

Tales of Resistance: Combating Legal Power from Italian Shores to  
London Streets

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## **Dedication**

This dissertation is dedicated to my father, who, during summer storms, would read Shakespeare to me by flashlight until the power came back on.

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## Introduction

In 1566, members of the Inner Temple wrote and staged *Gismund of Salerne* for Queen Elizabeth I. As an adaptation of a tale in Boccaccio's *Decameron*, *Gismund* is the earliest known English play that derives from Italian novelle.<sup>1</sup> In the same year, George Gascoigne produced two plays at Grays Inn, one of the most influential Inns of Court and a central place for legal training in England. The two plays, *Supposes*, deriving from Ariosto's *Suppositi*, and *Jocasta*, a tragedy adapted from Lodovico Dolce's *Giocasta*, similarly share Italian sources. These three plays mark the beginning of a larger English phenomenon, in which playwrights transformed Italian narratives for the Elizabethan and Jacobean stage.<sup>2</sup> The connections between law, theatricality, and Italian literature in these plays also exemplify the two larger discourses in this dissertation, including: the dialogue between law and literature in early modern theatre, and the expansive influence of Italian culture on English literature.

Legal historians and literary scholars alike continually demonstrate how the law provides one of the primary concepts in which people comprehend the world in which they live.<sup>3</sup> The law informs societies of the past and present like no other discipline,

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<sup>1</sup> As noted in Murray J. Levith's *Shakespeare's Italian Settings and Plays* (London: Macmillan, 1989), 2.

<sup>2</sup> Gascoigne's *Jocasta* is also thought to be the first Greek tragedy on the English stage, and was translated from the Italian of Lodovico Dolce's *Giocasta* with the help of Francis Kinwelmershe. For more information, see Gillian Austen, *George Gascoigne* (Cambridge: D.S. Brewer, 2008), 52. Murray J. Levith references *The Supposes* as one of the first English plays based on an Italian play in *Shakespeare's Italian Settings and Plays*, 2.

<sup>3</sup> Christopher W Brooks, *Law, Politics and Society in Early Modern England* (Cambridge: Cambridge University Press, 2009), 7.

mapping power structures, political spheres, and social relationships in the process. The new “legal turn” in literary studies has added a great deal to our understanding of early modern legal experience, especially in terms of the connections of literary genres to categories of law and jurisdictional boundaries, as well as the immense overlap between the kinds of narrative structuring inherent to literary and legal texts.<sup>4</sup> Yet, law-literature studies have often relied on nationalistic boundaries, overlooking the intense interchange of legal and literary ideas circulating across geographical divides.<sup>5</sup> The following analysis showcases how early modern theater became a coalescing site of transnational legal knowledge and perspectives. I use the strong connection between Italian and English literature to think through how legal ideas travel across cultural divides and circulate in both legal learning and popular understandings of law. In this process, I examine what it means for literature and legal texts entrenched in Italian social circumstances to circulate in England’s drastically different legal environment as well as the ways in which Italian law prompted new perspectives on English legal authority.

Specifically, I illustrate how English authors appropriated Italian texts to oppose increasing monarchic power in the legal system. I argue that Italian materials provided a

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<sup>4</sup> See, for example: Christopher Warren, *Literature & the Law of Nations, 1580-1680* (Oxford: Oxford University Press, 2015); Bradin Cormack, *A Power to do Justice: Jurisdiction, English Literature, and the Rise of Common law, 1509-1625* (Chicago: The University of Chicago Press, 2007); Lorna Hutson, *The Invention of Suspicion: Law and Mimesis in Shakespeare and Renaissance Drama* (Oxford: Oxford University Press, 2011); Victoria Kahn and Lorna Hutson, *Rhetoric and Law in Early Modern Europe* (New Haven: Yale University Press, 2001); and the edited volume, *Taking Exception to the Law: Materializing Injustice in Early Modern English Literature*, eds. Donald Beecher, Travis Decook, Andrew Wallace, and Grant Williams (Toronto: University of Toronto Press, 2015).

<sup>5</sup> Christopher Warren’s book *Literature & the Law of Nations, 1580-1680* also highlights and combats this nationalistic tendency in law-literature studies.

comparative legal viewpoint for writers to contest the overarching power shift from local to state legal authority in sixteenth-century England. By recovering the Italian sources of popular English plays and pamphlets, I establish English authors' engagement with Italian law, in which legal authority was already invested in court powers removed from local communities. At the same time, I demonstrate how English writers manipulated common stereotypes of Italian court authority, such as the Duke's mastery of Machiavellian dissemblance in Shakespeare's *Measure for Measure* and Webster's violent display of court corruption in Italian revenge tragedies, to disturb audiences and provoke a wider public to evaluate the role of court power in legal affairs. My project then reveals the preoccupation of popular literature with legal concepts as well as Italian influences on early modern English expectations and understandings of law. I develop this argument through close analysis of literary texts within chapters dedicated to specific features of English common law. While individual chapters focus on particular aspects of the English legal system, collectively, they showcase a broader view of literature's place in contested negotiations for power in early modern England.

### **Italian-English Connections in Legal Knowledge and Practices**

The relationship between popular legal knowledge and Italian influences on English literature that I illustrate throughout this dissertation stems from England's connections to Roman law. While English common law differentiated from continental legal practices based on Roman law, the English legal systems still derived from a

common Roman legal heritage.<sup>6</sup> Even in the differentiating factors central to English common law, such as the jury system and the concept of equity, the English legal system developed in relation to the expansive Roman legal history adapted throughout Europe. In addition to the impact of Roman law's extensive legal tradition, especially in Roman canon law developed in the Catholic Church, English legal learning had strong connections to Roman legal ideas and procedures.<sup>7</sup> The authority of Roman legal scholarship in the early modern period existed, for example, in the teachings of rhetoric and understandings of legal concepts that built from Roman foundational texts.<sup>8</sup>

Outside of specific connections to Rome's legal heritage, Italian discourse building from Roman principles also featured prominently in English legal thinking. William Fleetwood, a sixteenth-century lawyer and well-known legal figure, had a particular interest in connecting legal concepts to critics of the Italian historiographer Polydore Vergil.<sup>9</sup> Furthermore, John Lydgate's *The Fall of Princes*, a translation of Boccaccio's *De Casibus Virorum Illustrium*, was the source of an expansive collection of

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<sup>6</sup> *The Oxford Handbook of Language and Law*, eds. Peter M. Tiersma and Lawrence M. Solan (Oxford: Oxford University Press, 2012).

<sup>7</sup> For more on England's strong connections to Roman law, see especially R.H. Helmholz, *Roman Canon Law in Reformation England* (Cambridge: Cambridge University Press, 2004); *Law & Equity: Approaches in Roman Law and Common law*, Eds. E. Koops and W.J. Zwalve (Boston: Martinus Nijhoff Publishers, 2014), 3-13; Mario Ascheri, "Common law/Ius Commune tra dottrina e storia," *Relations Between the Ius Commune and English Law*, eds. R.H. Helmholz and Vito Piergiovanni. Rubbettino Editore, 2009, 51-54; Edward D. Re, "The Roman Contribution to the Common law," 29.3 *Fordham Law Review* 447 (1961); and George Mousourakis, *Roman Law and the Origins of the Civil Law Tradition* (New York: Springer Publishing, 2014).

<sup>8</sup> For example, Thomas Wilson's treatise *The Arte of Rhetoric* (1553) illustrates that the works of Cicero were key texts for the study of Latin grammar. This text contributed to the larger influence of Roman ideas in English education.

<sup>9</sup> Stowe 423, cited in Brooks, *Law, Politics and Society*, 84.

cautionary tales against bad governing, *The Mirror for Magistrates* (1559).<sup>10</sup> This collection included contributions from active writers with legal backgrounds, including William Baldwin, Thomas Phayer, and George Ferrers.<sup>11</sup> Lastly, recent scholarship has demonstrated how classical Roman legal theories, in combination with early modern Italian interpretations, extended to English conceptions of international conflict and justice, especially in the works of Oxford Roman law scholar Alberico Gentili (1552-1608).<sup>12</sup>

In addition to the long-held connections and influences of Roman law in English legal circles, the jurisdictional relationship between England and Italy within Ecclesiastical law highly influenced English legal practices. Henry VIII's Act of Restraint of Appeals prevented Catherine of Aragon, as well as any other English person, from going to Roman authority to appeal decisions of English church courts. English scholars note that by the time of the more official Reformation era, a jurisdictional reformation was already occurring in England.<sup>13</sup> One crucial effect of England's break from Rome was in the expansion of central court litigation, including an increased number of statutes as well as more centralized legal practitioners such as judges and

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<sup>10</sup> Paul Budra, *A Mirror for Magistrates and the De Casibus Tradition* (Toronto: University of Toronto Press, 2000).

<sup>11</sup> Brooks, *Law Politics, and Society*, 56.

<sup>12</sup> See especially, *The Roman Foundations of the Law of Nations: Alberico Gentili and the Justice of Empire*, eds. Benedict Kingsbury and Benjamin Straumann (Oxford: Oxford University Press, 2010).

<sup>13</sup> Brooks, *Law, Politics and Society*, 45; R.H. Helmholz, *Roman Canon Law in Reformation England*, 26-33.

lawyers.<sup>14</sup> England's diplomatic, religious, and political relationship to Italy thus greatly affected England's legal system. The fallout of England's break from Rome created two parallel legal systems in English courts, in which ecclesiastical power still operated, but was subjected to common law authority. Amidst these larger shifts of power occurring within Reformation politics, however, canon law principles still held great sway in legal procedures for the spheres of marriage and the family. Thus, we can observe strong connections between English common law and Roman law in both English legal learning circles as well as English legal practices reacting specifically to England's relationship with Rome.

### **Legal Concepts in Popular Literature**

Using literary analysis, the following chapters expand these bonds between Roman and English law in the early modern period. Law-literary scholars note that the developments of European legal systems progress in language, building from the expansion of vernacular speech, culturally specific linguistic structures, and evolving syntax configurations.<sup>15</sup> Literary analysis has also been critical to our understanding of various legal genres, where scholars examine the specific structuring of legal discourse in both codified documents and procedural examinations.<sup>16</sup> Furthermore, law functions

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<sup>14</sup> The impact of England's break from Rome was first noted in print by mid seventeenth-century jurist Sir Mathew Hale, as cited in John Baker's *The Oxford History of the Laws of England*. vol. VI: 1483-1558 (Oxford: Oxford University Press, 2003), 35.

<sup>15</sup> See especially *The Oxford Handbook of Language and Law*, eds. Peter M. Tiersma and Lawrence M. Solan, 2012.

<sup>16</sup> *Ibid.*

within commanding narratives that reveal larger social and political contexts. By studying these overarching narratives, scholars uncover rhetorical devices used in trials or judicial opinions, including the way facts are ordered to provide a coherent story to make a case. Such work also highlights broader ideologies inherent to law, such as the nature of confession, punishment, and absolution.<sup>17</sup> A few prominent examples of scholarship that examine these connections in the early modern period include Christopher Warren's analysis of literature's connections to the development of international law; Lorna Hutson's work on "evidential awareness," where she illustrates how English playgoers learned about the processes of evidence-making; and Bradin Cormack's study of literature's role in the transformations of jurisdiction and juridical norms occurring in early modern England.<sup>18</sup> All of these, and many more, studies in law and literature illustrate how law is a collection of lived experience rather than a simple compilation of codified regulations.

The growing field of law and literature informs this dissertation, as there are direct connections between legal knowledge and literary genres in the specific Italian and English materials used in this study. While there is less scholarship on law and literature in an Italian context, there is still a strong overlap between legal learning and the development of Italian literature. For example, recent scholarship has proven that Italian short stories, or *novelle*, were not only a literary but also a legal genre from the initial

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<sup>17</sup> *Law's Stories: Narrative and Rhetoric in the Law*, eds. Peter Brooks and Paul Gewirtz (New Haven: Yale University Press, 1996).

<sup>18</sup> Warren, *Literature & The Law of Nations*, 2015; Hutson, *The Invention of Suspicion*, 2011; Cormack, *A Power to do Justice*, 2007.

developments of the form.<sup>19</sup> Universities of law used *novelle* to teach legal procedures, and in this process, reevaluated Roman legal concepts in Justinian's texts such as the *Novellae*.<sup>20</sup> Giovanni Boccaccio, the perceived creator of the *novelle* form, was also a jurist and his legal training highly influenced the portrayal of social, political, and legal issues occurring in his *novelle*. In addition to Boccaccio, many *novelle* writers had legal training and perhaps turned to the *novelle* form with the idea that fiction might better represent the larger laws of human experience.<sup>21</sup> The *novelle* discussed in this dissertation, analyzed both in Italian literary circles and in sources to English plays, consequently have this direct connection to legal training.

The overlap between sites of legal knowledge and popular literature in Italian *novelle* directly parallels the ways English legal training in London's Inns of Court correlated to the development of English theatre. Several playwrights, such as John Marston and John Webster, attended the Inns. Inns of Court were special patrons of popular theaters; and in turn plays were a central part of lawyers and law students experience at Inns of Court.<sup>22</sup> For example in 1594, Gray's Inn, the largest of the Inns of Court, requested that Shakespeare pick one of his plays for the famous Christmas "law

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<sup>19</sup> Carmen R. Rabell, *Rewriting the Italian Novella in Counter-Reformation Spain* (Woodbridge: Tamesis, 2003).

<sup>20</sup> The legal genre of *novellae leges* also connects to the history of international law in Chenxi Tang, "The Transformation of the Law of Nations and the Reinvention of the Novella: Legal History and Literary Innovation from Boccaccio's *Decameron* to Goethe's *Unterhaltungen deutscher Ausgewanderten*." *Goethe Yearbook: Publications of the Goethe Society of North America* 19 (2012): 67-92.

<sup>21</sup> Nelson Moe, "Not a Love Story: Sexual Aggression, Law and Order in 'Decameron X 4'" *Romantic Review* 86,4 (1995), 623.

<sup>22</sup> See Alan H. Nelson and Jessica Winston, "Drama of the Inns of Court," *A New Companion to English Renaissance Literature and Culture, Volume Two*, Ed. Michael Hattaway (Hoboken: Wiley-Blackwell, 2010), 94-105.

revels.”<sup>23</sup> At this celebratory event, Shakespeare even revised his play *The Comedy of Errors* to include more trial scenes and legal passages. In addition to these connections occurring within the Inns of Court, Lorna Huston has also illustrated how a “judicial pedagogy of narrative” inundated Renaissance rhetorical education, which in turn created formal innovations on the English stage.<sup>24</sup> We can easily observe that these connections between legal learning and literature had a real impact on English theatre, as during Shakespeare’s career, more than a third of the plays performed in London had one or more trial scenes.<sup>25</sup>

In addition to English theatre’s specific connection to the legal training of the Inns, more popular ideas of law circulated throughout England in genres such as sermons, news pamphlets, and street ballads. Early modern England is a specifically interesting place to study law and literature given the strong material connection between the more elite circles of legal knowledge and the popular literature of the time. The circulation of these ideas is in part indebted to the English public’s engagement with law, where a general populous had great interest in legal affairs. In English common law, unlike many continental legal procedures based on Roman law, even a commoner in English society could participate in a jury trial and attend judicial procedures. For example, the law courts at Westminster Hall in London were immensely popular, with many English people attending the four terms of court each year as a kind of dramatic pastime.<sup>26</sup> For

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<sup>23</sup> Daniel J. Kornstein, *Kill All the Lawyers? Shakespeare’s Legal Appeal* (Lincoln: University of Nebraska Press, 1994), 11.

<sup>24</sup> Hutson, *The Invention of Suspicion*, 7, 122, 146.

<sup>25</sup> Kornstein, *Kill All the Lawyers*, 15.

<sup>26</sup> *Ibid.*

this reason, scholars argue that the general English populace knew much more about law than any other European population. This more intense public engagement with law, as well as the broader transmission of ideas from English legal circles to the general public, make England an especially fruitful place for scholarship on law and literature.

These connections between legal learning, public engagement in legal proceedings, and literary texts all coalesce in English theatre, where the English stage illustrates how legal ideas circulate in popular literature. Early modern English playwrights continually adapted and evaluated legal concepts on stage, paying particular attention to legal principles more central to English law, such as the concept of Equity. Many of Shakespeare's plays, as an example, highlight Equity as a means of challenging the literalism of law.<sup>27</sup> Plays illustrate criminal acts and characters within larger political and social concerns of the time, where the audience can act as a judge evaluating characters and their motives in the circumstances of any given play.<sup>28</sup> At the same time, plays represent larger concepts inherent to law, such as the nature of crime and value of virtue. Scholars have consequently read English theater as a legal history, where the overlaps between legal learning and popular conceptions of law, between legal and literary narratives, and between the elite forms legal knowledge and the popular agency of the jury system all collide.<sup>29</sup> In the following chapters, I build from such scholarship

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<sup>27</sup> *The Law in Shakespeare*, eds. Constance Jordan and Karen Cunningham (New York: Palgrave Macmillan, 2007).

<sup>28</sup> See especially Victoria M. Time, *Shakespeare's Criminals: Criminology, Fiction, and Drama* (Westport: Greenwood Press, 1999); Huston, *The Invention of Suspicion*, for ways playgoers learned to evaluate evidentiary questions.

<sup>29</sup> For more on Shakespeare and Law, see Andrew Zurcher, *Shakespeare and Law* (New York: Bloomsbury Arden Shakespeare, 2011).

to demonstrate larger connections occurring between law and literature across transnational borders.

### **A Transnational Perspective of Law and Literature**

*Gismund of Salerne* and Gascoigne's plays, mentioned in the opening of this introduction, illustrate not only the overlap between legal learning and English theater, but also the Italian sources inherent to that connection. This project analyzes the influence of Italian literature on the English stage to uncover the intertextual dynamics and broader comparative ideas circulating in two diverse legal systems. Anglo-Italian scholars highlight the huge transfer of Italian materials occurring in every English genre.<sup>30</sup> In addition to strong parallels in Italian sources to English literature, Italian connections in news production, court culture, and political writings point to a broader commerce of information circulating in the English literary milieu that amalgamated on the English stage.<sup>31</sup> Thus, in addition to specific Italian sources, Anglo-Italian scholarship should, in the words of Michele Marrapodi, reveal "broader intercultural factors as semantic *topoi*, genre models, ideological codes, and interdiscursive relationship,"<sup>32</sup> Recent scholarship in Anglo-Italian studies highlights Italy's place in social and political

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<sup>30</sup> I am indebted to Soko Tomita's detailed survey of Italian materials circulating in England in her two works: *A Bibliographical Catalogue of Italian Books Printed in England, 1558-1603* (Farnham: Ashgate Publishing Company, 2009); and *A Bibliographical Catalogue of Italian Books Printed in England, 1603-1642* (Farnham: Ashgate Publishing Company, 2014).

<sup>31</sup> Louise George Clubb, 'Italian Stories on the Stage,' in *The Cambridge Companion to Shakespearean Comedy*, ed. Alexander Leggatt (Cambridge: Cambridge University Press, 2002).

<sup>32</sup> Michele Marrapodi, "Introduction," *Italian Culture in the Drama of Shakespeare & His Contemporaries: Rewriting, Remaking, Refashioning* (Burlington: Ashgate, 2007), 5.

dialogues within early modern England. For example, Michael Redmond argues playwrights built from the influential works of Niccolo Machiavelli, Francesco Guicciardini, and Baldassare Castiglione as a way for audiences to understand statecraft.<sup>33</sup> My analysis of what it means for Italian materials to circulate in England's very different legal environment works within scholarship on Italy's central place in Elizabethan and Jacobean drama.

Italy occupies both a material and conceptual space in English literature. When analyzing the particular Italian sources of English drama, scholars such as Ernesto Grillo have claimed English drama owed about four-fifths of its plots, ideas, and general inspiration to Italian drama.<sup>34</sup> In addition to Shakespeare's adaptations of Italian sources in plays like *Othello*, *The Merchant of Venice*, and *Measure for Measure*, many of Shakespeare's contemporaries, including Ben Jonson, Robert Greene, John Webster, and John Marston, extensively borrowed Italian sources for their plays.<sup>35</sup> Yet, the Italian connections appearing on the English stage are not simply limited to direct sources. Rather, there existed a wide range of Italian materials circulating in England's popular print market, and this market had strong connections to English theater. One prominent example is in the Italian language printing of John Wolfe, who in addition to Tasso and Guarini, printed five books by Machiavelli, four by Aretino, controversial books

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<sup>33</sup> Michael J. Redmond, *Shakespeare, Politics, and Italy* (Farnham: Ashgate, 2009).

<sup>34</sup> Ernesto Grillo, *Shakespeare and Italy* (Glasgow: University Press Glasgow, 1949), 65.

<sup>35</sup> Redmond, *Shakespeare, Politics, and Italy*, 8.

informing the Protestant view of Italy, and numerous news pamphlets from Italy.<sup>36</sup> In addition, Italian manuals like Saviolo's fencing book and Castiglione's *The Courtier* were influential for English court culture.<sup>37</sup> Lastly, there was a large market for translated Italian materials, such as William Painter's *The Palace of Pleasure*, which included translations of Italian *novelle*, as well as John Florio's *A Worlde of Wordes*, which included translations from Aretino, Boccaccio, Castiglione, Petrarca, and Tasso.<sup>38</sup> Given the wide range of Italian materials circulating in England, scholars like Michele Marrapodi argue that English borrowings of Italian literature is "the most significant example of appropriation of an alien culture among various literary forms of art in Europe."<sup>39</sup> In addition to exploring England's material connections to Italy, scholars have also shed light on Italy as a concept in English literature.

As English authors translated and adapted Italian texts, common stereotypes of Italian culture emerged and collective perceptions of "Italy" were subjugated to political and ideological English concerns.<sup>40</sup> Roger Ascham's infamous phrase, "Inglese italianto è un diavolo incarnato,"<sup>41</sup> points to the negative reaction of English writers regarding

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<sup>36</sup> Stephen Parkin, "Italian Printing in London 1553-1900," in *Foreign-Language Printing in London 1500-1900*, ed. by Barry Taylor (Boston Spa: The British Library, 2002); Tomita, *A Bibliographical Catalogue*, 9-10.

<sup>37</sup> Tomita, *A Bibliographical Catalogue*, 10-11.

<sup>38</sup> Tomita, *A Bibliographical Catalogue*, 4; Frances Yates, *John Florio: The Life of an Italian in Shakespeare's England* (Cambridge: Cambridge University Press, 1934).

<sup>39</sup> Michele Marrapodi, "Introduction," *The Italian World of English Renaissance Drama: Cultural Exchange and Intertextuality*, Eds. Michele Marrapodi and A.J. Hoenselaars (Newark: University of Delaware Press, 1998), 6.

<sup>40</sup> Stephen Greenblatt, *Renaissance Self-Fashioning: From More to Shakespeare* (Chicago: University of Chicago Press, 1980).

<sup>41</sup> Roger Ascham, *The Schoolmaster*, (Amsterdam: Theatrum Orbis Terrarum, 1968), 66. Ascham's phrase points to larger conflicts between those in favor of and against Italian

Italian influences in English culture.<sup>42</sup> Italian stereotypes came from places like travel narratives, such as William Lithgow and William Thomas's *History of Italy* (1549), that vividly depict Italy as a place of exotic splendor.<sup>43</sup> On the other side, English authors often portray Italy as a place where there is a tolerance of vice and jealousy, a joy in mischief and plotting, and a desire for revenge.<sup>44</sup> Thus, English literature created and adapted this overarching view of Italy as a place of extreme conflicts between virtue and vice, love and hatred, political integrity and corruption, and atheism and religion.<sup>45</sup> As noted by Jack D'Amico, "Italy" became a dramatic convention in itself, as staging a play in Italy meant anything could happen, since no one and nothing is as it seems. In part, early modern English authors could then manipulate common perceptions of Italy as a kind of smoke screen for English concerns, and indeed scholars of Anglo-Italian relations note we can see both a sense of patriotism and xenophobia in the use of Italian stereotypes.<sup>46</sup>

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influences. For example, John Florio quotes Ascham directly and asks him, "Now who the Diuelli taught thee so much Italian?" in his *Second Frutes* (1591).

<sup>42</sup> See Redmond, *Shakespeare, Politics, and Italy*, 32; and Andreas Mahler, "Italian vices: cross cultural constructions of temptation and desire in English Renaissance drama." *Shakespeare's Italy*. eds. Michele Marrapodi, et al. New York: Manchester University Press, 1993. 49-68.

<sup>43</sup> Michele Marrapodi, *Shakespeare's Italy: Functions of Italian Locations in Renaissance Drama* (Manchester: Manchester University Press, 1997), 2. and Michele Marrapodi, *Shakespeare, Italy, and Intertextuality*. New York: Manchester University Press, 2004.

<sup>44</sup> Marrapodi describes the common stereotypes employed in English literature as, "a repulsive territory of vices where domestic anxieties could be easily stored and exorcised" in *Italian Culture in the Drama of Shakespeare*, 2.

<sup>45</sup> Jack D'Amico. *Shakespeare and Italy* (Gainesville: University Press of Florida, 2001), 1.

<sup>46</sup> As noted in Levith, *Shakespeare's Italian Settings and Plays; Italian Studies in Shakespeare and His Contemporaries*, Eds. Michele Marrapodi and Giorgio Melchiori

My work on Italian-English connections builds from both Italy's material connections to English literature and Italy's strong conceptual space in the English imagination. The following chapters bring together source studies, legal history, and cultural theory to understand this transnational strategy in early modern English literature. I recover how English authors actively engaged with their Italian sources to explore legal power. This dissertation builds from research of legal documents to reveal the social and legal experience contextualizing Italian sources that became a means for English authors to comparatively analyze law in early modern England. In addition to my study of Italian sources, I consider how English writers employed common stereotypes of the "Italian Other" in English literature—such as Machiavellian cruelty and court corruption. I illustrate the ways writers manipulated the collectively created Italian fantasy, where nothing is as it seems, to reveal the broader theatricality of state power in English common law. Within my project's transnational view of law-literary studies, my work offers a broader approach to transnational exchange that integrates cross-cultural connections and historical relationships with socially constructed views of other nations.

### **Combating Legal Power from Italian Shores to London Streets**

The connections between law-literary studies and Anglo-Italian studies that I've outlined in this introduction all come together in my argument that Italian materials became the voice for resisting legal power in early modern England. I specifically

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(Newark: University of Delaware Press, 1999), 7; A.J. Hoenselaars, *Images of Englishmen and Foreigners in the Drama of Shakespeare and his Contemporaries: A Study of Stage Characters and National Identity in English Renaissance Drama, 1558-1642* (Rutherford: Fairleigh Dickinson University Press, 1992).

analyze Italian influences within the larger shift from local to centralized legal authority occurring in English common law. Initially, English common law prioritized local adjudication in the jury system. Sir John Fortescue's *In Praise of the Laws of England* from the 1460s claimed the English jury had far less risk of being corrupted because of the fact that plaintiffs and witnesses spoke before a jury assembled from the community, who would presumably already know a person's credibility.<sup>47</sup> Yet England's legal system centralized fairly quickly, a result of which is noted in William Lambarde's *Eirenarcha* (1582). Lambarde highlights how jurisdictional shifts in power had diminished community peace-keeping efforts, as it took the "election" of conservators of the peace out of the hands of "the common people" and "translated" it to "the assignment of the king."<sup>48</sup> This expansive transfer of legal authority overpowered traditional communal mediation practices on which English common law was founded, and was met with continuous conflicts between centralized authorities and community forces. I argue English writers used foreign Italian jurisprudence to expose the growing divide between communal and state power in the English justice system.

I begin by examining Italian short stories, or *novelle*, circulating in English literary circles, including late medieval writers such as Giovanni Boccaccio, Franco Sacchetti, and Matteo Bandello. I investigate common threads in *novelle* in dialogue with legal scholarship to understand tensions between legal authorities and communities. I particularly focus on judicial positions in north-central Italy, where foreign judges were

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<sup>47</sup> Sir John Fortescue, *On the Laws and Governance of England*, ed. S. Lockwood (Cambridge, 1997), 30-47.

<sup>48</sup> Lambarde, *Eirenarcha*, 20-2, as quoted in Brooks, *Law, Politics and Society*, 14.

appointed within a community on a contract basis. As this geographical area is the same place the *novella* genre flourished in the fourteenth and fifteenth centuries, the *novellieri* give us insights into both a judge's given power over, and vulnerability to, community forces. Rather than portraying judges as ultimate ruling authorities with their own individual agency, these tales emphasize how judicial power was irrevocably tied to the community. I conclude with a survey of Italian *novelle* circulating in England to demonstrate the impact of Italian narratives on English perceptions of judges as community mediators. Specifically, I point to the tension between republican and despotic forms of government present in Italian *novelle* that English authors found useful to think through the divide between English legal idealism of local, communal justice, and the reality of English legal practices increasingly formed within centralized power.

In my second chapter, I use Shakespeare's play *Measure for Measure*, based on a *novella* from Gimbattista Giraldi Cinzio, to examine what it means for Shakespeare to stage narratives engaged in Italian Roman law within England's common law system. The chapter analyzes *Measure for Measure* as an exemplar of the cross-cultural legal exchanges in the numerous Italian stories depicted on the English stage. Within this comparative framework, I argue Shakespeare builds from Italian social experience in Cinzio's *novella* and Machiavelli's political discourse to critique the shift from local to state authority occurring throughout sixteenth century England. Specifically, Shakespeare's *Measure for Measure* challenges commanding ideas of communal justice fundamental to English legal ideology and reveals law's theatrical power of perception. Using Shakespeare's play as a case study, I further illustrate how transnational literature

both contributes to popular conceptions of law and uncovers power dynamics behind the development of early modern legal systems.

I study early modern news pamphlets in my third chapter, where scholars like Mario Infelise have noted that Italian newsheets, or *avvisi*, constructed the initial form of reporting crimes. This created a model that was then replicated throughout Europe and especially in England's print market, where authors had to be careful to avoid harsh censorship policies prompted by the new commerce of information. This chapter focuses on English "cony-catching" narratives in which writers such as Robert Greene and Thomas Dekker built from conventions of news reporting to act like investigative journalists revealing England's criminal world. I argue the cony-catching tales employ Italian narrative conventions—including Italian news reporting and character types common to English drama—to uncover the ways local policing forces in England had become increasingly distant from community concerns. The tales' connections to news networks, legal processes, and theatricality all showcase a wider sense of popular English legal knowledge and experience emerging from Italian materials.

My research on the relationship between news networks and theater leads to my fourth chapter on John Webster's drama *The White Devil*. As Webster builds from accounts of Vittoria Accoramboni's murder in Italian criminal pamphlets, or *avvisi*, he adapts the Italian legal environments of his sources to discuss England's transition to a centralized legal system. I argue Webster uses Italian *avvisi* to exemplify how centralized authority affected the English jury. In *The White Devil*'s infamous trial scene, foreign ambassadors to Rome assemble like an English jury to enact "objective" judgment as

outsiders of the community. In England's move towards a centralized legal system, juries were increasingly composed of people from outside a community, rather than more local character witnesses, to eliminate the forces of corruption and professionalize the jury system. Since the palpable corruption of the trial easily passes by this perceived objectivity, I argue Webster's play challenges emerging English notions of neutrality occurring within this transition to the jury system. I conclude with a study of England's jury system as the perceived center of England's local power in legal affairs. My dissertation then progresses from higher authoritative positions to the common jury member in order to showcase how transnational literature contributed to escalating tensions in English legal experience.

**Chapter One: “Muioia il Podestà!”: Legal Authority and Community Forces in Late Medieval Novelle**

One of Franco Sacchetti’s novelle focuses on the actions of messer Rinaldello as he arrives in Florence.<sup>49</sup> Upon seeing a social gathering for a bridal party with many of the city’s well-to-do citizens, he asks the Florentines near him how many judges are employed in the city. When the Florentines detail the various judicial positions, Rinaldello, shocked at the sheer number of Florentine judges, then describes how in his city one man came from Bologna to act as judge and turned the harmonious peace in the community to discord and war [“la pace che solevamo avere, è convertita in guerra; noi stiamo tanto male.”]<sup>50</sup> Rinaldello then remarks that if just one judge could create such turmoil in his small community, he is surprised the numerous judges in Florence have not completely destroyed the city, leaving one rock on top of another [“qui abbiamo lasciato pietra sopra pietra.”]<sup>51</sup> The tale ends with the Florentines’ amused sense of agreement with Rinaldello, and is complemented with Sacchetti’s own thoughts supporting Rinaldello’s observations. After citing examples in which smaller territories do well with no judges, Sacchetti concludes the narrative with an ancient inscription found in a garden: “dolus malus abesto et jurisconsultus.”<sup>52</sup>

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<sup>49</sup> Franco Sacchetti, *Il Trecentonovelle*, (Torino: Edizione di riferimento a cura di E. Faccioli, Letteratura italiana Einaudi, 1970), No CXXVII, 333-4.

<sup>50</sup> *Ibid.*, 333.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*, 334.

While this tale expresses a common critical perception of judicial authority seen in late medieval novellieri,<sup>53</sup> the critique is especially surprising coming from Sacchetti, a man who was a chief judge in Bibbiena, San Miniato, and Faenza.<sup>54</sup> Through Messer Rinaldello's remarks, Sacchetti demonstrates how authority figures might destroy harmony in a community and raises the question whether territories even need judges at all. In turn, Sacchetti's tale prompts us to consider numerous questions: Is Rinaldello's exempla story on the destructive power of one judge a prominent feature of Italian legal experience? Does the questioning of the value of judges reflect a common critique of judicial authority in central Italy? What ideas of law and justice contextualize the narrative? Sacchetti's tale, along with others by numerous novellieri writers of the time, grants us a unique perspective on the complex relationships existing between legal authorities and communities.

This chapter analyzes judicial authority in novelle, in the context of Italian legal thought and procedures, in order to paint a new picture of the interaction of judicial power with community forces in late medieval Italy. I specifically focus on the position of Italian chief judges, or podesta, to illustrate the broader tensions between Republican and Despotic forms of government in late-medieval Italy.

Edward Muir and Guido Ruggiero state in the introduction of *History from Crime*

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<sup>53</sup> "Novellieri" referring both to collections of Italian short stories (novelle) as well as the writers of such collections.

<sup>54</sup> See more details of Sacchetti's life in Dr. Guido Biagi's introduction to *Tales from Sacchetti* (London: J.M. Dent, 1908), 3-24; and Michelangelo Zaccarello, "Ingegno Naturale e Cultura Materiale: I Motti degli Artisti nelle 'Trecento Novelle' di Franco Sacchetti," *Italianistica: Rivista di letteratura italiana* 38, no. 2 (2009): 129-140; and Piotr Salwa, *La narrativa tardogotica Toscana*, Fiesole, FI: Cadmo, 2004.

that the study of criminality shows us moments where “microsystems challenge macrosystems of power and values.”<sup>55</sup> While we can easily see such challenges in Sacchetti’s novella, the primary focus of Italian legal scholarship has remained in court documents within the study of specific trial records.<sup>56</sup> In this exploration, historians must consider that court cases cannot be treated as an unbiased recording of “true” accounts of events, as the documents are crafted within limits set by legal procedures as well as cultural and social factors of the time.<sup>57</sup> Even if the words on paper are not a result of inflicted torture, a common tactic in Italian investigations, the witnesses are articulating their voices within the power dynamics of a courtroom context, and their voices are further mediated through the documented narrative of a court case. Such layers of mediation have challenged legal scholarship and are the precise reason studying fiction benefits our understanding of law.<sup>58</sup> The novelle analyzed in this chapter give us significant insights into relationships of authority, ideals of justice, and the perceived power of law.

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<sup>55</sup> *History from Crime: Selections from Quaderni Storici*, eds. Edward Muir and Guido Ruggiero. (Baltimore and London: The Johns Hopkins University Press, 1994), viii.

<sup>56</sup> One prominent exception is Justin Steinberg’s *Dante and the Limits of the Law* (Chicago: University of Chicago Press, 2013).

<sup>57</sup> See Muir and Ruggiero’s *History from Crime*, as well as Trevor Dean and Kate Lowe, *Crime, Society, and the Law in Renaissance Italy* (Cambridge: Cambridge University Press, 1994).

<sup>58</sup> This chapter is greatly indebted to scholarly work in the growing field of law-literary studies that has also started to find its way to Italian scholarship. Richard Weisberg is widely credited for establishing the field more generally, with titles like *Poethics and Other Strategies of Law and Literature* (New York: Columbia University Press, 1992). Today, the field continues to develop with such work as *Liminal Discourses: Subliminal Tensions in Law and Literature*, eds. Daniela Carpi and Jeanne Gaakeer (Berlin: de Gruyter, 2013); M. P. Mittica, *Raccontando il possibile. Eschilo e le narrazioni giuridiche* (Milano: Giuffrè, 2006); and Ian Ward, *Law and Literature: Possibilities and Perspectives* (Cambridge: Cambridge University Press, 1995).

The novelle as a genre began in the latter half of the 1300s, continuing to grow in its popularity through the fifteenth and sixteenth centuries.<sup>59</sup> As Gloria Allaire notes, the genre grows out of medieval *exempla* and didactic literature, including: “moralizing anecdotes and folk wisdom in popular sermons, *fabliaux*, and parables.”<sup>60</sup> In addition, content for novelle also comes from courtly tales and chivalric romance as well as biblical and hagiographical tales.<sup>61</sup> Many of the novellieri borrow plots directly from more ancient tales, or the cento novelle antiche, anachronistically labeled “il novellino,” which were first anthologized between 1281-1300.<sup>62</sup> In developing the genre, Boccaccio is the first to codify and create a high structure for the tales.<sup>63</sup> His *Decameron* represented a remarkable break from the literary canon, and Boccaccio in many ways created the conventions of the genre that subsequent novellieri followed, especially writing “della vulgar lingua” in prose. While the genre is associated with the borghesia of Florence and Tuscany, it was also a response to a booming vernacular book culture. In addition to the rise in pragmatic literacy for the merchant class, Tuscany had a growing audience of lay

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<sup>59</sup>The field of Novellistica studies is well established; see for example: Gloria Allaire, *The Italian Novella*, ed. Gloria Allaire (New York: Routledge, 2003); *Favole, parabole, istorie : le forme della scrittura novellistica dal Medioevo al Rinascimento*, Eds. Gabriella Albanese, Lucia Battaglia Ricci, Rossella Bessi (Roma: 2000); and Nicoletta Marcelli, *Eros, politica e religione nel Quattrocento fiorentino : cinque studi tra poesia e novellistica*. (Roma: Vecchiarelli, 2010).

<sup>60</sup> Allaire, *The Italian Novella*, 1.

<sup>61</sup> *Ibid.*

<sup>62</sup> For more information, see *The Novellino or One Hundred Ancient Tales*, ed. Joseph P. Consoli (New York and London: Garland Publishing, 1997).

<sup>63</sup> For a more detailed description of Boccaccio’s impact on the genre, see Michelangelo Picone, *Boccaccio e la codificazione della novella: letture del “Decameron”* (Ravenna, Longo Editore, 2008).

readers for these texts.<sup>64</sup>

While law-literature scholarship is limited in novelle studies, the tales exist as a legal genre from the inception of the form. Italian law Universities continually used novelle in their study of legal concepts and scholars have especially noted the novelle's connection to the recovery of Justinian's texts, including the *Novellae*.<sup>65</sup> Boccaccio was first a jurist and then poet, where scholars have argued that he offers a comparison of jurists and poets in which poets can uncover the larger laws of human behavior.<sup>66</sup> Within these connections to legal training, the novellieri depict a wide range of characters and wide variation of social situations, often critiquing human behavior and activities. In this process, the boundary between fact and fiction was constantly blurred within the genre.

Novellieri often used material from chronicles to achieve the effect of realism, and some chroniclers inserted tales into their "histories."<sup>67</sup> Many novellieri were also hired to write chronicles, like Giovanni Sercambi. In Sercambi's writing, scholars have noted an enormous overlap in the content and narrative structures between his novelle

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<sup>64</sup> See Christian Bec, *Les marchands écrivains. Affaires et humanisme à Florence, 1375-1434* (Paris: Mouton, 1967); and Susan Noakes, "The Development of the Book Market in Late Quattrocento Italy," *Journal of Medieval and Renaissance Studies* XI (1981): 23-55.

<sup>65</sup> See especially, Carmen R. Rabell, *Rewriting the Italian Novella in Counter-Reformation Spain* (Woodbridge: Tamesis, 2003); Chenxi Tang, "The Transformation of the Law of Nations and the Reinvention of the Novella: Legal History and Literary Innovation from Boccaccio's *Decameron* to Goethe's *Unterhaltungen deutscher Ausgewanderten*." *Goethe Yearbook: Publications of the Goethe Society of North America* 19 (2012): 67-92.

<sup>66</sup> Nelson Moe, "Not a Love Story: Sexual Aggression, Law and Order in 'Decameron X 4'" *Romantic Review* 86, 4 (1995), 623.

<sup>67</sup> A Varvaro, "Tra cronaca e novella" *La Novella Italiana* (Rome, 1989), 155-6.

and cronache.<sup>68</sup> The narrative technique in novelle also reveals a blurry line between fantasy and realism, often claiming that the events in the tale “had really happened.”<sup>69</sup> Yet, even outside of issues of what events had occurred to inform the tales, Martines has noted that when tales depart from reality, they still “tell us about the construction of alternate imaginary realities and therefore about social strain and stress in the real world.”<sup>70</sup> Novelle originate from the societal tensions that contextualize the narratives.

The novelle discussed in this chapter also display a blurry line between fact and fiction. While the initial tales by Boccaccio and Bracciolini seem to be imagined scenarios, the tales by Ser Giovanni Fiorentino and Matteo Bandello are more pointedly tied to historical figures and events. Yet all of these tales reveal relationships and perceptions of authority in unparalleled clarity. This chapter analyzes common threads in novelle in dialogue with legal scholarship to reveal tensions between legal authorities and communities, especially between the varying forms of government in late-medieval Italy. I focus on the unique role of judicial positions in north-central Italy, in which foreign judges were appointed to positions within a community on a contract basis. I use the unique position of foreign judges to represent larger tensions occurring in Italian literature, especially between Republic ideals and Despotic authority.

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<sup>68</sup> See especially Myriam Swennen Ruthenburg, “Telling Lies, Telling Lives: Giovanni Sercambi between *Cronaca* and *Novella*.” *The Italian Novella*, Ed. Gloria Allaire (New York: Routledge, 2003), 69-81.

<sup>69</sup> For example, in Sacchetti’s CXLVII, a man who tries to defraud customs at the city gates fills his breeches with eggs is then discovered when the collector makes him sit down. Sacchetti states that he won’t mention the man’s surname, for the sake of his kindred.

<sup>70</sup> Lauro Martines, *Strong Words Writing & Social Strain in the Italian Renaissance* (Baltimore & London: The Johns Hopkins University Press, 2001), 181.

As this geographical area is the same place the novella genre flourished, the novellieri give us insight into both a judge's given power over, and vulnerability to, community forces. The novelle illustrate a judge's precarious position within the community as both an influential insider and a susceptible foreign outsider. Rather than portraying judges as ultimate ruling authorities with their own individual agency, as in the tale from Sacchetti summarized above, these tales demonstrate how judicial power was irrevocably tied to the community. This focused analysis on the chief judge's tenuous position leads to larger insights into the ways legal authority was connected to community relations in late medieval Italy. I then conclude with a survey of these Italian tales in early modern England to showcase how the tensions between Republicanism and Despotism forms of government in the Italian tales circulated within England's literary milieu.

### **Judicial Authority in North-Central Italian Legal Systems**

The designated judicial structure in most of central and northern Italy, excluding Venice, heavily relied on foreign outsiders to occupy positions of authority. Head judges were hired from a pool of learned lawyers and noblemen from outside the community, with the logic that outsiders would possess a sense of impartiality in judgment.<sup>71</sup> In most cases, a chief judge made a contract with a city for a semester (around six months) and brought with him his own staff. At the end of the semester, noble citizens reviewed the

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<sup>71</sup> Andrea Zorzi discusses this in his article "The Florentines and Their Public Offices in the Early Fifteenth Century: Competition, Abuses of Power, and Unlawful Acts." *History from Crime: Selections from Quaderni Storici*. eds. Edward Muir and Guido Ruggiero (Baltimore and London: The Johns Hopkins University Press, 1994), 112.

judge's work, and his contract could be renewed or he might be transferred to a new city.<sup>72</sup> In his notable work *Crime and Justice in Late Medieval Italy*,<sup>73</sup> Trevor Dean outlines the general picture of judicial positions in central and northern Italy, in which a typical judicial team would include a chief judge, or podestà, and a number of other judges, notaries, and police agents as his staff. In addition, there would be civic officials like a town crier supporting judicial authorities. While some communities hired only this set of legal authorities, others included a few other positions—such as a bargello or a “bandit catcher,” as well as a capitano del popolo, whose post was often quite similar to that of the podestà. Venice and Southern Italy had radically different systems in appointing positions of authority; however, this is the general picture of the judicial system throughout the late medieval period in central and northern Italy, where most of the novellieri originate and set their tales. In this system, foreign judges under contract with a city were expected to occupy a more unbiased, “outsider” role in the community.

While judges were appointed from outside a given territory, they quickly became an influential force in the community, both resolving tensions and enforcing codes of behavior. When a lord of Milan felt his dukedom was getting too unruly, he made a decree for stronger enforcement of judicial power and more severe punishments as a remedy “before this contagion is passed to many others.”<sup>74</sup> The medical imagery used in this decree also aligns with how judges might view their work as a kind of cleansing

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<sup>72</sup> The summary of this contract process is described by Trevor Dean and Kate Lowe in *Crime, Society, and the Law in Renaissance Italy* (Cambridge: Cambridge University Press, 1994), 1-16.

<sup>73</sup> Trevor Dean, *Crime and Justice in Late Medieval Italy* (Cambridge: Cambridge University Press, 2007), 12-13.

<sup>74</sup> Antiqua ducum Mediolani decreta, 185-6 (as cited in Dean, *Crime and Justice*, 90).

agent to the ills of a community.<sup>75</sup> In this process, the head judge, as either a podestà or capitano, would receive cases in one of the following ways: as an accusation from the injured party; as a notification or “denunciation” by local district officials; and, lastly, by the judge’s own actions from an investigation.<sup>76</sup> The judge’s authority to investigate people within a more inquisitional style of justice led to moments of arbitrary use of power, injustice, and inequality. Novellieri often depict such judicial abuses of authority in their tales.<sup>77</sup> What is more, legal historians like G. Cherubini and Guido Ruggiero have noted that a chief judge’s mode of inquiry was frequently characterized by secrecy and torture tactics, where the defendant was often unable to present his or her defense until a trial was almost over.<sup>78</sup> Even though other historians like M. Vallerani<sup>79</sup> have noted that perhaps judges did not hold as much arbitrary power as it might seem on the surface, a head judge doing an inquiry would simultaneously play the role of investigator, prosecutor, and judge. Thus it is clear that judges might exploit their power when in a

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<sup>75</sup> David S. Chambers and Trevor Dean, *Clean Hands and Rough Justice* (Ann Arbor: University of Michigan Press, 1997), 40-1. Chambers and Dean also note that judges “saw themselves as cleaners and weeders, removing dirt from the social fabric and digging out pernicious tares from the garden of state,” 40-1.

<sup>76</sup> Summarized from Dean, *Crime and Justice*, 12.

<sup>77</sup> San Bernardino’s exempla stories in *Le prediche volgari* discuss corruption in legal systems; people are tortured based on a loose sense of suspicion in stories number 87, 89, and 90 of Sercambi; Boccaccio also discusses false accusations in legal processes in *il Decameron*, III.7, IV.3, and IV.10; judges are bribed in Bracciolini No 224, and Sacchetti No 77. Lastly, the trope of the “lustful judge” is seen in many tales from Boccaccio, Bandello, and Cinzio.

<sup>78</sup> G. Cherubini, *Gente del medioevo* (Florence: Le Lettere, 1995), 67; Guido Ruggiero, *Violence in Early Renaissance Venice* (New Brunswick: Rutgers University Press, 1980), 29.

<sup>79</sup> M. Vallerani, “Conflitti e modelli procedurali nel sistema giudiziario comunale: I registri di processi di Perugia nella seconda metà del XIII secolo,” *Società e storia*, 48 (1990): 279-81.

more inquisitional mode of justice. Yet, even though judges had a sense of individual agency, their power was reliant on forces originating within the community.

Even when chief judges act severely on their own authority, judicial practices were still strongly tied to community forces. In fact, a judge's inquiry often resulted on the basis of repute (or fama) from unnamed informants in the community. Fama as a concept is repeatedly used in proceedings of medieval Roman canon law courts.<sup>80</sup> This general talk in the community as reputation or a sense of a community voice was crucial to judicial practices. One example of official justice intertwined with community relations and rumors is in a case from Bologna in 1473.<sup>81</sup> Here, a man named Francesco was fined for allegedly beating his wife, causing her to miscarry and die, and the main evidence against him was from two witnesses who heard reports of this act from around the community. It was then discovered that the dead woman's mother initiated this process of fama. In this case, the husband was able to produce a credible defense; however, we can see that the act of fama or just general report of persons in a community greatly influenced a given podestà or capitano's investigations.<sup>82</sup>

This case demonstrates how the legal system was often heavily tied to community relations and tensions. The case also points more generally to the social and political function of legal procedures, especially public proceedings, in restraining community

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<sup>80</sup> For detailed discussions of fama, see *Fama: The Politics of Talk & Reputations in Medieval Europe*, eds. Thelma Fenster and Daniel Lord Smail (Ithaca and London: Cornell University Press, 2003).

<sup>81</sup> ASBo, Curia del Podestà, Inquisitiones, busta 374, fols. 108-11, 142v-52v (1473) cited in Dean, *Crime and Justice*, 27-8.

<sup>82</sup> For more information on this sense of "community voice" in court records, see Joanne Ferraro, *Marriage Wars in Late Renaissance Venice*, (Oxford, New York: Oxford University Press, 2001).

conflicts.<sup>83</sup> Head judges, as the chief legal authority in a given territory, were forced to negotiate their own power with the demands of a community. As outsiders, judges were put into tenuous relationships with both the general populace as well as the noble citizens who had hired them. In the following novelle, we see the immense pressures a head judge would face from his initial interactions with the city to difficult court cases that are closely tied to social and political dynamics of the time. In all of these tales, the judge's precarious position as a foreign power gives us insights into the way authority functions in Italian communities. Specifically, the novelle exemplify the influence of community forces in shaping judicial authority.

### **The Public Persona of Judges**

While the above legal scholarship illustrates that judges could be put into a tenuous social position in a community, it is difficult to locate this relationship in legal documents such as court cases and statutes. Instead, novellieri writers are perhaps able to articulate definitively such judicial vulnerability. First, as public figures, judges were easy targets for criticism and ridicule in novelle. At times, this ridicule is designed simply for the amusement of disrespecting a person in a powerful position. For example, in a tale from Giovanni Sabadino degli Arienti, a wealthy man hits someone in the court. When the judge says he should charge him right there, the man simply pays the fine associated

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<sup>83</sup> As noted in M. Vallerani, *La giustizia pubblica medievale* (Bologna: Il Mulino/Ricerca, 2005), 13.

with his assault and asks the judge for his change.<sup>84</sup> As in Sabadino degli Arienti's tale, judges are humorously insulted by townspeople in court proceedings within Sacchetti's novelle 42 and 43,<sup>85</sup> where again the point is to cleverly disrespect a powerful figure. Within this more playful tradition of mocking judicial authority, there are also novelle that more explicitly critique the public fanfare and ceremony associated with a chief judge's position. In these tales, we see the difficulty a foreign judge would face in asserting his public persona within a given community.

A novella in Poggio Bracciolini's *Facezie* nicely illustrates the challenges of establishing a head judge's public persona.<sup>86</sup> Here, the fanfare of a head judge ceremonially entering the community is mocked for its tediousness. The tale begins by explaining how a new podestà had come to Florence and, as is custom, was giving a speech in front of community members at the cathedral. After the judge spends numerous hours discussing his previous accomplishments and ceremonial exit from his former position, the people start to become extremely tired with the podestà ["la lunghezza di uno sproloquio tanto fastidioso, e tantomeno riusciva a vedere la fine: pareva anzi che l'intera giornata sarebbe trascorsa in quelle ciance."]<sup>87</sup> Finally, as it is just about night, a witty member in the crowd approaches the podestà and tells him he ought to shorten his speech since it is almost the end of the day and if he doesn't enter the city today, his prescribed date to start, he will have missed his appointment. After hearing the

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<sup>84</sup> Giovanni Sabadino degli Arienti, *Le porretane*, No. 4, a cura di Giovanni Gambarin (Barbi: Laterza, 1914), 21-3.

<sup>85</sup> Sacchetti, *Trecento novelle*, 118-122.

<sup>86</sup> Poggio Bracciolini, *Facezie*, no 9 (Milan: Rizzoli Editore, 1983), 125-126.

<sup>87</sup> *Ibid.*

Florentine's clever critique, the podestà quickly babbles that he had come to Florence in order to end the ceremony. While we might read Bracciolini as another tale of playful insults to authority, the tale's ridicule of the judge's performance reflects how such ceremony was significant to the establishment of a judge's relationship to the community. Bracciolini's mocking tale is effective precisely because this moment would have been so important to the podestà's initial encounter with the city.

In the historical context surrounding Bracciolini's tale, it is also clear that a podestà's public persona was mainly forged in his ceremonial entrance to a city. As Trevor Dean notes, a primary means of assessing the character of a new chief judge was in this ceremonial entrance. Dean includes chroniclers that describe their city's chief judge by using the judge's appearance and "theatrical presence" in the ceremony to evaluate his character.<sup>88</sup> After witnessing this ceremony, chroniclers like the Sienese Donato di Neri would note whether each podestà was "honorable" or "dishonorable."<sup>89</sup> In these character sketches, the honorable are described as wise and experienced, while the dishonorable are men of little worth, young and impetuous.<sup>90</sup> Consequently, Bracciolini's critique of the podestà's long-winded speech and tiresome ceremonial entrance is a part of a larger concern over a judge's public face to the community. In the same *Cronache senesi*, Chambers and Dean also note that the evaluation of a judge's character was often put into gender terms, in which a judge should have masculine virility in order to rule.<sup>91</sup> This again would have been especially important to demonstrate in the ceremonial

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<sup>88</sup> Dean, *Crime and Justice*, 55.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> Chambers and Dean, *Clean Hands*, p 39-40.

entrance to the city. Bracciolini's novella and the surrounding chronicles illustrate how a judge's public character was important in establishing his relationship to the community. As a new, and especially foreign, authority, chief judges were scrutinized under the public spotlight and a ripe figure for ridicule.

In addition to assessing the individual qualities of the chief judge, chroniclers also established their initial assessment of the judge based on the supporting judicial staff he brought with him to the city. In this case, writers would decide whether it seemed the judge was "bene accompagnato"<sup>92</sup> or well accompanied with a solid judicial team. The lesser authorities that made up the podestà's staff, all foreigners to the given community, would strongly reflect on the podestà's ability to rule. One of Boccaccio's tales in the *Decameron* presents this critical view of the podestà's judicial team. In the story, a supporting judge in the podestà's staff is ridiculed in a way that suggests foreign judges are ill fit for the demands of Florentine justice. The tale (VIII 5)<sup>93</sup> begins with the narrator Filostrato explaining that people must have heard that often Florentines have judges come to their city, who seem to have been rather taken from the plough-tail, or out of a cobbler's shop, than the schools of law: ["uomini levati più tosto dallo aratro o tratti dalla calzoleria, che delle scuole delle leggi."]<sup>94</sup> He then illustrates a tale in which a lesser, bumbling judge appears crudely clad in court. A member of the community, Maso del Saggio, recognizes the judge's odd and witless appearance and realizes he might use the

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<sup>92</sup> *Cronache senesi*, ed Lisini and Iacometti, 785 (as cited in Dean, *Crime and Justice*, 54).

<sup>93</sup> Giovanni Boccaccio, *Il Decameron*, novella quinta, ed. Vittore Branca (Torino: Utet, 1956), 639-642.

<sup>94</sup> *Ibid.*, 639.

foreign judge for sport. The next day Maso, along with two other companions, conspire to snatch the judge's breeches so that as the judge stood up, he was disgraced in front of everyone in the court. The judge, stunned and angered by this act, asks "whether it is a custom in Florence for a judge to have his breeches removed while sitting on the bench of justice" ["gli convenia cognoscere e saper se egli s'usava a Firenze di trarre le brache a' giudici, quando sedevano al banco della ragione."]<sup>95</sup> He then complains to his superior, the podestà. The podestà is initially outraged, yet changes his tune once his friends advise him that this would not have happened if he had brought a more qualified judge to be a member of his staff in Florence ["se non per mostrargli che i Fiorentini conoscevano che, dove egli doveva aver menati giudici, egli aveva menati beconi."]<sup>96</sup> In the end, the podestà decides to stay quiet on the matter.

In Boccaccio's tale, we see not only how more minor foreign judges might be susceptible to ridicule, but also how that mockery would reflect on the podestà as the ruling foreign authority. As previously mentioned, the head judge or podestà was contracted for a short term and hired from outside of Florence, bringing his own staff with him to govern the territory. David Wallace has explained how Boccaccio's tale illustrates the potential for a podestà to be exposed to public humiliation and derision if he didn't bring an adequate staff with him.<sup>97</sup> The failures of supporting judges on the judicial team would consequently reflect as failures of the podestà, who brought the judges with him to the city. Wallace also notes that the Florentines in this tale are "adept

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<sup>95</sup> Ibid., 642

<sup>96</sup> Ibid.

<sup>97</sup> David Wallace, *Landmarks of World Literature: Decameron by Boccaccio*. (Cambridge University Press, 1991), 92.

at spotting the false pretensions of foreign credentials and in removing the pretender from the body politic.”<sup>98</sup> Instead of mere pranksters, the characters in this tale point to a larger tension in the fourteenth century Florentine judicial system: the idea that the city was perhaps appointing deficient foreign judges instead of more qualified, superior Florentine judges. What is more, the Florentine Studio of law at this time was attempting to establish itself against the long tradition of appointing foreign lawyers coming from Bologna, the most prestigious legal university.<sup>99</sup> Consequently, Boccaccio’s tale is also elucidating a larger critique of the greater legal education system that established authority and appointed foreign judges in Florence.

This tension between local and foreign authority in Boccaccio’s tale foreshadows changes to come in the Florentine legal system. As the ideological bond of employing foreign judges for their impartiality weakened, Florentine leaders condensed authority to be more localized.<sup>100</sup> In the first half of the fifteenth century, Florentines go away from the practice of hiring foreign lawyers as judges altogether, and instead create new legal positions from within the community and under direct control of political authorities, such as the establishment of the Otto di Guardia and a magistracy of the Conservatori delle Leggi in 1429.<sup>101</sup> Andrea Zorzi explains that in this system, “the regime was looking for a new equilibrium that favored oligarchic closure and the concentration of power.”<sup>102</sup> Boccaccio’s tale, in which we see the community as smarter and more adept

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<sup>98</sup> Ibid., 93.

<sup>99</sup> Ibid.

<sup>100</sup> Zorzi, “The Florentines and Their Public Offices,” 112.

<sup>101</sup> Dean, *Crime and Justice*, 12.

<sup>102</sup> Zorzi, “The Florentines and Their Public Offices,” 110.

than foreign authorities, prefigures Florentine abandonment of foreign judges and the city's consequent establishment of localized authority. The change, designed to keep power more inside the Florentine community, also led to an increase in abuses of power and unlawful acts in the judicial system. After Florence changes its legal system, competition for judicial positions rose from within community, which created special jurisdiction over practitioners of corruption and politics within elections for judicial positions.<sup>103</sup>

While Boccaccio illustrates motives behind the Florentine sentiment to have more local authority, the following tale demonstrates the increased power that Florentine elite held in the legal system. Here, a judge becomes vulnerable to the tense, changing Florentine social and political environment. In this process, the judge has rising pressures to comply with conflicting community demands. As power in Florence becomes increasingly insular, foreign judges were frequently forced to comply with the desires of the leading noble party. In this edgy atmosphere, judges were often placed right in the center of social tensions, with their position as an outsider making them all the more vulnerable to community violence.

### **A Judge's Life in Jeopardy**

Judges were hired by the nobles of a city, but also heavily tied to the general populace as public figures enacting law on a day-to-day basis. The community tensions between the elite and lower citizens of a given territory would often play out in the legal

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<sup>103</sup> Ibid.

system, with the head judge being the primary target of social unrest. Late Medieval Florence was continually plagued with such tensions, as the city faced intense political power struggles and a destructive civil war. Boccaccio's tale mocking foreign authority does not focus on the difficult social and political dynamics a given judge would encounter; however, Ser Giovanni Fiorentino's novelle, *il Pecorone*, is a collection of short stories written in the fourteenth century that frequently illustrates the overwhelming political tensions Florence continued to experience.<sup>104</sup> In particular, Ser Giovanni integrates historical accounts of the Florentine Guelf-Ghibbine civil war throughout his novelle.<sup>105</sup> The first tale told on the twenty-fourth day recounts a legendary event in the power struggles between the ruling Guelf party and the general populace, including the defeated Ghibbines. As the social tensions in the tale erupt in the Florentine legal sphere, the novella paints a picture of the dangerous social and political dynamics that a head judge would be forced to navigate in a community.

The tale, told by Saturnina,<sup>106</sup> is a recollection of an historical event in which the leader of the popular party, Giano della Bella, is exiled from Florence.<sup>107</sup> The exile of

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<sup>104</sup> Not much is known about Ser Giovanni Fiorentino except that he was from Florence and is exiled from the city for political reasons.

<sup>105</sup> The Guelf and Ghibelline political parties come into common use in the 1240s, escalating to civil war in the middle of the century. During this time, the two parties alternated control of Florence--until the Guelf party retained a permanent victory after 1267. Guelfs then became the ruling elite of the city, eventually splitting into factions round 1300. The Guelf-Ghibelline dynamic during Ser Giovanni's tale reveals strong tensions between the Guelf elite and the general populace or popolo party. For more information, see John M. Najemy's *A History of Florence, 1200-1575*, (Hoboken: Wiley-Blackwell, 2008), 27.

<sup>106</sup> Ser Giovanni's novelle are structured as alternating tales between a young lover, Aurette, and the nun he is in love with, Saturnina.

Giano della Bella in 1294 was an important moment for the city's political tensions and would certainly be imbedded into the general Florentine consciousness by the time Ser Giovanni Fiorentino wrote *il Pecorone*. Ser Giovanni's narrative description of the past especially illustrates how chief judges were susceptible to community powers below and above their station. Saturnina begins her narrative explaining that in 1294 Messer Giovanni Lucino da Como had just come to be Florence's new podestà.<sup>108</sup> The podestà then faces a suit in which a powerful Florentine nobleman, Messer Corso Donati, had slain a townsman, the servant of another nobleman in the city. As Messer Corso Donati went before the podestà, the people all waited to hear that he had been condemned and would be executed for his crime.<sup>109</sup> Yet Messer Corso Donati, to the surprise of all, is acquitted of his murder charge. While the story does not go into details of the reasons the nobleman is acquitted, it still points to a larger concern in communities that noblemen faced special treatment under the law. In a Florentine chronicle, the podestà in charge of a case of organized robberies was said to have arrested only the minor participants or "uomini leggiari," leaving the bigger players that were higher up in the community

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<sup>107</sup> Although the elites of the city had been trying to get rid of Giano, the leader of the popolo or popular party, for a while at this point, the story depicts the crucial murder case that led to Giano's exile. The case was also a part of elite politics with different factions, and a corrupt judge returns an acquittal despite all the evidence against the murderer. The people blame the podestà for the acquittal, and attempt to attack him. Giano attempts to protect the podestà, but the crowd turns on him. In the ensuing chaos, Giano leaves the city, and this disgrace is what allows the nobles to banish him from Florence. See further details in John M. Najemy's *A History of Florence*, 88-9.

<sup>108</sup> Ser Giovanni Fiorentino, *Il Pecorone, Volume secondo*. giornata ventesimaquarta, novella I. (Milano: Per Giovanni Silvestri, 1815), 157-61.

<sup>109</sup> *Ibid.*, 158.

untouched.<sup>110</sup> As noted above, the city's elite members were continually creating a sense of oligarchic power in Florence, which also infiltrated the legal system. Although the tale is still set in a time where foreign judges were appointed, the narrative depicts how the perceived "impartiality" of foreign authority was fading, as the city was continually moving towards a closed circle of power among the elite. This demonstrates how the political dynamic of Florence at this time made it extremely difficult for foreign judges to assert their own authority.

While Messer Corso Donati's acquittal points to possible corruption and pressures from the Florentine elite, the people below still had a voice. As soon as the nobleman is acquitted, the general public or "il popolo minuto" start yelling, "Death to the Podestà!" ["Muoia il Podestà!"]<sup>111</sup> and rush from the court into the streets calling for arms ["all'arme, all'arme, e viva il popolo minuto."]<sup>112</sup> The people go to Giano della Bella's house, the leader of the popular party, and together they arrive at the palace of the priors and demand that they should carry out Messer Corso Donati's execution. When they are refused, they march to the palace of the podestà and attack it furiously, burning down the door and laying their hands upon the podestà shamefully ["vituperosamente."]<sup>113</sup> This moment illustrates how a given podestà would face the brunt of public scorn in community tensions. In the tale and in historical accounts of this event, the podestà is the primary target of the discontented general populace. Like the Florentine podestà in this

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<sup>110</sup> As seen in *Cronaca fiorentina di Marchionne di Coppo Stefani*, pp 243-4, cited in Dean, *Crime and Justice*, 55.

<sup>111</sup> Ser Giovanni Fiorentino, *il Pecorone*, 158.

<sup>112</sup> *Ibid.* 158.

<sup>113</sup> *Ibid.*

tale, judges might meet dangerous circumstances as the public face of the legal system, a community sphere where social and political tensions would fiercely collide.

This kind of public revolt aimed at legal authority is not unique to this story or Florence as a city. In another novella by Sacchetti, we see a newly elected podestà in the commune Santo Miniato in Toscana immediately face a case where the community is heavily divided.<sup>114</sup> The judge is afraid the people will kill him no matter which side he takes, saying to himself that he did not come to this place to die and is too old to try and combat the people [“io non debbo essere venuto qui per farmi uccidere, e sono poco adatto a combattere con costoro, però che io sono vecchio.”]<sup>115</sup> After failing to get the two community factions to reach their own agreement, the judge flees the city. Outside of novelle, there are also historical accounts in which chief judges and other members of their staff would be the people’s first targets in public revolts. For example, during the Ciompi revolt in Florence, the bargello from Città di Castello was hanged and then cut up into little pieces, which Dean describes as typical of crowd violence directed at legal authorities.<sup>116</sup> In all of these cases, it is important to note that the judicial staff, as outsiders in the community, would be more susceptible to crowd violence. Ser Giovanni’s tale notes that the podestà had just come to Florence. Consequently, the judge would not have more intimate or familiar ties to the city, making him a perfect mark for the angry crowd.

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<sup>114</sup> Sacchetti, *il trecentonovelle*, 444-47.

<sup>115</sup> *Ibid.*, 445.

<sup>116</sup> Dean, *Crime and Justice*, 54.

While the elite in Ser Giovanni's tale are not initially threatened, they see potential dangers in the public uproar and decide to take action against the crowd's leader, Giano della Bella.<sup>117</sup> The tale mentions that Giano was a co-collaborator in making the Ordinances of Justice<sup>118</sup> and also had perilous political ideas attempting to take power away from the Guelf party "per abbassare la Potenza de'grandi."<sup>119</sup> This particularly points to Giano della Bella's political position in the community, in which he was a major force in creating the Ordinances, legal procedures designed to lessen the power of the elite Guelfs. In order to get rid of this public hero, the nobles and leading members of the city order the head judge to do an inquiry on Giano della Bella and his followers or supporters: ["s'accordarono col capitano del popolo, e feciongli formare una inquisizione contra 'l detto Giano ed altri suoi consorti e seguaci."]<sup>120</sup> Here we see not only the power of the inquiry procedure in the judicial system, but also how judges would face enormous pressures from the Florentine elite. Even before Florence's official transition to a localized legal system, Ser Giovanni illustrates the tight grip nobles held on legal authority—where it seems as though all they have to do is order the chief judge to do an inquiry to solve their problems. We then might see from the story that chief

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<sup>117</sup> Najemy has noted this was a moment the nobles had been waiting for to get rid of Giano della Bella in *History of Florence*, 88-9.

<sup>118</sup> The Ordinances of Justice, written in 1293 by elected priors from different guilds and three jurists, was an important political document that gave much more power to the popolo party, especially in strengthening existing anti-magnate legislation. Many of the ideas in the document were borrowed from legislation used in Bologna's popular government (Najemy, *History of Florence*, 82).

<sup>119</sup> Ser Giovanni Fiorentino, *il Pecorone*, 159.

<sup>120</sup> *Ibid.*, 159.

judges might not be able to act out of their own individual agency, as they are forcibly tied to the power dynamics of a given community.

After the nobles' meeting in the tale, rumors quickly fly around the community about the upcoming inquiry and the public revolts yet again.<sup>121</sup> Giano decides to leave Florence until the commotion settles down, but the nobles take the opportunity of his absence to exile him permanently from the city. Nothing is changed with the initial, controversial acquittal, and the city goes on as if the public uproar had not even happened. The tale ends with Saturnina stating that the story shows that citizens should not rise above their due station [*“e nota che questo è grand'esempio a' cittadini che hanno a venire, di guardarsi di non voler essere troppo presuntuosi, ma star contenti”*]<sup>122</sup> and that it is clear that the general public has little power against the elites of Florence [*“alla commune cittadinanza; e l'esempio abbiamo veduto chiaro a' di nostri in molti cittadini ch'al presente mi taccio. Di questa novità ebbe gran mutazione e turbazione il poplo di Fiorenza d'allora innanzi, e gli artefici e popolani minuti poco potere ebbero in Comune.”*]<sup>123</sup> Ser Giovanni's tale then illustrates the power of the Florentine elite in the city, especially in its influence over legal authority in the community. Historically, the exile of Giano della Bella was a major blow to the popular government as the elite were able to solidify their rule over a leaderless popolo party.<sup>124</sup> The Ordinances designed to check elite power were also increasingly overlooked after Giano's departure.<sup>125</sup> Ser

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<sup>121</sup> Here, we might also observe the power of fama as reports in community affairs.

<sup>122</sup> Ibid. 160.

<sup>123</sup> Ibid. 160-161.

<sup>124</sup> Najemy, *History of Florence*, 89.

<sup>125</sup> Ibid.

Giovanni's narrative articulates the desperate power struggle between Florence's general popolo and elite, but also highlights the role of judicial power within these intricate social and political dynamics.

The newly elected podestà in this tale is caught between the powers below and above his position. His initial ruling is perhaps influenced by noble powers in the city; he is the target of public scorn and violence; and his judicial authority to conduct inquiries is merely a part of the nobles' plot to get rid of the people's champion, Giano della Bella. The tale then demonstrates the tenuous relationship a given chief judge would hold to all sides of the community and the challenges he might face in navigating such circumstances. More broadly, the tale illustrates how the complex political environment of Florence easily blended into legal practices and procedures. We can then see where societal tensions were interwoven with the legal structure of time, in which authority was compelled to rely on community forces. While in Ser Giovanni's tale, the judge's life is threatened from the popolo, the power above him protects his ruling and person. In the next, and final tale discussed in this chapter, a judge's life is threatened from princely power.

### **Princely Power Over a Judge's Body**

While the Florentine system becomes increasingly oligarchic in nature, a single ruling family governed many other territories in north-central Italy. In the next tale by Matteo Bandello, this power dynamic makes the chief judge even more vulnerable to community forces. While Matteo Bandello writes his novelle in the early 1500s, the

forty-fifth novella in the third volume of Bandello's novella is a story centered on Galeazzo Sforza, the Duke of Milan from 1466 until his assassination in 1476.<sup>126</sup> The representation of princely power in Bandello's tale illustrates to what extent chief judges would be vulnerable to the Duke's authority and reveals interesting power dynamics in the legal system of dukedoms. The novella then grants insights into how the legal system was interwoven into community forces, and in this case, is connected to court politics and scandals.

The tale<sup>127</sup> begins with a description of Duke Galeazzo Sforza, claiming he was a prince with many good qualities, but was also known to be a man who had numerous affairs with different women. The narrator explains how the Duke had many children by these various women, but also states that the women were married off into noble families and that it is not known that he ever took any woman by force [“non si sa però già mai che egli per forza donna alcuna pigliasse.”]<sup>128</sup> One of the Duke's previous mistresses, now married to a powerful count in the city, raises a suit against a kinsman of hers to get some of his inheritance; however, the tale also states she does this more for the favor she expects to have from the Duke than from any legal right [mossa più dal favore che

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<sup>126</sup> Just before the start of High Mass on the day after Christmas in 1476, Galeazzo Sforza was daggered by Giovanni Andrea Lampugnani, Gerolamo Olgiati, and Carlo Visconti. The assassins had both personal and political motives for their actions, including the belief that Galeazzo's assassination might be a catalyst to create a popular republic in the territory. For more information, see Lauro Martines, *April Blood: Florence and the Plot against the Medici*, (Oxford: Oxford University Press, 2003), 7-25.

<sup>127</sup> Summary and quotations are taken from Matteo Bandello, *Novelle, Raccolta di Novellieri Italiani*, volume terzo, novella XLV (Torino: Cugini Pumba e Comp. Editori, 1853), 94-6.

<sup>128</sup> Bandello, *Novelle.*, 94.

sperava dal duca ottenere, che per ragione.”]<sup>129</sup> After a lengthy legal process, the suit falls to messer Gian Andrea Cagnuola, a young man who had just recently become a doctor of law. Described as a man of “tanto amatore della giustizia,”<sup>130</sup> Cagnuola quickly decides that her case is unfounded. The woman then goes to Duke Galeazzo Sforza to convince him to order in her favor. The Duke orders Cagnuola to change his ruling, but the judge refuses to give a false verdict. The Duke then puts Cagnuola in prison and states that the young man will be beheaded tomorrow. The next day, Cagnuola comes to the block in front of the Duke and general community, kneels down and says, “It is better to die innocent than to live as an evildoer” [“meglio è morir innocente, che viver malfattore.”]<sup>131</sup> After this statement, Cagnuola is brought up to the Duke, who says to him that he has played his game well and fairly and that if he had for fear of death pronounced a false judgment, his head would have been cut off. Since now the community sees that Cagnuola is a man of worth, he will instead be the Prince’s head councilor. The tale ends by stating that Cagnuola was esteemed throughout the duchy of Milan as a just and righteous man.

Bandello’s tale raises numerous questions into the Duke of Milan’s character: did he actually intend to kill Cagnuola in favor of his former mistress or was this all a set up? Is his plotting all a show to convince the people of his “just” rule? And, in terms of the initial scandal leading to the case, what are we to make of the fact that it’s “not known” that he has taken any woman by force? Such questions are not far from the Duke’s

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<sup>129</sup> Ibid., 95.

<sup>130</sup> Ibid.

<sup>131</sup> Ibid., 96.

general reputation during his reign, in which it was said he had a cruel streak in his character.<sup>132</sup> Galeazzo was a known womanizer, often passing off women he grew tired of to his courtiers. Furthermore, his flair for dramatic, performative violence is apparent: the Duke ordered a poacher to be executed by having him swallow a hare whole, including the fur. Out of amorous jealousy, he had one man's hands cut off and another nailed alive to his coffin. When a priest predicted a short reign for the prince, Galeazzo had the man starved to death. While the tale leaves unanswered questions in terms of Bandello's own characterization of the Duke, it depicts in utmost clarity the Duke's lethal power over Cagnuola's body.

The Duke's dramatic execution scene affirms his own princely power over any of the legal authorities below him. The scene demonstrates how even men of judicial authority were still subjects to the Prince's rule. In this process, the expendable nature of the judge's body is also linked to his foreignness in the community. This especially points to how a Prince might use his legal subjects for his own gain. Outside of Bandello's tale, such strategic planning by a prince is also famously illustrated in Machiavelli's *Il Principe*. Here, Machiavelli praises the strategy of the prince Cesare Borgia in Cesena, who appointed Remirro de Orco, an outsider famed for his brutality, to restore order in the community. Once de Orco's role as an enforcer of strict laws was complete, and the people were more or less subdued under the control of legal authorities, Borgia had de Orco spectacularly executed and placed in two pieces in the central square

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<sup>132</sup> These and other actions of the Duke are noted in Lauro Martines, *April Blood*, 7-25.

[“in duo pezzi in su la piazza.”]<sup>133</sup> For Machiavelli, de Orco’s death was a perfectly executed demonstration of princely power, designed to shock and awe the people.<sup>134</sup>

Machiavelli goes on to explain Cesare’s intelligent design in orchestrating this spectacular death, which deflected any hatred from the people towards himself and also assured people that the cruel deeds done under de Orco’s authority were attributed only to him, not the Prince.<sup>135</sup>

Bandello’s tale similarly illustrates this princely strategy, especially in the spectacle of Cagnuola at the block. Here, Galeazzo uses Cagnuola’s execution scene to deflect his own potential for scandal and demonstrate his just nature as the Prince. The Prince even uses language that reveals his more strategic scheming, telling Cagnuola he had played his game well and fairly. We might then see Cagnuola, a new and foreign authority, as simply a pawn in the Prince’s game. In the execution scene, Galeazzo simultaneously asserts his power over the judge and also validates his princely wisdom in choosing people of good character as his councilors. Whether the Duke actually intends to have a just rule, he effectively portrays Machiavelli’s sense of princely virtù to his people. Bandello’s tale demonstrates how foreign judges could easily be placed under the thumb of ruling powers, even when asserting their own ideals of justice. Chief judges, as foreigners to the community, would be more vulnerable to the Prince’s lethal power. In this way, judges might often end up as expendable assets to a Prince’s own motives.

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<sup>133</sup> Niccolò Machiavelli, *Il Principe* (Milano: Mondadori Printing, S.p.A, 1994). Chapter 7.

<sup>134</sup> Machiavelli claims, “la ferocità del quale spettacolo fece quelli populi in uno tempo rimanere satisfatti e stupidi,” 37.

<sup>135</sup> *Ibid.*

Machiavelli's praising of this princely strategy has been seen as shocking for the time because it rejects classical and Christian views of moral, social, and political orders, particularly that of human society as a body politic.<sup>136</sup> Bruce Buchan, building from Foucault and Agamben, has especially noted how this moment challenges the idea of the body politic by demonstrating the deadly princely power obtained over individual bodies in the community, showing us an increased separation between sovereigns and subjects, even subjects that possess legal authority.<sup>137</sup> Yet even though Machiavelli might appear shocking or this moment might be used to illustrate a significant change in philosophical understandings of law and justice, it also clearly reflects a broader pattern of legal strategy across Italy. De Orco's position of authority and subsequent execution exemplify a common legal strategy in bringing an outsider to enforce law and also reveals the inherent vulnerability of that outsider position in the community. By the time of de Orco's death in 1502, this general separation between sovereigns and subjects of the law was already a part of the logic behind much of the North-Central Italian legal system. Cesare Borgia's use of de Orco as a kind of foreign enforcer is far from a unique circumstance, and Italian legal communities throughout employed similar strategies of bringing in someone from outside the community to enforce order. This again demonstrates how difficult it would be for judges to assert their own individual agency and authority in various Italian legal systems. Whether in more popular governments like

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<sup>136</sup> As seen in Aristotle, *The Politics*, book 1, trans. T.A. Sinclair (London: Penguin, 1981), v, 68-9; and Cicero, *On the Commonwealth and On the Laws*, book 1, ed. James E. G. Zetzel (Cambridge: Cambridge University Press, 1999), paras. 39a and 41, p. 18.

<sup>137</sup> Bruce Buchan, "Duo pezzi in su la piazza: The Death of the Body Politic in Western Political Thought." *South Atlantic Quarterly*, V 110. No. 4. 2011, 903-4.

Florence or princely kingdoms like Milan, a judge's power would be irrevocably tied to societal forces.

### **Novelle in England**

The novelle discussed in this chapter, as well as numerous other writings by novellieri, circulated widely in England. Tales by Bandello and Boccaccio were particularly popular, as numerous editions of their work were printed in both the original Italian and in translation. Furthermore, Poggio Bracciolini's tales are included in a broader collection of 140 tales of English, classical, Italian or French origin, entitled, *Merry Tales, Wittie Questions, and Quicke Answers*. Thomas Berthelet is thought to have printed this collection in 1532, with a reprint in 1567 by H. Wykes. The later Wykes edition includes tales from Ludovico Domenichi, Cinzio, and more tales from Bracciolini's *Facetiae*.<sup>138</sup> Giovanni Francesco Straparola's *Le piacevoli notti* appear in William Painter's *The Palace of Pleasure* (1566) and a later collection of tales entitled *The Forrest of Fancy*, translated by H.C and printed in quarto by Thomas Purfoot. The collection also includes tales from Boccaccio and Cinzio.<sup>139</sup> Cinzio's *Hecatommithi* was printed in various editions in Italian, with some versions including Cinzio's plays. R. Jones's *An Heptameron of Civill Discourses* (1582) is yet another collection of novelle, including tales from Bandello, Cinzio, and Boccaccio, that is interspersed with poems translated by George Whetstone.<sup>140</sup> Finally, John Wolfe published Pietro Aretino's *La*

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<sup>138</sup> Tomita, *A Bibliographical Catalogue*, 139.

<sup>139</sup> *Ibid.*, 214-15.

<sup>140</sup> *Ibid.*, 243-44.

*terza, et ultima parte de ragionamenti* in 1589. Aretino's text was even among the book collection of famed English jurist Sir Edward Coke.<sup>141</sup>

Within the broader transfer of Italian novelle to English literature, William Painter's *The Palace of Pleasure* (1566) had a lasting impact. This text was one of the first attempts to introduce Italian short tales to English readers and the first Tome contains novelle from Bandello, Boccaccio, Ser Giovanni Fiorentino, Straparola, and Masuccio's *Novellino*.<sup>142</sup> A later edition of Painter's work, printed by Thomas Marsh in 1569, became the more definitive edition.<sup>143</sup> Painter's *Palace* was immensely popular among English readers and was immediately followed by imitations of his work, such as Geoffrey Fenton's *Certaine Tragicall Discourses*, (1567), George Pettie's *A Petite Pallace of Pettie his Pleasure*, George Turberville's *Tragical Tales*, (1587), and George Whetstone's *The Rocke of Regard*, (1576) and his *An Heptameron of Civill Discourses* (1582), which included many English translations of Italian tales.<sup>144</sup>

Painter's *The Palace of Pleasure* also had a lasting impact on English drama. In addition to Shakespeare's plays that borrow directly from Italian versions of novelle, such as *Othello* and *Measure for Measure*, many of Shakespeare's plays, including *All's Well that Ends Well*, and *Romeo and Juliet*, are adaptations of Painter's tales. Numerous Elizabethan and Jacobean dramatist also adapted stories from Painter, including Robert Wilmot's *Tancred and Gismund* (1566), John Webster's *Duchess of Malfi*, John Marston's *The Insatiate Countesse* and *Dutch Courezan*, Philip Massinger's *Picture*

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<sup>141</sup> *Ibid.*, 323.

<sup>142</sup> *Ibid.*, 129.

<sup>143</sup> *Ibid.*, 130.

<sup>144</sup> *Ibid.*

(1629), *The Widow* by Ben Jonson, John Fletcher, and Thomas Middleton; Francis Beaumont and Fletcher's *Triumph of Death* (1612); Fletcher's *Maid of the Mill* (1623); and James Shirley's *Loves Crueltie* (1631).<sup>145</sup>

As will be discussed in the following chapters, the connections between Italian and English literature are significant for understanding portrayals of law on the English stage. Italian materials are at the heart of English drama's characterizations of legal authority and the ways law functions in a community. One of the first English tragedies based on an Italian novelle, *Gismund of Salerne*, was produced at London's Honourable Society of the Inner Temple.<sup>146</sup> Shakespeare's plays that are the most cited in law and literature studies, including *The Merchant of Venice*, *Measure for Measure*, and *Titus Andronicus*, all have Italian sources and broader cultural connections. Many of Shakespeare's contemporaries also employ Italian settings in plays that have attracted attention to their staging of legal concepts, including, Thomas Dekker's *The Honest Whore*, Jonson's *Volpone*, Marston's *The Malcontent*, George Chapman's *All Fools in Florence*, and Beaumont and Fletcher's *Philaster in Sicily*. The remainder of this dissertation will work through these intertextual dynamics inherent to English drama and the staging of English law.

## Conclusion

The novelle in this chapter enhance our understanding of power dynamics and judicial authority in late medieval Italy. Across the different political systems illustrated

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<sup>145</sup> *Ibid.*, 131

<sup>146</sup> Levith, *Shakespeare's Italian Settings and Plays*, 2.

in these tales, the judge's vulnerability as a foreign authority remains a common thread. Whether a judge is the occupying authority or a part of a set political hierarchy, judicial authority is often dependent on community forces. Understanding the difficulties foreign judges would face in a community grants us interesting insights into the late medieval Italian legal system. In particular, the tenuous relationship judges face in these novelle illustrate that law is never operating as its own hegemonic system and is instead heavily tied to the tensions of a given community.

As these tales travelled to English literary circles, English authors picked up on these legal tensions occurring in both popular governments like Florence and princely kingdoms like Milan. The overarching contrasts between Republic and Despotic political forms in Italian materials became a useful means for English authors to understand larger transitions occurring in English common law. The following chapter uses Shakespeare's *Measure for Measure* as a case study for the ways authors built from Italian social and legal experience to portray growing divides between local and centralized power in early modern England.

## Chapter Two: Local Communities and Monarchic Power in Shakespeare's *Measure for Measure*

### Italian Law in England

In the initial act of Shakespeare's *Measure for Measure*, Duke Vincentio invests his "absolute power"<sup>147</sup> in his deputy, Lord Angelo, stating that he will employ Angelo's strict character to contain the community's vices.<sup>148</sup> The Duke's strategy dramatizes the ways a Renaissance prince might use his judicial officers for his own gain and echoes the Remirro de Orco episode in Machiavelli's *The Prince* discussed in the previous chapter.<sup>149</sup> Here, Machiavelli praises the strategy of Cesare Borgia in Cesena, who appointed Remirro de Orco to restore order in the community and then had de Orco spectacularly executed in the central square.<sup>150</sup> For Machiavelli, de Orco's death was a perfect demonstration of princely power, which deflected any hatred in the community and also assured people that the cruel deeds done under de Orco's authority were

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<sup>147</sup> William Shakespeare, *Measure for Measure*, (New York: Signet Classic, 1998), 1.3.13; all quotations are from this edition.

<sup>148</sup> See, for example, the lines: "We have strict statutes and most biting laws./ The needful bits and curbs to headstrong weeds, /Which for this nineteen years we have let slip," 1.3.19-21.

<sup>149</sup> This parallel is also noted in Constance Jordan's article, "Interpreting Statute in *Measure for Measure*, in *Shakespeare and the Law*, ed. Bradin Cormack, Martha C. Nussbaum, and Richard Strier (Chicago: The University of Chicago Press, 2013), 101-121. For more on the connections between Shakespeare and Machiavelli, see, for examples, John Roe's *Shakespeare and Machiavelli*, (Cambridge: D.S.Brewer, 2002) and Michael Redmond's *Shakespeare, Politics, and Italy* (Burlington: Ashgate Publishing, 2009).

<sup>150</sup> Niccolò Machiavelli, *Il Principe* (Milano: Mondadori Printing, S.p.A, 1994), Chapter 7.

attributed only to him, not the prince.<sup>151</sup> Angelo's authority in Shakespeare's play, like Remirro de Orco's position in Cesena, is tenuous since his ultimate control of the legal system is subject to the prince's lethal power.

The Duke's decision to employ Angelo as a strict enforcer in *Measure for Measure* picks up on a broader pattern of legal strategy in Renaissance Italy, where it was commonplace to bring in an outside force to implement law in a community. The judicial structure in most of central and northern Italy, excluding Venice, employed foreign outsiders to occupy legal positions on a contract basis. By the time of de Orco's death in 1502, this general separation between legal authorities and communities was a part of the logic behind much of north-central Italian legal systems, where most of Italianate material circulating in England originates. While scholars of early modern theater have examined the presence of Machiavelli on stage to think through the role of princely authority,<sup>152</sup> especially in terms of a character's Machiavellian plotting, the more subtle use of Machiavellian strategy here reveals the extent to which foreign judicial authority is vulnerable to princely power.

Using *Measure for Measure* as a case study, this chapter explains what it means for English authors to stage narratives engaged in Italian social and legal practices that are radically different from England's common law system. Even though Shakespeare sets *Measure for Measure* in Vienna, the play adapts well-known Italian sources,

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<sup>151</sup> Machiavelli claims the ferocity of the spectacle both stunned and amazed the people ["la ferocità del quale spettacolo fece quelli populi in uno tempo rimanere satisfatti e stupidi,"] 37.

<sup>152</sup> See *The Italian World of English Renaissance Drama*, ed. Michele Marrapodi and A.J. Hoenselaars (Newark: University of Delaware Press, 1998) and Alessandra Petrina, *Machiavelli in the British Isles* (Burlington: Ashgate Publishing, 2009).

including a novella from Giambattista Giraldo Cinzio's *gli Ecatommiti* (1565) and his later adapted play, *Epitia*.<sup>153</sup> Anglo-Italian scholars have noted the detailed Italian literary and social conventions present in Shakespeare's play.<sup>154</sup> Within this intertextuality, *Measure for Measure* and its Italian sources exemplify core differences between Italian and English legal systems, especially in regard to where legal authority stems from in a given community. While England's legal system initially placed power in local hands—so much so that jury members often occupied a character witness role—the centralization of English authority made officials increasingly distant from community concerns. Legal scholars, including JH Baker, Malcolm Gaskill, Christopher Brooks, and JA Sharpe demonstrate early modern England's transition from the more private law of the middle

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<sup>153</sup> Cinzio's *Epitia* was published posthumously in 1583 and Cinzio's novella was also adapted in George Whetstone's *Promos and Cassandra* (1578). See parallel passages between Shakespeare's *Measure for Measure* and Cinzio's drama *Epitia* noted in *The Cambridge Shakespeare Library Volume 1 Shakespeare's Times, Texts and Stages*. ed. Catherine M. S. Alexander. (Cambridge: Cambridge University Press, 2003). 70-3.

<sup>154</sup> Scholars note in particular the play's borrowing of Cinzio's *la tragedia a fin lieto*, or tragedy with a happy ending, as well as broader Guarinian pastoral tragicomedy and conventions common to Italian novelle, such as Boccaccio's fabliau-like bed tricks, the disguised ruler character, and the ransom plot narrative. For more details on the play's Italian intertexts, see, for example: Michele Marrapodi's introduction to *Shakespeare and Renaissance Literary Theories* (Burlington: Ashgate Publishing, 2011); Marrapodi's chapter, "Beyond the Reformation: Italian intertexts of the ransom plot in *Measure for Measure*," and Jason Lawrence's chapter, "'The story is extant, and writ in very choice Italian': Shakespeare's dramatizations of Cinthio" in *Shakespeare, Italy, and Intertextuality* (Manchester: Manchester University Press, 2004); Michael J. Redmond's *Shakespeare, Politics, and Italy: Intertextuality on the Jacobean Stage* (Burlington: Ashgate Publishing, 2009); and Jason Lawrence's "*Who The Devil Taught Thee so Much Italian?*": *Italian Language Learning and Literary Imitation in Early Modern England* (Manchester: Manchester University Press, 2005), especially pages 136-9.; and Benedikt Höttemann, *Shakespeare and Italy*, (Berlin: Lit Verlag, 2011), 160.

ages, to the state law with which we are more familiar with today.<sup>155</sup> This chapter argues that Italian legal concepts became a means for English authors to contest the overarching power shift from local to centralized monarchic power in sixteenth-century England. In this transitional moment, where legal judgments occurred outside of local forces, it is no surprise that Italian materials would become important for thinking through the complicated relationship between those who govern a community and the community itself.

Shakespeare builds from and transforms his Italian sources to highlight such changes in the English legal system. A comparative legal and literary approach allows for new insights into the relationship between legal authorities and communities in early modern England. In *Measure for Measure*, Shakespeare uses the apparatus of foreign Italian jurisprudence to expose the gap between communal and state justice in English legal experience. As Shakespeare challenges dominant notions of community influence in English law, the play uncovers the law's own theatrical power of perception intrinsic to the rise of England's central legal system. The transnational legal critique in *Measure for Measure* is representative of a larger comparative trend in English legal culture—where broader European encounters such as England's jurisdictional break from Rome and the rise of Humanism greatly affected the way law was understood in both England's legal scholastic circles and popular culture.

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<sup>155</sup> Christopher Brooks, *Law, Politics, and Society in Early Modern England* (Cambridge: Cambridge UP, 2009); JA Sharpe, *Crime in Early Modern England 1550-1750* (New York: Routledge, 1998), 242; J.H. Baker, *An Introduction to English Legal History*, 4<sup>th</sup> edition (Dayton: LexisNexis, 2002); Malcolm Gaskill, *Crime and Mentalities*.

### Judicial Authority in Italian Novelle and Society

The setup for Angelo's authority parallels Italian social circumstance portrayed in Cinzio's novella as well as the narrative's subsequent adaptations. The designated judicial structure in most of central and northern Italy heavily relied on foreign outsiders to occupy positions of authority. Head judges were hired from a pool of learned lawyers and noblemen from outside a commune, with the logic that outsiders would possess a greater sense of impartial judgment.<sup>156</sup> The hired head judge would bring with him a team of lesser judges, notaries, and policing forces to make up the judicial structure of a given territory. These officials worked to enforce statutes of the cities they were charged to govern. At the same time, members of the judicial staff also employed local agents, such as lawyers, to become familiar with how statutes were commonly understood in the community.<sup>157</sup> In most cases, a chief judge made a contract with a city for a semester and at the end of the semester, noble citizens reviewed the judge's work and his contract could be renewed or he might be transferred to a new city.<sup>158</sup> In this system, foreign judges under contract with a territory were expected to occupy a more unbiased, outsider role in the community.

Angelo's character in the Italian sources, Juriste, occupies this role as an outsider

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<sup>156</sup> Andrea Zorzi discusses this in his article: "The Florentines and Their Public Offices in the Early Fifteenth Century: Competition, Abuses of Power, and Unlawful Acts." *History from Crime*, eds. Edward Muir and Guido Ruggiero (Baltimore and London: The Johns Hopkins University Press, 1994), 112.

<sup>157</sup> Sara Menzinger, "Consilium sapientum: Lawmen and the Italian Popular Communes," *The Politics of Law in Late Medieval and Renaissance Italy*, ed. Lawrin Armstrong and Julius Kirshner (Toronto: University of Toronto Press, 2011), 40-45.

<sup>158</sup> The summary of this contract process is described by Trevor Dean and Kate Lowe in *Crime, Society, and the Law in Renaissance Italy* (Cambridge: Cambridge University Press, 1994), 1-16.

to the community. In Cinzio's tragic novella, Juriste is a young courtier when the Holy Roman Emperor, Maximilian I, offers him the post of Governor in Innsbrook. While the story is set outside of Italy, it still functions within Italian social circumstances, especially the legal power dynamics crucial to Shakespeare's play. The Emperor explains to Juriste that he has great favor with him, and he could forgive Juriste of many faults while ruling, except if Juriste acts against justice ["cosa fatta contra la Giustitia appresso me non ritroverebbe perdono"].<sup>159</sup> Juriste initially gains approval in his rulings, but then a young man named Vico is accused of rape and condemned to die. Vico's sister, Epitia, pleads to Juriste for mercy in his judgment. Juriste, like Angelo, propositions Epitia to sleep with him in order to save her brother's life—adding that he would also possibly marry her in the future. During the night Epitia lies with Juriste, however, Vico is executed, and Juriste has the head brought to Epitia in the morning.

Epitia travels to see the Emperor in the town of Villaco and asks for justice, paralleling the Duke's judgment scene at the end of *Measure for Measure*. The Emperor forces Juriste to marry Epitia to restore her honor and reputation, and then gives the order for Juriste's execution. However, Epitia worries people will attribute Juriste's death more towards her own appetite for vengeance and cruelty than her desire for justice ["parendole, che cio' le potesse effere piu tosto attribuito ad appetito di vendetta, & a crudeltà, che a desiderio di Giustitia."]<sup>160</sup> Her moving speech eventually frees Juriste, who marries Epitia, and the story ends with the narrator claiming rulers should possess

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<sup>159</sup> Giambattista Giraldi Cinzio, *de gli hecatommithi*. (Venice: Girolamo Scotto, 1566), 257.

<sup>160</sup> Cinzio, *de gli hecatommithi*, 264.

moderation and kindness in their interactions with their subjects. Although Epitia's speech frees Juriste, she does so out of concern with ideals of justice and her reputation. Consequently, the story's conclusion at best offers a grudging sense of reconciliation. In the novella, Juriste has no prior connection to the community, and the Emperor's outside ruling does not serve to resolve tensions in the community. While Juriste is vulnerable to the lethal force of the Emperor (like Cesare Borgia's princely power), the divide between legal authority and community forces makes true mediation difficult to achieve. Cinzio's adapted play, *Epitia*, similarly displays divides between law officials and the community. In the concluding scene with the Emperor, it is revealed that the jailor in charge of Vico's execution was aware of Epitia's circumstances and had substituted her brother's body for that of another criminal, just like with Claudio and Ragazone. As Epitia only pleads for Juriste's life *after* it is discovered that her brother is alive, Juriste still occupies an outsider role and is only saved from execution because the jailor disobeyed his orders.

Cinzio's *Epita* delves into the potential connection between foreign legal authorities and judicial corruption. Juriste uses the moment of Vico's condemnation as a way of attracting Epitia, and decides to free her brother until a strict magistrate convinces him that he must punish criminal acts. While Juriste's motives for executing Vico in the novella are more ambiguous, here Juriste is fearful that the magistrate will tell the Emperor about his exchange with Epitia, and kills her brother to avoid the Emperor's wrath, claiming: "non mi mettesse in odio al Signor mio."<sup>161</sup> The play expands on judicial misbehavior to comment explicitly on foreign judges' desire to give influential members

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<sup>161</sup> Giambattista Giraldi Cinzio. *Epitia*. (Ventia: Moretti, 1583), 29.

of the community advantages in the legal system. At one moment in the play, Juriste asserts that Vico should live because of his status in the community. In *Epitia*, Juriste is vulnerable to the Emperor's authority as an outsider and his vice in part stems from his distance from the community.

Cinzio's novella and play build from common Italian narratives surrounding judicial corruption. Mariella Cavalchini has noted previous versions of this story circulating in Italy, such as a short story in Masuccio Salernitano's *Novellino* (1476) in which a wife sacrifices herself to save her husband from legal condemnation.<sup>162</sup> Across European literature of the early modern world, judicial corruption was a common concern; yet, it seems especially present in the Italian novelle so popular on the English stage. The expectation of unequal treatment based on social status in Cinzio's *Epitia* points to a common conception that Italian law operated as a spider web which captures smaller flies while letting larger insects free.<sup>163</sup> In another common exemplum story, a judge leading a criminal to the gallows is seen as the "great thief leading a little one."<sup>164</sup> Given the legal setup in north-central Italy, a large part of such judicial corruption came from foreign judges' desire to gain influence in a given community as outsiders. Although judges might be vulnerable to powers above them, like Juriste, these narratives showcase the potential conflicts that might occur in a legal system that divides legal

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<sup>162</sup> Previous versions noted in Mariella Cavalchini's "L'Epitia di Giraldo Cinzio e *Measure for Measure*." *Italica*, Vol, 45. No. 1 (March 1968), 59-69; we can also see stories of judges extracting sexual favors in Boccaccio (IV. 6, 10).

<sup>163</sup> Dean, *Crime in Medieval Europe*, 30. Dean also mentions how Savonarola often uses this analogy in sermons.

<sup>164</sup> San Bernardino's exempla stories in *Le prediche volgari* discuss corruption in legal systems; Boccaccio also discusses false accusations in legal processes in *il Decameron*, III.7, IV.3, and IV.10; judges are bribed in Bracciolini No 224, and Sacchetti No 77.

officials from the community.

While the setup of *Measure for Measure* also puts Angelo in this vulnerable position, he is not an outsider appointed by an emperor to rule a given territory. Rather, Shakespeare's addition of the Mariana plot bolsters Angelo's roots in the community. When the Duke (as Friar Lodowick) first approaches Isabella about Angelo's proposition, he explains the background of Mariana and Angelo's broken engagement. The Duke tells Isabella this "is a rupture that you may easily heal," as he has devised "the cure" to heal both past and present trauma.<sup>165</sup> Of course, the Duke's organized bed trick substituting Isabella for Mariana only works as a potential solution because of Angelo's past connection to the community.

Mariana explains the bed trick to Angelo in the play's conclusion, reminding him of their past relationship:

This is that face, thou cruel Angelo,  
Which once thou swor'st was worth the looking on;  
This is the hand which, with a vowed contract,  
Was fast belocked in thine; this is the body  
That took away the match from Isabel,  
And did supply thee at thy garden house  
In her imagined person.<sup>166</sup>

These lines reflect interesting issues in marriage contract law, yet they also again remind us of Angelo's connection to the community. After Mariana marries Angelo, the Duke parallels Cinzio's Emperor when calling for Angelo's execution. Yet because of Angelo's ties to the community, Mariana is able to convince Isabella to plead for Angelo even before it is revealed that Claudio is alive. There is, consequently, a significant difference

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<sup>165</sup> 3.1.239-40.

<sup>166</sup> 5.1. 207-213.

in the relationship between Angelo's legal authority and the community in Shakespeare's version of the tale. Shakespeare adapts Cinzio's narrative, and the common strategy illustrated in Machiavelli, so that the community appears to have a stronger force in legal proceedings. Angelo's connections make him harder to simply execute (like Juriste or Remirro de Orco), and he instead becomes a crucial part of the Duke's legal mediating process. However, the Duke controls and manipulates these community connections for his own gain, and Angelo remains vulnerable to his lethal power until the very last moments of the play.

The changes to Cinzio's tale place Angelo in a stronger position in the community and allow for the play's comedic resolution. At the same time, the play's unsettling conclusion prods at new, stronger tensions in England's legal environment. While the Emperor of Cinzio's narratives is a distant force from the community, being introduced only at the end of the story to enact judgment, the Duke becomes intimately connected to the community. This connection, however, does not equal community power as the Duke consolidates authoritative roles and pulls the strings of the play until its end. *Measure for Measure* exposes the fact that English law might only seem to be more tied to the community (like the seeming Duke) at a point where authority was in reality increasingly placed outside of local hands. This comparison with Italian law reveals the way England's central legal authority broadened its scope with the continued illusion of community involvement in legal concerns.

## Community Forces in the English Legal System

Angelo's relationship to the community of Vienna reflects a common philosophy that the English legal system was more intimately intertwined with community forces. Scholars have often pointed to elements of English law, such as its jury system and reliance on local constables to enforce order, as key differences between English and continental legal practices.<sup>167</sup> In general, this sense of community can be found in the very foundation of English Common law. Whereas in Italy, local lawyers often granted their own advice or *consiglia* for cases to educate foreign judges on local customs, by 1600 in England, lawyers had already for years been employed in the major provincial towns to record and more broadly implement local bylaws.<sup>168</sup> This systemization of local procedures led to an overall perception of English common law as grounded in case-to-case judgments, rather than codified statutes and legal doctrine. All in all, there were strong pressures on judges to accept local customs and procedures over abstract legal principles. Outside of the formal legal structure, English law allowed for community arbitration, and this intermingling of official and informal justice in English jurisprudence often came close to popular expectations of how the law should operate.<sup>169</sup> Indeed, we

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<sup>167</sup> See, for example, Trevor Dean's chapter "Courts, Crimes, and Causes" in *Crime in Medieval Europe 1200-1550* (Harlow, England: Longman, 2001), 1-30; and *Relations Between the ius communie and English Law*, eds. Richard H. Helmholz and Vito Piergiovanni (Rubbettino, 2009).

<sup>168</sup> For the process of Italian *consiglia*, see J.H. Baker, *The Common law Tradition* (London: The Hambledon Press, 2000), 108; see p. 164 in Baker for how English common law emerges out of case-to-case rulings. Christopher Brooks also describes the systemization of local laws in *Law, Politics, and Society in Early Modern England*, 386.

<sup>169</sup> Sharpe, *Crime in Early Modern England*, 65.

might read the Duke in Shakespeare's *Measure for Measure* as a legal authority invested in the ability to use his official and informal power to guarantee the play's resolution.

Local, communal influence in legal proceedings is at the heart of English perceptions of law. In addition to the English jury system, the ideal of communal justice existed in the early development of England's legal structure. As Baker notes, "the earliest form of justice was not conceived of as emanating from a ruler or from a ruler's learned judges. We do not hear of the king's law, or of a lord's law, but of communal justice or the custom of the people."<sup>170</sup> Legal power is envisaged as originating from the community, not a given ruler or judicial authority. Baker goes on to explain this concept *folcright*, or "folk-right," was then included in royal legislation throughout the Anglo-Saxon period. Accordingly, this sense of tying ruling authorities to the community exists within the earliest formation of English legal ideas and English Common law.<sup>171</sup>

The perception of a given judge or legal official being "one of the people" continues on into the English legal ideology of the common law system in the early modern period. Legal texts from Justices of the Peace mirrored much of popular literature when praising a given judge's ability to conduct out of court settlements to ease tensions in a community. The author of numerous Elizabethan handbooks for justices, William Lambarde, commented that a Justice of the Peace ought to "occupy himself also in pacifying both the suits and controversies, that do arise amongst his neighbours," and later claims the Justice needs to be "a compounder, as a commissioner of the peace: and I think him so much the meter to step in betwixt those that be at variance, as, by reason of

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<sup>170</sup> Baker, *An Introduction to English Legal History*, 8.

<sup>171</sup> *Ibid.*

his learning, wisdom, authority, and wealth he is like to prevail more by his mediation and entreaty, than is another man.”<sup>172</sup> Lambarde’s text is one of many examples where a judge receives praise for his ability to mediate community tensions both inside and outside the traditional court space. Throughout the sixteenth century, we can also see this sense of more informal community involvement in legal affairs in the continued power of Manorial courts—where, for example, the law day at Southhampton also included community feasting and drinking.<sup>173</sup> This image of community members participating in a communal legal space again draws an apt parallel to the ending of *Measure for Measure*, where the Duke makes a public affair of justice at the city’s gates.

The perceived strong connection between English legal authorities and communities also exists in the specific principle of equity. Equity, or the idea of privileging specific circumstances of a case over codified laws and statutes, was particular to the Elizabethan and Jacobean courts of Chancery. However, the concept of equity operated more broadly in the English legal system—where this principle was designed to ease or enlarge law as a mediating force in itself. In *The English Reports* (1599), a central text to the education of law, Edmund Plowden comments on the interpretation of statute in *Eyston v. Studd*, stating: “And in order to form a right Judgment when the letter of a Statute is restrained, and when enlarged, by equity, it is a good way, when you peruse a statute, to suppose that the law-maker is present, and that

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<sup>172</sup> Quoted in Robert Shoemaker, *Prosecution and Punishment: Petty Crime and the Law in London and Rural Middlesex* (Cambridge: Cambridge UP, 1991), 24.

<sup>173</sup> Christopher Harrison, “Manor Courts and the Governance of Tudor England,” in *Communities and Courts in Britain 1150-1900* (London: The Hambledon Press, 1997), 51-3.

you have asked him the question you want to know touching the equity, then you must give yourself such an answer as you imagine he would have done, if he had been present.”<sup>174</sup> This passage illustrates that a given ruling stems from the process of interpreting law, which here Plowden imagines as a more imaginative, human relationship to lawmakers. The ability to weigh information to the particulars of a case reflects judicial understandings of community pressures as well as the benefits in having a judge who is able to understand fully the specific circumstances of a given case.

When interpreting judicial connections to the community in *Measure for Measure*, Shakespeare scholars like David Bevington suggest that the play offers legal judgments formed on the principle of equity. Here, the characters Escalus, the Provost, and the Duke enact the ideals of equity throughout the play, continually superseding the often ridged, constricted scope of the law.<sup>175</sup> The Duke describes Escalus as a person “pregnant” in the art of common justice, more so than anyone else in the community.<sup>176</sup> When Duke Vincentio initially gives his legal authority to Angelo he commands him to “enforce or qualify the laws/ As to your soul seems good.”<sup>177</sup> Such lines especially highlight the concept that a ruling authority ought to adjust statutes based on his own personal sense of judgment. The Duke also tells Angelo to have both “Mortality and

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<sup>174</sup> Edmund Plowden, *The English Reports (Volume LXXV): King’s Bench Division IV*, ed. Max A Robertson and Geoffrey Ellis (The Canada Law Book Company, 1907), 699.

<sup>175</sup> See Bevington’s chapter, “Equity in *Measure for Measure*” in *Shakespeare and the Law: A Conversation Among Disciplines and Professions*. eds. Bradin Cormack, Martha C. Nussbaum, and Richard Strier, (Chicago: The University of Chicago Press, 2013), 164-174.

<sup>176</sup> 1.1.11-13.

<sup>177</sup> 1.1.64-66.

mercy” in his tongue and heart as a legal authority.<sup>178</sup> Indeed, the *concept* of merciful judgment persists throughout the play. For example, the Provost wishes for mercy towards Claudio’s strict punishment, and Isabella makes a case for mercy in legal proceedings in her initial meetings with Angelo.<sup>179</sup> *Measure for Measure* clearly demonstrates the concept of equity as a method of obtaining justice—even if not really put into practice in the legal judgments of the play.

While the principle of equity certainly exists as an ideal in *Measure for Measure*, it was ever more separate from the English legal system in the contemporary reality surrounding the play. From around 1550 on, equity was increasingly thought of as the specific prerogative of the Court of Chancery and not as a part of the general English system. As a consequence, equity itself became a regulated compilation of coherent and codified principles tied to government forces and increasingly separate from English common law.<sup>180</sup> This change to equity is just one of many challenges to community forces in the law at this transitional moment in the English legal system. In particular, the case for a strong relationship between legal authorities and communities became secondary to a more coherent, standardized legal system. As will be discussed in the next section, the notion of community legal influence became an increasingly distant dream as state, centralized power amplified throughout the late sixteenth and into the seventeenth century. The unresolved tensions in Shakespeare’s *Measure for Measure* reflect this larger change in the English legal system—where the community only *seems* to have

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<sup>178</sup> 1.1.44-45.

<sup>179</sup> See 2.2.

<sup>180</sup> Baker, *An Introduction to English Legal History*, 107-8.

power in English law. The consequent illusion of English principles tying community forces to legal affairs in *Measure for Measure* reveals that such ideals grant royal, centralized legal authority even greater control over communities.

### **England's Transition from Local to State Authority**

English legal scholars like JH Baker, Christopher Brooks, and JA Sharpe discuss at length the shift from local, communal justice towards centralized, state authority.<sup>181</sup> While the common law system initially had the role of fact-finding for a case up to the jury's discretion—as one of the key differences between the trial setup in continental courts—the jury's power and authority dropped dramatically in the sixteenth century.<sup>182</sup> What's more England saw the rise of centralized positions of Justices of the Peace at the same time the legal system diminished the number of county and hundred positions as institutions for more communal influence in law. Royal command continually took authority from local sheriffs and placed it into these Justices of the Peace, consolidating legal power.<sup>183</sup> In *Eirenarcha* (1582), William Lambarde highlights how this shift in power had declined community peace-keeping efforts, as it took the “election” of conservators of the peace out of the hands of “the common people” and “translated” it to “the assignment of the king.”<sup>184</sup> Towards the end of the sixteenth-century and throughout

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<sup>181</sup> Ibid., Baker also illustrates this process of centralization in *The Common law Tradition*, 322.

<sup>182</sup> Baker, *The Common law Tradition*, 112; Here, we see how the jury's role in “fact finding” especially diminished at this time.

<sup>183</sup> Baker, *An Introduction to English Legal History*, 25.

<sup>184</sup> Lambarde, *Eirenarcha*, 20-1 (as quoted in Brooks, *Law, Politics and Society*, 14).

the seventeenth, the English court system also continually moved judicial structures towards centralized authority, with the consequent abolition of special courts traditionally led by civilians. In this process, authorities largely removed from original jurisdictions took over such civil courts.<sup>185</sup>

In this transition from local to state authority, there are numerous cases in which both common citizens and legal officials wrestled with the reach of state authority, government control, and royal power. Instances such as the Bates case of 1606, which contested the King's legal power in connection to parliament, or the *Butler and Baker's Case* from the King's Bench (1591) –where it was questioned just how much money should be due to the crown in one's death—showcase strong tensions in the move to central authority.<sup>186</sup> Another judicial transformation due to this shift in power that attracted a lot of attention was the change to The Court of Star Chamber.<sup>187</sup> By the Stuart period, this office changed to be a place for the Crown to bring prosecutions and directly enforce punishments. The proceedings were held quickly and tried summarily without a grand jury or trial jury, and punishments were up to the full discretion of the court. Accordingly, the Star Chamber offered a space for the government to prosecute things like seditious speech or actions as well as ecclesiastical offenses where a jury may not agree. These various instances disclose an unparalleled sense of royal legal power in England's Common law.

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<sup>185</sup> Luigi Moccia, "Notes on 'historical comparative law,' 'open legal system' and the 'common and comparative law' in Gino Gorla's works," *Relations Between the Ius Commune and English Law*, 117.

<sup>186</sup> For details, see *Relations Between the Ius Commune and English Law*, 240.

<sup>187</sup> This description stems from Baker, *An Introduction to English Legal History*, 119.

When Shakespeare shifts the legal environment in *Measure for Measure* to appear closer to the community, the play captures the potential for royal power to infiltrate community concerns and diminish community forces. The Italian setup of the play quickly transforms to showcase the English principle that common law originates from community forces and maintains strong connections between legal authority and local power. The play's comparison with Italy allows for a new perspective of English Common law, as an audience might observe how the legal officials of this play become so far removed from community concerns—even when maintaining closer ties to community members. Instead, those with legal authority wield unquestioned power over the city of Vienna. The play exemplifies that the illusion of community involvement in legal affairs results in new levels of state power over local authority.

While Angelo immediately pressures the community through his condemnation of Claudio and subsequent demolishing of city brothels, his legal power is ultimate and indisputable. The extent of Angelo's authority is made crystal clear when Isabella claims she will inform the public of his sexual proposition.

Here, Angelo confidently replies:

Who will believe thee, Isabel?  
 My unsoiled name, th'austereness of my life,  
 My vouch against you, and my place I' th' state,  
 Will so your accusation outweigh,  
 That you shall stifle in your own report,  
 And smell of calumny.<sup>188</sup>

These lines clearly illustrate the divide between community forces and legal power.

Angelo assertively states that his place in the state will completely outweigh Isabella's

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<sup>188</sup> 2.4.154-159.

accusation and any attempt to defame him will only prove to ruin Isabella's own reputation. While on the surface, Angelo has stronger ties to the community in the Mariana plot—and the play repeatedly stresses the importance of both “mortality and mercy” in law—we also see the real dangers that might occur in a central system in which legal authority could become above critique. After these lines, Isabella asks herself questions reinforcing this problem in the social and legal environment of the play: “To whom should I complain?” “Who would believe me?”<sup>189</sup> Isabella confirms for the audience that it is not just Angelo threatening to keep her silent but that in fact she is powerless to accuse him, and his position in the community is too high for any kind of reproof. Isabella then continues her monologue with a strong critique of judicial corruption, where legal authorities might bid “the law make curtsy to their will.”<sup>190</sup> This moment illustrates the impact of having legal officials whose status is so far elevated over the community that they are beyond critique. While any legal system will face the concerns of corruption, Isabella's lines specifically point to the increasing divide in the power dynamics between law and community forces that continued throughout England's transition to centralized, state power.

This dialogue between Angelo and Isabella marks a dramatic change from Shakespeare's Italian sources—where Isabella's character never seems to doubt her ability to discredit Juriste to the Emperor. As soon as Epitia sees her brother is dead, she calmly and swiftly journeys to see the Emperor and has full confidence that Juriste will

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<sup>189</sup> 2.4.171-2.

<sup>190</sup> 2.4.175; Isabella also draws a parallel to the Italian metaphor of corruption with idle spiders entrapping people in 3.2.275-80.

be punished. It is only when the Emperor is going to enact lethal punishment on Juriste that Isabella worries what the rest of the community might think of her and instead pleads for his life. In contrast to Epitia, Isabella is completely powerless, and it is precisely her powerlessness that makes the play so unsettling. Isabella's inability to question Angelo's authority points to the real potentials of judicial corruption when members of the law are above reproof. Italy then becomes a useful lens for understanding power relations between legal forces and the community. As Shakespeare's adaptation of Cinzio's story includes stronger connections to community members, we might see the dangers in believing the English legal system remains grounded in community forces when actually community power is increasingly distant from legal affairs. The law's seeming power might be best summarized in Angelo's provocative lines to Isabella: "Say what you can, my false o'erweights your true."<sup>191</sup>

### **Duke Vincentio and Central Princely Power**

While Angelo exercises unquestionable legal authority in Duke Vincentio's perceived absence, the Duke's method of obtaining justice in the play specifically exposes a monarch's legal reach in a centralized system. The Duke's disguise as a friar puts him in a new, more powerful position to infiltrate community concerns. Not only does the Duke use his disguise to assess the community in his social interactions (such as his conversations with Lucio), he also continually finds places where he "can be

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<sup>191</sup> 2.4.170.

concealed” to survey private actions.<sup>192</sup> Subha Mukerji notes that this makes the Duke “the eye of the state” using surveillance to control his citizens. Mukerji even includes Lording Barry’s satirical play, *Ram Alley*, where Dash creates a similar image of a monarch’s legal power: “It is the kingdom’s eye, by which she sees/The acts and thoughts of men.”<sup>193</sup> The Duke’s character reflects these impending concerns of princely power expanding in a more centralized legal structure.

When the Duke decides to put Angelo in his place and disguise himself to further interact with the community, he increases his own scope of legal power. While the Duke’s actions may *seem* to point to English ideals of community arbitration, such as the principle of equity, this role effectively asserts further power and control over the city. Accordingly, the play reveals the seeming connection between English law and community forces, breaking down the notion of community power in the English legal system. As England transitioned to a centralized system, the Duke’s actions emphasize the fact that centralization allows for an unprecedented reach of monarchical legal power. In this section, I demonstrate how Shakespeare’s play transforms the Italian disguised ruler plot to exemplify the prince’s new reach of power in a centralized legal system; discuss contrasting views in contemporary England over monarchical legal authority in terms of religious, political, and social concerns; and conclude with how such conflicting views coalesce in the play’s final scene, where Duke Vincentio employs law’s theatrical power.

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<sup>192</sup> 3.1.52-53.

<sup>193</sup> Quoted from Mukerji, *Law and Representation*, 236.

In *Measure for Measure*, Italian narrative conventions and social circumstances are transformed to illustrate the unprecedented, incisive reach of a monarch in a centralized system. The notion of an authority figure veiling or disguising himself appeared widely on the English stage and in political discourse. While the disguised ruler plot in *Measure for Measure* is not a part of the plays' Italian sources, this narrative technique existed in numerous Italian novelle. Machiavelli also famously illustrates the political necessity of dissimulation in *The Prince*—in part revealing the theatrical essence behind a prince's power. Michel Redmond claims that the disguised ruler plot in England became a way to discuss political issues of statecraft, especially under James I, and this was a large part of the trend of adapting Italian materials in English theatre.<sup>194</sup> The convention became so popular that plays built from both Italian stories and English history in order to display the power dynamics intertwined with a disguised ruler character. In Samuel Rowley's *When You See Me, You Know Me* (1604), Henry VIII disguises himself to mingle with his subjects and reform corruption in his government. As Henry's character surveys the government of the city, Jean Howard argues the play "implicitly calls on the monarch to attend to the city's problems and to reform the abuses of courtiers and others in power."<sup>195</sup> Duke Vincentio similarly takes it upon himself to reform the community through the use of disguise and deception—assessing both legal officials and the broader populace in the process.

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<sup>194</sup> See Redmond's chapter, "I have my dukedom got; Shakespeare and the Evolution of the Italianate Disguised Ruler Play" in *Shakespeare, Politics, and Italy*, 121-168.

<sup>195</sup> Jean Howard, *Theater of a City*, 89.

The Duke's chosen disguise as a friar also occupies multiple positions of authority and illustrates how completely state power might infiltrate everyday life. When Duke Vincentio (as Friar Lodowick) first gets to the prison, he asks the Provost to let him see the prisoners and know their crimes so that he might accordingly "minister" to them.<sup>196</sup> The Duke takes over the role of religious authority so that he holds sole judgment throughout the dénouement of the play. Upon seeing Juliet's pregnant state, the Duke again asserts this ecclesiastical role, claiming: "I'll teach you how you shall arraign your conscience."<sup>197</sup> By merging religious and legal power, the Duke alone teaches his citizens how to conduct themselves and understand the consequences of crime. Accordingly, the Duke is able to enact further power over his subjects than in his typical role as a prince, and his perceived connections to the community only allow for further control. The Duke's consolidation of power also echoes Henry VIII's legal break from Rome, where the English court system especially expanded its central scope as a means of preventing Roman influence in ecclesiastical power. For example, the Act of Restraint of Appeals prevented Catherine of Aragon, as well as any other English citizen, from appealing decisions to Rome's Church courts.<sup>198</sup> The Duke in *Measure for Measure* consequently reproduces the strategies initiated under Henry VIII to centralize and secure English legal authority in both secular and ecclesiastical courts.

At the same time, the Duke's actions reflect the longer lasting, continued effects of England's break from Rome, especially in the conflicts between religious and secular

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<sup>196</sup> 2.3.5-8.

<sup>197</sup> 2.3.21.

<sup>198</sup> Brooks, *Law Politics, and Society*, 45.

power in the English legal system. Throughout the early modern period, England continued to uphold two separate, but parallel authoritative systems in secular and ecclesiastical courts. As local English law transformed into central power, there was also a more universal sense of jurisprudence under the Church, which was developing as a comparable but wider spread system of centralizing ecclesiastical authority.<sup>199</sup> The Duke collapses these two systems into one, all-controlling force. Even after Lucio's backhanded comment about Friar Lodowick that "Cucullus non facit monachum" or "the cowl does not make the monk,"<sup>200</sup> the Duke continues to occupy this religious role until the play's final lines, where he explains to Angelo he has confessed Mariana and knows "her virtue."<sup>201</sup> The Duke's conflated roles connect to increased tensions between religious, ecclesiastical courts and secular state institutions.

Outside of religious tensions, the Duke's disguise also illustrates conflicting early modern understandings of a monarch's role in legal affairs. Specifically, the play points to contrasting views of a king's legal range and whether a king is subject to the law. The Duke's ability to rule outside of any given court structure parallels what James I writes in *The Trewe Lawe*: "The King is above the law, as both the author and giver of strength thereto....a good king will frame all his actions to be according to the Law; yet hee is not bound thereto but of his good will."<sup>202</sup> Here, as in other writings, James is clear that a king's legal scope has no end. Yet, at the same time, constitutionalists claimed that the

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<sup>199</sup> Baker, *An Introduction to English Legal History*, 126—see chapter on Ecclesiastical Courts, 126-134.

<sup>200</sup> "The cowl does not make the monk." 5.1.263.

<sup>201</sup> 5.1.530.

<sup>202</sup> King James VI and I, *The Trewe Law of Free Monarchies*, in Somerville, *Political Writings*, 75.

king was constrained by positive law produced by a legislative body. Sir Edward Coke, considered one of the great jurists of the Elizabethan and Jacobean eras, insisted that the law circumscribes a given ruler's discretionary power. Coke claims that any commissioners "are not to act according to their wills and private affections"<sup>203</sup> and even told James in 1608 that he had no authority to participate in the judicial decisions of his own courts.<sup>204</sup> We can observe strong similarities between such questions of James's legal power and the Duke's authority—and indeed scholars have found numerous connections between these two figures. Yet, whether the Duke is a specific image of James or not, the play picks up on the legal, political, and social concerns of this transition into centralized law. The play particularly dramatizes conflicting views over princely power that were continually contested and reinforced throughout James's rule. The Duke's character provides insights into the litigious connections between princely power, the law, and community forces in this time—which of course, are all intensifying leading up to England's Civil Wars.

The questionable reach of the Duke's authority and his machinations to achieve justice coalesce in the play's resolution. The Duke's commandment for Angelo to be his own judge when investigating Isabella's charges contradict the overarching principle of common law: "nemo debet iudex in propria causa."<sup>205</sup> In this bizarre and carefully orchestrated trial scene, Angelo fills the role of his own judge, and Escalus treats Isabella, Mariana, and Friar Lodowick with no mercy—even threatening the rack for such slander

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<sup>203</sup> *Rooke v Withers* (1598), as quoted in Baker, *Introduction to English Legal History*, 165.

<sup>204</sup> Baker, *Introduction to English Legal History*, 98.

<sup>205</sup> 5.1.166-7.

to the state.<sup>206</sup> The unusual legal practices and uncomfortable spectacle of the innocent Isabella all lead to the play's unsettling marriage "resolution." Throughout this scene, we witness the complete lack of community power in legal affairs as well as the unyielding scope of the monarch's legal and lethal power.

While Isabella's rhetoric in her plea against Angelo remains strong, her words amount to little power. The Duke states Isabella's claims must be "in th' infirmity of sense" before asserting that she is discrediting Angelo "in hateful practice."<sup>207</sup> After a short interview, Isabella is arrested for her slanderous speech. This again is a stark contrast to Shakespeare's source, where the Emperor instantly believes Epitia's complaints against Juriste, and Epitia pleads for Juriste's life because *she* is worried that the people might perceive his death as an act of vendetta. The different treatment of these female characters also sets up a parallel between the power behind the Duke and Emperor. As Redmond asserts, "The willingness of the Emperor in *Epitia* to punish the offending magistrate, answering the pleas of the female victim, validates his fame as God's representative on earth."<sup>208</sup> The Emperor's judgment, and subsequent lessening of legal punishment, exemplifies a ruler who has both "absolute justice" and "great mercy."<sup>209</sup> While throughout *Measure for Measure* different characters idealize these exact same qualities, this theatrical end seems to have neither. Instead, the scene

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<sup>206</sup> 5.1.324.

<sup>207</sup> 5.1.47; 5.1.107.

<sup>208</sup> Redmond, *Shakespeare, Italy and Politics*, 146-7.

<sup>209</sup> *Ibid.*, 147, Redmond also cites Cinzio's lines: "Voi trouerete in lui quel, c'hauer deue/ Ogni Signor, c'habbia gouerno in terra,/ Somma giustitia à gran pieta congiunta."

showcases the complete inability of the community to hold legal authority and the Duke's consequent tyrannical power.

Mariana and Angelo's relationship also exemplifies this lack of community power, even though the couple's connection reinforces Angelo's place in the community. The alternating legal authorities of the Duke, Angelo, and Escalus quickly strike down Mariana's claims supporting Isabella's story. Instead, the Duke leaves to resume his role as Friar Lodowick and gives Angelo permission to "punish them to your height of pleasure."<sup>210</sup> Of course, this is all a part of the Duke's plan, and he quickly returns as Friar Lodowick—dramatically revealing himself to be the Duke once all hope for justice seems lost. In the end, Angelo appears as a simple pawn in another of the Duke's clever plots to exert further control over the community. The Duke initially places his deputy in a vulnerable position (just like Remirro de Orco and Juriste) and threatens Angelo's life up until the very last moments of the play, ignoring Mariana's pleas to not "mock [her] with a husband."<sup>211</sup> While the play "resolves" in the last-minute marriages, the unresolved tensions of its conclusion stem from the fact that no one is free from royal legal authority. This Italian setup again showcases how English law might only seem to be more closely tied to community power.

Rather than obtaining communal mediation, the Duke's connections to the community uphold his legal power as an incontestable force. The populace does not exercise power in legal affairs—despite the legal authorities' strong ties to the community. The Duke's judgment in particular is so far removed from community

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<sup>210</sup> 5.1.240.

<sup>211</sup> 5.1.420.

concerns that even those pardoned with lesser sentences, such as Angelo and Lucio, claim they would rather face death. What is more, the Duke concludes with a startling proposal to Isabella, a woman just about to take her vows to become a nun. The play's problematic ending has led to intense scholarly scrutiny. For example, Stephen Greenblatt claims this unsettling conclusion allows for a kind of ironic analysis stemming from how the play uncovers the way state institutions manipulate anxiety for people to become obedient subjects.<sup>212</sup> While my reading builds from similar ideological forces in English and Italian the law, the play's tensions are more fully understood when comparing Italian and English legal ideas and structures surrounding the text. In my reading, *Measure for Measure* is less a demonstration of obtaining the obedient subject and more an illustration of contemporary tensions and the law's theatrical power to seem connected to community forces.

### **The Law's Theatrical Power**

The connection between law and theater remains center stage in *Measure for Measure*, with the "old fantastical Duke of dark corners"<sup>213</sup> as the law's ultimate director. Here, the Italian convention of a disguised ruler plot reveals legal authority's relationship with theatrical devices. What's more, the play continually reminds us of its "seeming" practices and portrays Italo-Vienna as a "*società spettacolo*," a concept common to

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<sup>212</sup> Stephen Greenblatt, *Shakespearean Negotiations* (Los Angeles: University of California Press, 1988).

<sup>213</sup> 4.3.159-160.

depictions of Italian society in English theater.<sup>214</sup> While this conflict between truth and deception occurs throughout *Measure for Measure*, the legal authorities of the play are the clearest deceivers. The Duke claims his appointment of Angelo will allow the community to “see what our seemers be” and Angelo is a disgraced “seemer” by the play’s conclusion.<sup>215</sup> Yet the Duke himself is the play’s most obvious seemer, continually calculating different schemes up until the play’s public legal spectacle at the city’s gates. This makes the play’s central plotter also the community’s chief legal authority—equating legal power with the process of fiction making.<sup>216</sup>

Law-literature scholars continue to explore how these two disciplines intertwine and inform each other, specifically analyzing how public spectacles, such as a given play or public execution, shape popular conceptions of law.<sup>217</sup> Shakespeare’s *Measure for Measure* exemplifies theater’s role in imagining English common law and the new conflicting relationships occurring within the English legal system—such as the divides between ecclesiastical and secular legal authority, monarchical and parliamentary power, as well as local officials and centralized legal positions. This interdisciplinary analysis of Shakespeare demonstrates how literature uncovers aspects of law and its influence in

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<sup>214</sup> I am borrowing the term “*società spettacolo*” or “society of spectacle” from Michele Marrapodi’s extensive scholarship on representations of Italy in English theater.

<sup>215</sup> 1.3.53-4.

<sup>216</sup> This is also noted in Subha Mukerji’s *Law and Representation*. Mukerji further discusses how the Duke’s illusionary craft fits into the technical meaning of “legal fiction,” which is “a lie done for the good of the commonweal,” 51.

<sup>217</sup> See, for example, Randy D. Gordon, *Rehumanizing Law* (Toronto: University of Toronto Press, 2011); Kieran Dolin, *A Critical Introduction to Law and Literature* (Cambridge, Cambridge University Press, 2007); W.N. Osborough, *Literature, Judges, and the Law* (Dublin: Four Courts Press, 2008); and Lorna Hutson, *The Invention of Suspicion* (Oxford: Oxford University Press, 2007).

early modern English society that cannot be obtained using legal scholarship alone. In particular, *Measure for Measure* displays law's theatrical power as a force that allows for further control over the populace. At the same time, the play contributes to popular expectations and understandings of English common law—challenging this overarching legal fiction of community power in the English legal system.

Shakespeare's ability to question and critique this legal fiction of community power also uncovers a new reading of the rogue characters in the play's subplot, such as Pompey and Lucio. These rogue characters are new additions to the plot and are completely absent from Shakespeare's Italian sources—which might suggest they point more clearly to English society and legal culture. More than anything, the rogue characters highlight the fact that law can "seem" anything it wants to be within its narrative power. These characters are then perhaps the place to most clearly see the conflicting dynamics of legal authority in the play, especially in terms of the law's theatrical power. The rogue Pompey, whose name plays on the Roman "Pompey the Great," is more adept at using legal rhetoric than the bumbling constable. Later, Pompey equates his former profession as a tapster in Mistress Overdone's brothel with his new legal position as the hangman's assistant.<sup>218</sup> Such comical scenes mock legal authority, but also equate legal power with the criminals of the play. Pompey easily adapts from his role as a barman to a legal officer simply by changing his clothing and title. This quick and easy transition showcases the power of perception in the community's legal setup.

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<sup>218</sup> See 2.1 for the constable scene. Pompey describes to the Provost his feelings about his new legal position in the lines: "Sir I have been an unlawful bawd time out of mind, but yet I will be content to be a lawful hangman." (4.2.15-17) and later states that he is "as well acquainted here as [he] was in our house of profession" (4.3.1).

The play questions what is the real difference between a legal official and bawd—especially given the Duke’s orchestrated bed trick between Isabella and Marianna.

We might also see this legal power of perception with the rogue Lucio, whose name even translates to “bringer of light.” Lucio is skilled in playing multiple roles in the community (as both a gentleman and common patron of the city’s brothels) and his character ties the comedic subplot to the play’s main plot centered on Isabella’s attempts to save Claudio. When faced with legal pressures, Lucio continually uncovers law’s theatrical power. In Isabella’s initial plea to Angelo, Lucio incessantly directs her rhetoric in different directions—demonstrating his knowledge of how to manipulate legal power to the audience. While Lucio comically slanders the Duke to his face throughout the play, he also specifically attacks legal authority’s seeming power when discussing Claudio’s case with Isabella. Lucio contends the Duke is strangely absent, and he has learned from people who “know the very nerves of state” that his “givings-out” were far from his “true-meant design.”<sup>219</sup> While these lines identify the dissembling nature of the Duke’s actions, it is fitting that such critique comes from a character that excels in the craft of dissemblance. With both Pompey and Lucio, *Measure for Measure* exposes the fact that legal power can easily be understood as a kind of con, especially given its power of perception in a community.

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<sup>219</sup> 1.4.50-55.

## Conclusion

*Measure for Measure*'s power to reveal tensions in English law connects to the broader participation and understanding of law and legal language in early modern English life. At the same time England's centralized system took power out of local hands, English society as a whole also experienced a new level of legal cultural awareness and participation in legal affairs.<sup>220</sup> Within this broader participation in the legal system, Shakespeare's play illustrates a much larger trend in adapting Italian stories and events for the English stage. In addition to Shakespeare's plays sourced in Italian materials, such as *The Merchant of Venice* and *Othello*, there are numerous early modern plays building from Italian sources: such as Marston's *The Malcontent* and *Antonio's Revenge*; Fletcher's *The Faithful Shepherdess*; Webster's *The Devil's Law Case* and *The White Devil*—just to name a few. That is, of course, not to mention the Italian legal materials adapted in poetry, prose and news pamphlets, as well as printed histories and political discourse.

Shakespeare's *Measure for Measure* answers why Italian materials became prominent in English popular conceptions of law at this transitional moment in the English legal system—where writers might use Italian materials to critique this shift from local to state authority. In particular, *Measure for Measure* challenges common conceptions of communal justice in order to reveal law's illusory, theatrical power. Shakespeare uses Italo-Vienna, and the Duke as a fictional ruler, to showcase how

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<sup>220</sup> See, for example, Lorna Hutson's *Invention of Suspicion*, where Hutson claims this increased participation in legal affairs led to "investigative procedures of common law acquiring a new cultural centrality and moral exemplarity," 5.

diminutive community forces might become in England's central legal system increasingly under monarchic control. This broader interest in performing Italian law reflects and shapes popular conceptions of the English legal system as it transitioned from more local to centralized institutions, where literature uncovers aspects of early modern legal experience that cannot be fully analyzed in court cases or statutes. Within this more comparative view of Italianate plays on the English stage, this chapter's analysis of *Measure for Measure* demonstrates the way literature affects popular conceptions of law, and especially the monarch's role in legal affairs, across geographical, political, and cultural barriers.

### Chapter 3: Italianated Englishmen: Cony-Catchers and Communal Justice in Local Legal Experience

Cony-catching pamphlets engage in a creative space between fact and fiction, detailing various criminal cons played on cheated commoners or “conies.”<sup>221</sup> Between 1550-1620, the pamphlets gained great popularity in the English reading public. A more in-depth understanding of the tales has led to insightful work on England’s cultural, social, and economic tensions in the early modern period—including labor and vagrant economies, subject-state relations, social codes, and competing notions of private vs. public space.<sup>222</sup> Although scholarship on cony-catching pamphlets and rogue literature has revealed aspects of English culture, the tales still have much to tell us about early modern English social realities, especially in connection to competing power dynamics in England’s legal environment.<sup>223</sup>

One element of these tales that scholars have yet to explore is their intertextual connections to Italian literature and social experience. In Robert Greene’s *A Notable Discovery*, which arguably established conventions for the cony-catching genre, the narrator claims he has travelled widely in Italy; yet he is quick to explain: “I am English

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<sup>221</sup> For more details on the development of pamphlet literature, see Joad Raymond, *Pamphlets and Pamphleteering in Early Modern Britain*, (Cambridge: Cambridge University Press, 2003).

<sup>222</sup> See, for example, Bryan Reynolds, *Becoming Criminal: Transversal Performance and Cultural Dissidence in Early Modern England* (Baltimore: Johns Hopkins University Press, 2002); *Rogues and Early Modern English Culture*, ed. Craig Dionne and Steve Mentz (Ann Arbor: The University of Michigan Press, 2004); and Anupam Basu, “‘Like Very Honest and Substantial Citizens’: Cony-Catching as Social Performance,” *English Literary Renaissance* 44, no. 1 (2014): 36-55.

<sup>223</sup> Craig Dionne, “Fashioning Outlaws: The Early Modern Rogue and Urban Culture,” *Rogues and Early Modern English Culture*, eds. Craig Dionne and Steve Mentz (Ann Arbor: The University of Michigan Press, 2004), 33-61.

borne, and I have English thoughts, not a devil incarnate because I am Italianate.” The narrator then includes a critical description of Italy with the comparative conclusion: “I have not seene more excesse of vanitie then wee Englishe men practice through vain glory.”<sup>224</sup> In these few lines, Greene specifically points to a now infamous phrase illuminating potential English anxieties over Italian influences noted in Roger Ascham’s *The Schoolmaster* (1570): “Inglese italianto è un diavolo incarnato.”<sup>225</sup> While Greene’s use of Italy as a point of comparison for roguery certainly highlights English-Italian connections, Italy is specifically mentioned in many of the cony-catching pamphlets. Authors use Italian phrases throughout their tales, equate cony-catchers to “Machiavellians,” and even explain how the rogues’ pickpocket instruments are made in Italy.<sup>226</sup> So what does Italy have to do with the art of cony-catching, an activity typically thought of as a particularly “English” phenomenon? Why do these authors frame the

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<sup>224</sup> Robert Greene, “To the Reader” *A Notable Discovery*. (London, 1591), 3. *Early English Books Online*. Web. 6 July 2015, <[http://gateway.proquest.com.ezp2.lib.umn.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:image:6150:3](http://gateway.proquest.com.ezp2.lib.umn.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:image:6150:3)>.

<sup>225</sup> Roger Ascham, *The Schoolmaster*, (Amsterdam: Theatrum Orbis Terrarum, 1968), 66. Ascham’s phrase points to larger conflicts between those in favor of and against Italian influences. For example, John Florio quotes Ascham directly and asks him, “now who the Diuelll taught thee so much Italian,” in his *Second Frutes* (1591).

<sup>226</sup> Greene calls cony-catchers “Machiavellians” in his pamphlet *The second part of conny-catching Contayning the discouery of certaine wondrous coosenages*. (London, 1591), 9. *Early English Books Online*. Web. 6 July 2015, <[http://gateway.proquest.com.ezp2.lib.umn.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:99841561](http://gateway.proquest.com.ezp2.lib.umn.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:99841561)>; and Dekker claims cony-catchers have “instruments from Italy made of steele” in *The Belman of London*. (London, 1608), 27. *Early English Books Online*. Web. 6 July 2015, <[http://gateway.proquest.com.ezp2.lib.umn.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:image:16563:27](http://gateway.proquest.com.ezp2.lib.umn.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:image:16563:27)>.

details of criminal activity in England within Italian conceptions and what is to gain in understanding Italian intertexts within cony-catching tales?

In this chapter, I argue the cony-catching tales build from Italian narrative conventions, including Italian character types common to English literature, as a way of critiquing the power shift from local to state authority in the English legal system. Specifically, the tales represent and shape the role of local legal authorities, such as constables and local lawyers, as increasingly outside and distant from community concerns. English legal scholars note that after Henry VIII, England held unresolved conflicts about where authority lay and many aspects blurred any attempt at creating distinctions (like England's break from Rome). Within these conflicts, early modern English legal discourse worked through multi-geographical, and multi-temporal understandings of law, so that the English legal system simultaneously appeared distinct and could be understood within a broader comparative framework.<sup>227</sup> Using a similar cross-geographical lens for English legal experience, I will demonstrate how Italy occupies a material and conceptual space in cony-catching tales as a way of evaluating the role of legal authority at a local level in community concerns.

A part of this cross-cultural connection in cony-catching tales is the unique positioning of the pamphlets between the genres of news reporting and theater. The cony-catching pamphlets build from common narrative and rhetorical conventions first established in Italian news pamphlets. In this process, the imaginative tales emerge from

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<sup>227</sup> See, for example, Christopher Brooks's study of English legal writers use of French political thought, Cicero, and Machiavelli in *Law, Politics and Society in Early Modern England* (New York: Cambridge University Press, 2008).

pressures surrounding the ability to control information between state powers, political factions, and individual authors that all originates within commercialized news production in Italy. While these tales of malefactors borrow heavily from the news genre, the cony-catchers themselves are often more akin to the English stage—and especially Italianate court culture emphasized in early modern theater—than historical rogues. As the cony-catching pamphlets employ a mix of factual reporting and fictional theater, I read the tales like Anupam Basu, who claims the genre evolved into a means of articulating tensions in the “shifting and contested social landscape” of early modern English life.<sup>228</sup>

In line with recent scholarship on rogue literature, this chapter showcases how cony-catching pamphlets employ Italian material both to illustrate and actively shape the relationship between community forces and local legal authorities. I first discuss how cony-catching pamphlets stem from Italian influences in the form and structure of news pamphlets. Here, cony-catching tales emerge from tensions over the control of information in news production, and cony-catching pamphlets disguise themselves as news reports upholding English authorities to circumvent harsh censorship policies. Then, I focus on cony-catching tales that illustrate England’s changing legal environment that increasingly took power out of local hands, diminishing community peacekeeping efforts. The chapter concludes with broader connections to Italianate theater on the English stage—where cony-catchers appear as “Italianated Englishman” in order to

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<sup>228</sup> Basu, “Like Very Honest and Substantial Citizens,” 38.

further critique legal positions of power increasingly tied to court dynamics that were far removed from common community concerns.

### **Italian-English Connections in News Networks and Criminal Reports**

From 1550-1620, numerous authors enjoyed the creative space between fact and fiction when mimicking news pamphlets for cony catching tales.<sup>229</sup> The genre builds from news conventions and rogue literature circulating in the early sixteenth century—as the cony-catching pamphlets include detailed accounts of tricksters, glossaries of names, language translations of the rogues “canting” language, and tables of the various crimes (each called a specific “law”). As the genre developed, authors often borrowed from a set of conventions in the pamphlets such as cataloguing thieves, including eyewitness accounts, and employing similar terminology. While the tales clearly exaggerate the extent of this organized criminal world, some of rogue literature stems from historical events.<sup>230</sup> When reporting on this “brood of more strange Villanies,” the pamphlets employ journalistic conventions and establish a sense of journalistic verisimilitude building from the Italian news form.<sup>231</sup> In this process, cony-catching tales expand upon commanding tensions between legal authorities and communities over the control of information and reports of criminal activity in news production.

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<sup>229</sup> Dionne, “Fashioning Outlaws,” 33.

<sup>230</sup> For example, Harman’s *Caveat* relates events from 1566-7.

<sup>231</sup> Thomas Dekker, *Lanthorne and Candlelight; or The Bel-Man’s Second Nights-Walke, in The Non-dramatic Works of Thomas Dekker* ed. A. Grosart (London, 1884-6), 174.

Cony-catching tales develop from a larger European communication network that established itself in the sixteenth and seventeenth centuries. This network was one of the main avenues for continental legal practices and criminal actions to circulate in England. In the communication networks of seventeenth-century Britain and Europe, we might see a wider sense of how news shapes geographic boundaries, governs cross-cultural interactions, and even structures social conventions.<sup>232</sup> News from Italy was particularly popular in England, with numerous Italian news pamphlets, chronicles, and plays based on Italian history or news reports widely circulating in the English literary milieu.<sup>233</sup> In the following section, I examine the news network between Italy and England that contextualizes cony-catching tales, including the cross-geographical transmissions and receptions of legal ideas in popular pamphlets. As cony-catching tales built from common conventions of news pamphlets, this study brings to light pamphlet writers' participation in a larger systematic information phenomenon as well as the power dynamics intertwined with controlling information as it spread to different avenues and genres. Tracing the news network from which cony-catching tales emerge is important for understanding the ways in which legal ideas travel in literature as well as how such information shaped more popular English understandings and expectations of the legal system.

While news as a product for a wider public consumption began in the late sixteenth century, the news pamphlet genre built from an information community for

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<sup>232</sup> Joad Raymond, "Introduction," *News Networks in Seventeenth Century Britain and Europe* (New York: Routledge, 2006), 1-17.

<sup>233</sup> See a list of plays based on Italian current events in Michael Redmond's *Shakespeare, Politics and Italy*, (Farnham: Ashgate, 2009).

commercial enterprises dating back to the fourteenth century.<sup>234</sup> This system was adaptable, continually modifying its dynamics and intensity levels in certain areas as it continued to expand and connect European societies.<sup>235</sup> Even in this information community's origins, news between Italy and England was a prominent point of connection. In an early dispatch from 1303, members of the Ricciardi company of Lucca detail news from the Italian Peninsula to their representatives in London.<sup>236</sup> The letter describes various points of political concern and demonstrates the importance of keeping even far-away trading agents up to date on news from home in addition to hearing news from their distant postings. Later, in 1497, the Sforzas's ambassador in England explained that King Henry VII was "thoroughly acquainted with the affairs of Italy, and receives especial information of every event."<sup>237</sup> The letter goes on to say the King's courtiers heavily participated in intelligence services from Italian city-states, so much so that it was increasingly difficult to be the first to broadcast news from Italy. These two brief examples demonstrate the early news network in place for merchants and political figures between Italy and England—where information spread more narrowly in a courtly

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<sup>234</sup> Mario Infelise describes this broader fifteenth-century network in "News Networks between Italy and Europe," *The Dissemination of News and the Emergence of Contemporaneity in Early Modern Europe*, ed. Brendan Dooley (Farnham: Ashgate, 2010), 51-69.

<sup>235</sup> Paul Arblaster, "Posts, Newsletters, Newspapers: England in a European system of communications," in *News Networks in Seventeenth Century Britain and Europe*, ed. Joad Raymond (New York: Routledge, 2006), 19.

<sup>236</sup> George Holmes, "A Letter from Lucca to London in 1301," cited in Peter Denley and Caroline Elam (eds), *Florence and Italy: Renaissance Studies In Honour of Nicolai Rubinstein* (London: University of London, 1988), 227-33.

<sup>237</sup> Raimondo de'Raimondi de Soncino to the Duke of Milan, London, 8 September 1497, in *Calendar of State Papers and Manuscripts*, existing in the Archives and Collections of Milan, 1385-1618, ed. A.B. Hinds (London: HMSO, 1912), 323.

environment. Earlier productions of newsletters greatly influenced ambassadorial dispatches abroad and quickly began to filter down into the broader community, where we might see the first impression of public opinion in European societies.<sup>238</sup>

The public commercialization of news that occurs in late sixteenth-century England, with periodical newsletters outlining business and diplomatic factors, builds from this established network between Italy and England. Scholars like Mario Infelise and Brendan Dooley have noted that this new wave of popular, organized, and regulated information in Europe began with Italian *avvisi*. *Avvisi* were handwritten newsletters that were periodical and reported on a range of topics—from military and political news relevant to court affairs to dramatic accounts of crime in nearby areas.<sup>239</sup> Throughout the development of the news pamphlet genre, an expanded postal network also emerged from business and political relationships in the sixteenth century, where it was necessary to have more constant correspondence.<sup>240</sup> From the 1590s onward, this postal network continued to enlarge and improve carrier services to provide news to the general public.<sup>241</sup> The newly created *avviso* form and increased ability to spread news in the

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<sup>238</sup> Mario Infelise, "Roman *Avvisi*: Information and Politics in the Seventeenth Century." *Court and Politics in Papal Rome, 1492-1700*, ed. Gianvittorio Signorotto and Maria Antonietta Visceglia (Cambridge: Cambridge University Press, 2002), 212.

<sup>239</sup> For more in depth studies on the *avvisi* genre, see Brendan Dooley, *The Social History of Skepticism*, (Baltimore: The Johns Hopkins University Press, 1999); Mario Infelise, "News Networks between Italy and Europe;" Mario Infelise, *Prima dei giornali: Alle origini della pubblica informazione* (Roma: Laterza, 2005); Nicola Bernardini, *Guida della stampa periodica italiana*, (Lecce, R. Tipografia Editrice Salentina dei Fratelli Spacciante, 1890).

<sup>240</sup> Here, news was not limited only to commercial details, but included anything which might affect trade—such as the cost of commodities, taxes, changing exchange rates, transportation. See Arblaster, "Posts, Newsletters, Newspapers," 19.

<sup>241</sup> *Ibid.*, 20.

postal network were both important factors in establishing a public commercialized market for news.

In the initial commercial use of news in Italy, professional writers at the center of this well established communication network drew up newssheets that put together events gathered from letters and other newssheets received by post. A copyist would then reproduce such newsletters in great quantities for postal courtiers to carry throughout Italy and Europe. These courtiers' travel led to the regularization of issue dates.<sup>242</sup> Rome and Venice were the two main centers of *avvisi* production, where writers had a wealth of information to collect, copy, and pass on to subscribers. Rome was especially perceived as a hub of transnational information. An imperial ambassador to Rome, Miguel Mai, claimed the city “is the vortex for all the world's affairs” in his dispatch to Charles V in 1530.<sup>243</sup> Later, the historian and news writer Maiolino Bisaccioni declared: “Rome, as you know, [is] the place where all the news in the world is found.”<sup>244</sup> While criminal news accounts were particularly popular for a wider audience, scholars like Mario Infelise note that the political intrigues of rival Italian courts also generated *avvisi* production, as each court craved the most current scandals and secrets of rivaling courts in addition to a court's own desire to project a certain public image.<sup>245</sup> In this process, there were both public *avvisi* that were widely distributed and read aloud in areas of a city as well as “secret” *avvisi*, which were more sought after as pertaining to little-known

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<sup>242</sup> Infelise, “News Networks between Italy and Europe,” 53.

<sup>243</sup> Cited in Andrew Pettegree's *The Invention of News: How the World Came to Know about Itself* (New Haven: Yale University Press, 2014), 103.

<sup>244</sup> Cited in Infelise, “Roman *avvisi*,” 213.

<sup>245</sup> *Ibid.*, 212.

court actions with a smaller intended audience for more private intentions. Naturally, a part of this division was in the value of leaking secret *avvisi* to public news sources.

In early forms of *avvisi* production, the pamphlet would include more basic information needed for trade or political purposes. The newsletter began with a heading that stated both the date and place where the report originated, with practical titles such as "News from Venice, 24 March 1570" or "In a letter from Constantinople it is reported."<sup>246</sup> The few pages of the pamphlet were then divided into multiple paragraphs, with "capitoli" (chapters) or "bollettini (bullets) to introduce the content of each section. At times, each chapter or bullet would detail news from various sources. In this early stage of news production, newsletters included topics such as conflicts affecting trade, ambassadorial reports, and price changes with little commentary from the *avviso*'s writer. This quick and to-the-point rhetorical style is visible in an *avviso* from Benedetto Dei in 1479, where he reports: "I have news from Lyon: trading went very well, we sold many cloths and received great wealth."<sup>247</sup> While earlier reports were commissioned for trading or political parties, the newsletter form quickly became a means to spread ideas more widely in public circles.

The form and content of *avvisi* change as news became more available for popular consumption. One area where we can especially see a contrast from the more practical style above is in crime pamphlets. *Avvisi* detailing criminal activity include much more

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<sup>246</sup> Pettegree, *The Invention of News*, 110.

<sup>247</sup> "Ho nuove da Lyone: a fiera d'ora è stata buonissima, averassi ispaciato assai drappi e presi assai di denari"(as cited in Mario Infelise, "La circolazione dell'informazione commerciale," *Commercio e cultura mercantile, Il Rinascimento Italiano e L'Europa*, 4 (2007), 507.

dramatic, eye-catching titles, such as, “New reports from Milan where a man has been sentenced to death for committing 120 homicides, a priest is burned alive, a child is quartered and other events unheard of, as you shall read. And everything described is true with great astonishment.”<sup>248</sup> News pamphlet titles increasingly became a space for *avvisi* writers to draw in public audiences and elevate their curiosity. The rest of a crime pamphlet would usually detail the criminal actions, circumstances surrounding the victims, and conclude with reports of judicial sentences and executions. It was especially popular to discuss crimes thought to be of grave danger to the public—such as Enrico Stumpo’s *avviso* detailing how five bandits had struck and robbed innocent victims in January, 1588.<sup>249</sup> While some newsheets detailed criminal events and consequent legal actions, others would pointedly uphold state authority in their explanation of criminal punishments.

From the start of news production, legal powers became aware of the benefits in having a communication network to uphold state authority. Crime reports provide gory details of a criminal’s torture, confession, sentencing, and punishment in order to reinforce the role of legal authorities in both protecting the community and upholding

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<sup>248</sup> “Milan 1609: Nuovo avviso venuto da Milano, dove s’indende la morte di un gentil’huomo principalissimo, il quale è stato giustitiato per haver commesso 120 homicidij, sotterrato un prete vivo, squartato un puttino et alter cose inaudite, come leggendo intenderete. E tutte cose verissime, e di grande stupore.” as cited in Infelise, “Criminali e ‘Cronaca Nera’ Negli Strumenti Pubblici d’Informazione tra ‘600 e ‘700,” *ACTA HISTRIAE* 15 no.2 (2007), 510.

<sup>249</sup> “Roma, 16 gennaio 1588: Li cinque banditi che di notte tempo amazzorono in Bevagna quell’huomo principale robbandolo, sono stati presi in Ancona et condotti al luogo del delitto sono stati rilasciati in quarti, per premio delle loro sceleretaggini,” as cited in Infelise, “Criminali e ‘Cronaca Nera’ Negli Strumenti Pubblici d’Informazione tra ‘600 e ‘700,” *ACTA HISTRIAE* 15 no.2 (2007), 513.

moral codes. The law's role in bolstering morality can be seen in an avviso describing how an adulterer made the sign of the cross along with a "tortura confessino" under interrogation.<sup>250</sup> The avviso's description of the intense interrogation process highlights how law enforces and maintains morality. While pamphlets could be used to enforce moral codes, they also often support specific ideologies or religious ideas from commanding powers in a community. For example, a report of Giordano Bruno's execution at Campo de' Fiori for his scientific endeavors states he was an "obstinate heretic" ["heretico pertinace"] who refused to take back his "bruttissime parole" even after the Church's lenience with his previous offences.<sup>251</sup> In this description and many others, pamphlets could be used to uphold legal punishments, create popular opinion condemning criminals, and enforce codes of behavior.

While pamphlets were certainly used to support legal authority and order, they were also seen as dangerous to authorities given their ability to offer diverse viewpoint or voice from those in power. As information could spread quickly through various avenues, religious and political forces alike aimed to control information from the start of news pamphlets. Infelise notes the initial attempts at *avvisi* censorship in Rome stems from the 1570s-80s, where Pope Pius V declared he would proceed against authors of defamatory

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<sup>250</sup> "Roma, 12 marzo 1588: sono parecchi quelli carcerati ultimamente perche, sendo ammogliati, sono stati querelati d'haver tenuto mano agli adultery delle loro consorti, li quail quando con la tortura confessino, se puo' far loro il segno della croce," as cited in Infelise, "Criminali e 'Cronaca Nera' Negli Strumenti Pubblici d'Informazione tra '600 e '700," *ACTA HISTRIAE* 15 no.2 (2007), 513.

<sup>251</sup> "Giovedì fu abbrugiato vivo in Campo di Fiori quell frate di S. Domenico di Nola, heretico pertinace, con la lingua in giova, per le bruttissime parole che diceva, senza voler ascolatre ne' confortatori ne' altri. Era stato dodici anni prigionie al S. Offizio, dal quale fu un'altra volta liberato" *Avvisi di Roma*, 19 febbraio 1600. Collezione suddetta, n. 1068 as cited in Bernardini, *Guida della stampa periodica italiana*, 39.

pamphlets.<sup>252</sup> In 1570, Niccolo' Franco was tried and executed for his activities writing *avvisi* and connections to various copyists.<sup>253</sup> In addition to Franco's condemnation, a writer in 1581 received a life sentence for allegedly discussing the Pope's health and in 1587 another writer was executed for divulging confidential information in pamphlets.<sup>254</sup> Successive Popes also took actions to confine *avvisi* production. In part, Papal censorship fell harder on the *avvisi* genre in Rome since the news pamphlets were often confused with pasquinades, which were anonymous short, satirical verses posted up around the city and especially on the Pasquino statue.

Concerns over the control of information were not limited to Papal censorship. One newsletter claimed that those in political power forced news reporters "to write trifles and lies that don't stir anything up."<sup>255</sup> In a 1593 treaty from Cardinal Azzolini's court, an aid of a cardinal's secretary is told not to speak to "anyone new" or associate with writers because they could "take an egg out of chicken's body, let alone secret out of youth's mouth."<sup>256</sup> With the rise of commercialized news, keeping secrets and controlling information was progressively more significant and difficult to maintain. As news pamphlets could either uphold or critique commanding powers, the commercial news genre creates a contentious environment for the control of information between legal

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<sup>252</sup> Infelise, "Roman *Avvisi*," 214.

<sup>253</sup> A. Mercati, *I costituti di Niccolo' Franco (1568-1570) dinanzi all'Inquisizione di Roma esistenti nell'Archivio Segreto Vaticano*, Citta' del Vaticano, 1955.

<sup>254</sup> cited in Pettegree, *The Invention of News*, 112.

<sup>255</sup> ASV, Miscellanea atti diversi manoscritti, b. 65, *De gli avvisi di Roma della corrente estate del 1665. Posta prima Pasquino Romano al Gobbo di Rialto*.

<sup>256</sup> Infelise, "Roman *Avvisi*," 216.

authorities and communities that continues on in England's pamphlet printing in the late sixteenth century.

### **Tensions Over Information Flourish as Italian News Travels to England**

The competing voices and political tensions that surround *avvisi* production carry over to England as the news form created a means of expressing events and ideas from multiple perspectives. As news from Italy created a comparative viewpoint that English Reformation politics aimed to constrict, the English pamphlets building from Italian conventions created a new space for dialogue that was difficult to restrain. English news production started by reporting events from continental Europe, with pamphlets such as: *A True Relation of the French Kinges* (1592), *Newes out of France* (1591), and *Newes From Rome, Spaine, Palermo* (1590).<sup>257</sup> English pamphlet scholars describe a general trend from the 1560s onward where printers had to meet increased demand for news in the reading public,<sup>258</sup> and Paul Voss has even claimed a quarter of English publications from 1591-1594 were devoted to current affairs abroad.<sup>259</sup> When English writers began producing their own pamphlets detailing domestic concerns, they built from the

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<sup>257</sup> Raymond, *Pamphlets and Pamphleteering*, 105.

<sup>258</sup> Thomas Nashe also portrays this new craving for news in his *Pierce Peniless* (1592), where one character is described as a "greedy purchaser of news." In part, the news market took off because of the print market's economic challenges in the 1590s—as it was much less expensive for printers to publish news pamphlets, rather than lengthy books, and news publications became a way for printers to get into the business.

<sup>259</sup> Paul J. Voss, *Elizabethan News Pamphlets*, (Pittsburgh: Duquesne University Press, 2001), 15.

established *avvisi* form, including similar structures, phrasings, and rhetorical devices.<sup>260</sup>

Even as pamphlets develop and take shape in English literary circles, this sense of intertextuality is vital to the pamphlet form and depiction of criminal acts in the cony-catching tales.

In 1592, the printer and bookseller John Wolfe created the first serial news publication with an ongoing audience that detailed foreign events, especially from Italy.<sup>261</sup> Wolfe spent time in Italy learning the craft of manufacturing pamphlets, and he printed numerous Italian texts—from literary works by Tasso and Guarini to Machiavelli and Castiglione, as well as some controversial books on protestant views of Italy such as *Aviso piacevole dato alla bella*.<sup>262</sup> One of the pamphlet's title pages in Wolfe's foreign news serial publications claimed that the text was "truly translated out of the French and Italian Copies, as they were sent to right Honourable persons."<sup>263</sup> Pamphlets that were then created for London stationers that detailed events in England borrowed common conventions from Italian *avvisi*. English pamphlets adhere to the same form of commercialized *avvisi* of the sixteenth century, which generally consisted of one or two folded sheets of paper in order to make up a quarto pamphlet that ranged from four to eight pages in total. The genre terminology developed in Italy also carries over to

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<sup>260</sup> See Fabrizio Rondolino, *Secondo Avviso* (Torino: Einaudi, 1999); Infelise, "Roman *Avvisi*: Information and Politics in the Seventeenth Century;" Infelise, "News Networks between Italy and Europe;" Pettegree, *The Invention of News*, 183.

<sup>261</sup> Joad Raymond, "News Writing," *The Oxford Handbook of English Prose 1500-1640*, ed. Andrew Hadfield, (Oxford: Oxford University Press, 2013), 408; Soko Tomita, *A Bibliographical Catalogue of Italian Books Printed in England, 1558-1603*, (Farnham: Ashgate Publishing Limited, 2009), 9-11.

<sup>262</sup> As cited in Tomita's *A Bibliographical Catalogue*, 10.

<sup>263</sup> Raymond, "News Writing," 408.

England. *Avvisi* went by *reporti* in Venice, with an *avvisi* writer called a *reportista*. These both led to the English terms “report,” and “reporters” as compilers of news.<sup>264</sup> While the form of communicating events and ideas remained almost identical from Italy to England, the commercialization of news in England also created the predicament of controlling information in English society.

As this new flood of information cascaded through English society in pamphlets, we see similar attempts to control information from political and religious powers. In addition to Italian writing as a comparative viewpoint in larger Reformation policies, Italian news pamphlets also created a form that would allow for debates on domestic concerns. As the pamphlet genre continued to transform from a narrative of simple fact reporting to communicating complex ideas, scholars like Zsuzsa Barbarics-Hermanik note that writers often interrelated intellectual, humanist, and religious discourses with news reports circulating in Europe.<sup>265</sup> As a result, England’s break from Rome led to increased governmental control of information in order to support English policy.

The potential for dissident voices in pamphlet writing is apparent, for example, in Thomas Bell’s detailed survey of the numerous pamphlets circulating in England from Catholic authors in *The anatomie of popish tyrannie*.<sup>266</sup> As a consequence of such

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<sup>264</sup> Dooley, *The Dissemination of News*, 54.

<sup>265</sup> Zsuzsa Barbarics-Hermanik, “Handwritten Newsletters as Interregional Information Sources in Central and Southeastern Europe,” *The Dissemination of News and the Emergence of Contemporaneity in Early Modern Europe*, ed. Brendan Dooley (Farnham: Ashgate, 2010).

<sup>266</sup> Thomas Bell, “The anatomie of popish tyrannie wherein is conteyned a plaine declaration and Christian censure, of all the principall parts, of the libels, letters, edictes, pamphlets, and bookes, lately published by the secular-priests and English hispanized Iesuties, with their Iesuited arch-priest; both pleasant and profitable to all well affected

pamphlet production, Elizabeth I and James I both increased censorship of printed words and general talk. Thus it was treasonous to speak of destruction against Queen Elizabeth or dispute her title “by writing, printing, preaching, speech, express words or sayings.”<sup>267</sup> On a more general level, a Royal Proclamation of 1589 condemned “certaine seditious and Schismatical Bookes and Libels” in pamphlet printing.<sup>268</sup> Many of the pamphlet writers discussed in this chapter, such as Thomas Dekker, Robert Greene, and Thomas Nashe, clashed with state powers as a result of their writing, which in some cases led to imprisonment and the closing of entire areas of literary production.<sup>269</sup>

Such tensions between state authority and local writers prompted cony-catching pamphlets to paint themselves as crime reports upholding legal power. Similar to Italian crime reports, English pamphlets detailing criminal accounts had the ability to uphold law and moral codes of social order as well as the potential to condemn legal authorities. While pamphlet production was perceived as a dangerous threat to state power, crime pamphlets employed similar techniques that we saw in Italian *avvisi* to bolster legal authority. English pamphlets have a similar structure that includes details of a crime, sentencing, and condemnation of those involved. In *The Crying Murther* (1624), the

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readers.” London, 1603. *Early English Books Online*, Web. 15 July, 2015.  
<[http://gateway.proquest.com.ezp2.lib.umn.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:99837238](http://gateway.proquest.com.ezp2.lib.umn.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:99837238)>

<sup>267</sup> See David Cressy, *Dangerous Talk: Scandalous, Seditious, and Treasonable Speech in Pre-Modern England* (Oxford: Oxford University Press, 2012), 63.

<sup>268</sup> Raymond, *Pamphlets and Pamphleteering*, 38.

<sup>269</sup> Andrew Hadfield describes how the works of Thomas Nashe contributed to both playhouses and published works being temporarily shut down in “‘Not without Mustard’: Self-publicity and Polemic in Early Modern Literary London,” *Renaissance Transformations: The Making of English Writing 1500-1650*, eds. Margaret Healy and Thomas Healy, (Edinburgh: Edinburgh University Press, 2009), 68-69.

author describes the murder of a clergyman in gory details to have moral effect on its reader, claiming the murderers had cut up the man's body in such a way that "butchers could not have done it more orderly and cunningly" to prevent the act from coming to light.<sup>270</sup> In another pamphlet, the writer explains how the murderers of a young boy cut out his sister's tongue, but she is later able to speak as "God had decreed to bring this cruell, barbarous, and bloody massacre to light."<sup>271</sup> The pamphlet then describes the indictment, trial, and execution of the criminals and ends with a message against violence in which the community should put their "willes to Gods will, assuring our selues, that all things shall worke together for the best, for them that love and feare him."

In these two short examples, we might see how crime pamphlets were a way of representing and creating a view of the state's normative social order.<sup>272</sup> In this same framework, Malcolm Gaskill has outlined how public executions communicated in news pamphlets broadcasted accounts of the condemned's crimes to endorse legal and moral ideologies—where pamphleteers saw their work as "matter for pious contemplation about sin."<sup>273</sup> While pamphlets that described a given criminal's trial or execution allowed for a narrative that enforced the meaning of punishment, pamphlets circulating also allowed

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<sup>270</sup> C.W., "The crying murther Contayning the cruell and most horrible butchery of Mr. Trat," (London, 1624), Early English Books Online, Web. 21 July 2015, <[http://gateway.proquest.com.ezp3.lib.umn.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:99837622](http://gateway.proquest.com.ezp3.lib.umn.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:99837622)> , 6.

<sup>271</sup> Anon., *The horrible murther of a young boy of three yeres of age, whose sister had her tongue cut out and how it pleased God to reueale the offenders, by giuing speech to the tongueles childe. Which offenders were executed at Hartford the 4. of August. 1606.* London, 1606, 3,10.

<sup>272</sup> Raymond, *Pamphlets and Pamphleteering*, 119.

<sup>273</sup> Malcolm Gaskill, *Crime and Mentalities in Early Modern England*, (Cambridge: Cambridge University Press, 2003), 213.

for dissident ideas to have a voice.<sup>274</sup> Accordingly, pamphlet writers became involved in broader disputes where on the one hand, crime pamphlets could be used to uphold legal authority, and on the other, state powers intensified censorship measures to constrict dissenting thought as well as narratives that portrayed legal actions in a negative light.

### **News Conventions and Government Fears in Cony-Catching Pamphlets**

Cony-catching tales evolve from such negotiations for power among communities—where the pamphlets build from crime writing conventions and the comparative viewpoint with Italy in these battles over the control of information. Consequently, the tales demonstrate connections between the law and political, economic, and ideological power. While the tales might not reflect a completely accurate picture of rogues and vagabonds in English society, they showcase a growing sense of anxiety over legal authority's place in community dynamics. Furthermore, the authors' role in detailing these crimes to a community becomes an active force in shaping the relationship between legal authorities and communities in early modern England. The cony-catching tales imagine a kind of popular literacy—where the author shares a common cause with his readers to protect themselves from these dangerous criminals in England's underbelly as well as a common plea to the justices to “weed out the bad worms” in English society.<sup>275</sup> In this way, cony-catching pamphlets disguise themselves

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<sup>274</sup> Raymond, *Pamphlets and Pamphleteering*, 119.

<sup>275</sup> Greene, *A Notable Discovery*, 11; this idea of weeding out the bad worms is a common phrasing in cony-catching tales.

as crime pamphlets bolstering legal actions while in reality the tales pointedly critique the overarching legal shift from local to state authority in England.

One way we can see cony-catching tales borrowing news conventions to appear as though they are upholding state authority is in their use of dramatic language common to criminal news reports. Scholars like Tessa Watt have demonstrated news pamphlets' emphasis on last-minute conversion and salvation in public executions—where news pamphlets often strengthen the unity between divine and temporal justice by illustrating common themes such as criminals facing justice and good overpowering evil.<sup>276</sup>

Harman's pamphlet *A caveat or warning for common cursetors, vulgarly called vagabonds* describes how rogues easily forget their legal punishments, never thinking to repent.<sup>277</sup> This forgetting of sins builds from the common emphasis on repentance and the nature of confession in news pamphlets described; yet Harman cleverly flips the convention on its head to stress how little is being done about these criminal actions.

Throughout the cony-catching pamphlets, authors use similar dramatic, heightened language employed in news pamphlets to showcase the dangers of cony-catchers and assert the deplorable conditions of England's criminal underworld. While such language appears in line with state power and news conventions condemning criminal acts, the pamphlets borrow these conventions to detail the failures of current

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<sup>276</sup> Tessa Watt, *Cheap Print and Popular Piety, 1560-1640* (Cambridge, 1991), 108; Sharpe, *Crime in Early Modern England*, 228; Raymond, *Pamphlets and Pamphleteering*, 121.

<sup>277</sup> Thomas Harman, *A caveat or warning for common cursetors, vulgarly called vagabonds*, (London, 1573), *Early English Books Online*. Web. 21 July 2015, <[http://gateway.proquest.com.ezp3.lib.umn.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:99841730](http://gateway.proquest.com.ezp3.lib.umn.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:99841730)>, 13-14.

legal authorities to protect communities. This heightened language highlights concern that criminal acts often go unpunished. Robert Greene claims in *A Notable Discovery of Coosenage* (1591) that such activities are often overlooked “because custome hath almost made them a law.”<sup>278</sup> He continues to say that roguery happens in every shire of the country and it is “a lamentable case in England, when such vipers are suffred to breed and are not cut of with the sword of justice.”<sup>279</sup> Greene’s use of dramatic language here details a dangerous problem that legal authorities have been unable to control.

In addition to flipping news conventions such as last-minute conversions and the use of dramatic language to support legal actions, the cony-catching tales also twist governmental anxieties over lawlessness common to proclamations, news reports, and legal discourse to degrade legal authorities. Cony-catching tales use similar language against criminal acts common to both news accounts and preambles to statutes when introducing the rogue problem to readers.<sup>280</sup> One example of many is in cony-catching pamphlets’ rhetorical strategy of asking the reader questions, which was very common in news pamphlets and legal discourse. Thomas Dekker’s *The Belman of London* (1608) includes dramatic statements on cony-catchers, where the narrator wonders how such awful people can continue to live in England and expresses his aghast at their strength, claiming: “what artillery have they to batter downe order, law, custome, plaine dealing, and all the goode guards and defenses of Government?”<sup>281</sup> Questions like these transform the dramatic, sensational language common to news reports upholding legal

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<sup>278</sup> Greene, *A Notable Discovery*, 9.

<sup>279</sup> *Ibid.*, 31.

<sup>280</sup> See a list of examples in Sharpe, *Crime in Early Modern England*, 173.

<sup>281</sup> Dekker, *The Belman of London*, 168.

actions as well as legal discourse in preambles to juries and in government issued statutes.

The cony-catching pamphlets' use of dramatic questions to the reader also echoes common governmental concerns over the effectiveness of the legal system as it became increasingly centralized under state power. Throughout this period, the English government continued to prod at the quality of legal authorities in their actions. In Elizabeth's reign, it appears many officials constantly worried about a drift towards lawlessness. In a 1568 speech to the Star Chamber, Lord Keeper Sir Nicholas Bacon declared Elizabeth was aware of current failures to enforce law, especially laws that "concerne godes honour and his true religion established in parliament by the whole consent of the three estates of the Realme"<sup>282</sup> The cony-catching tales build from such concern and cement ideas common in governmental beliefs repeatedly mentioned in statutes and proclamations, especially regarding "the danger of idleness, and the need to preserve order."<sup>283</sup> The subtle critique of law in heightened language in cony-catching tales is then so effective because the writers build from conventions a reader would be familiar with from the news pamphlet genre and common legal discourse.

The cony-catching tales readily pick up on governmental fears in controlling the population—with the authors boldly taking it upon themselves to reveal criminal cons to the public. All of the cony-catching authors detail their motives for writing the tracts as a public servant. Harman's Dedication to *A caveat or warning for common cursetors*

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<sup>282</sup> Folger, MS V.a. 143, fol. 71: 'A Speech in Star Chamber to the Justices, 1568,' as cited in Brooks, *Law, Politics, and Society*, 61.

<sup>283</sup> Sharpe, *Crime in Early Modern England*, 235.

claims he is writing the pamphlet so that the cony-catchers' "undecent, dolefull dealing and execrable exercyses may appeare to all, as it were in a glasse."<sup>284</sup> At the end of his tract, Harman again reinforces this imagery: "Thus I conclude my bold Beggars booke,/That all estates most playnely may see,/As in a glasse well polished to looke."<sup>285</sup> Thomas Dekker echoes this same idea of bringing to light such misdeeds in his *Lanthorne and Candlelight, or, The Bell-Mans Second Nights Walke*, where the belman "brings to light, a Brood of more strange Villanies then ever were till this yeare discovered."<sup>286</sup> Both authors describe and detail the cony-catchers' crimes, like an investigative journalist, but unlike news report, the authors themselves perform duties of the law to bring to light these crimes. Robert Greene emphasizes his personal role in uncovering criminal actions in his *A Notable Discovery*, claiming he "could not be silent seeing this abuse" and wished "to give light to the worshipfull Justices."<sup>287</sup> Greene similarly expresses his motives for writing the pamphlet "for the benefit of my cuntry."<sup>288</sup> Like Harman and Dekker, Greene undertakes the task of reporting these crimes for the public, replacing proper legal authorities. While the pamphlets claim their single goal is to bring to light these cons, the tales also disclose the current failures of justices and the legal system as a whole.

The cony-catching pamphlets claim they are simply servants to the commonwealth, and in this process provide calculated critiques of legal authorities.

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<sup>284</sup> Harman's dedication to *A caveat or warning for common cursetors*, iii.

<sup>285</sup> *Ibid.*, 72.

<sup>286</sup> Dekker, *Lanthorne and Candlelight*, 174.

<sup>287</sup> Greene, *A Notable Discovery*, 54.

<sup>288</sup> *Ibid.*, 37.

Authors claim the rogues will “freat” and “fume” in the publication of these pamphlets with their “lyfe beinge layde open,”<sup>289</sup> but the pamphlets more pointedly lay open current missteps of the justice system. Accordingly, the tales all share a common convention of directly pleading to legal authorities to use their information in order to eliminate these threats to society. Harman claims he will be sending the names and dwelling places to justicers so that “thereby the Justices and shreeves maye in their circuites be more vigilant to punishe these malefactores, and the constables, bailiffs and borseholders, setting asyde all feare, slouth, and pitie, may bee more circumspect in executing the charge gyven them by the aforesaid Justices.”<sup>290</sup> Dekker similarly dedicates his Belman pamphlet to those in office “sworne to punish,” and Greene expresses he is “desiring all Justices, if such coseners light in their precinct, even to use *summum ius* against them, because it is the baset of all villanies.”<sup>291</sup> The tales all share a similar direct call for the authorities to act upon these cony-catchers and critique legal officials who are currently failing to keep the public safe. In this process, the tales challenge the source of legal authority and emphasize increased tensions between local and state authority.

### **Local Officials in England’s Transition to a State-Run Legal System**

As previously mentioned, English common law differs greatly from continental European legal practices based on Roman law. Rather than laws being codified, written down, or delivered with the approval of a prince, English law from the start was

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<sup>289</sup> Harman’s dedication to *A caveat or warning*, iv.

<sup>290</sup> Harman, *A caveat or warning*, iii-vii.

<sup>291</sup> Greene, *A Notable Discovery*, 37.

perceived as something people collectively possessed. Institutions from manorial courts to the Inns of Court as well as legal principles such as equity aided this sense of communal ownership and participation in English common law. In a broader sense, however, early modern England experienced a transition from the more local, private and communal legal processes of the middle ages to a centralized state run system. In part this transition to state power resulted from the increased privileging of outsider, professional, more “objective” rulings over local social dynamics.<sup>292</sup> This concept of outside professionals adjudicating more effectively than local forces is exactly what cony-catching tales exploit in their mockery of local legal officials. Here, cony-catching pamphlets expose the ineffectual officials currently occupying positions that would have formerly been held by local members of the community, such as constables and lesser judges. Cony-catching tales then participate in popular knowledge of this larger legal transition in early modern England and offer a biting critique of more state-run, absent officials unfit for the task of communal mediation. Legal scholars claim that a surprising number of the English population was familiar with English law—in part because of popular, literary depictions of the legal system. Popular accounts of the law, like the cony-catching tales, were intertwined with popular legal experiences. Consequently, the tales’ critical displays of the law’s failures are a part of this popular knowledge base. As the cony-catching tales repeatedly illustrate faults in the legal system, they also showcase

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<sup>292</sup> Barbara Shapiro’s notable work, *A Culture of Fact: England, 1550-1720*, best highlights this transition from insider to outsider legal perspectives when settling disputes. Shapiro, *A Culture of Fact: England, 1550-1720*, (Ithaca: Cornell University Press, 2003).

the only chance for victims to vindicate themselves occurring within the community itself.

Almost all of the cony-catching pamphlets make it clear to their readers that legal authorities are not able to protect a given community. Harman's tales in particular showcase how rogues consistently evade punishment in the legal system. The inability of legal officials to bring justice to cony-catchers is so prevalent that friends of victims in these stories tell the caught "conies" not to speak anymore of being swindled, as the community and legal powers would laugh them to scorn.<sup>293</sup> A few rogues are daring enough to accomplish their tricks at a Justice's house and many of the cony-catchers actively target and manipulate the legal system. For example, both Greene and Dekker include stories of pickpockets targeting trials and public executions.<sup>294</sup> This manipulation also illustrates the tales' connections to social reality, as there were numerous statutes writing against pickpockets targeting legal spaces like courtrooms.<sup>295</sup> In cony-catching pamphlets' depiction of the law's inability to protect communities from such rogues, the tales blend fact and fiction to contribute to popular knowledge of the law.

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<sup>293</sup> Greene, *A Noteable Discovery*, see especially pages 15, 23, and 47.

<sup>294</sup> Greene, *The second part of conny-catching*, 33; Dekker, *The Belman of London*, 157-8.

<sup>295</sup> See Elizabethan statutes against pickpockets in 8 Eliz., I cap. 4, (as cited in Sharpe, *Crime in Early Modern England*, 163).

### The Changing Roles of Local Officials

Cony-catching tales particularly call out local officials, like constables, to showcase the larger changes in the English legal system.<sup>296</sup> As the law increasingly prioritized central state power over local authority, constables were increasingly further removed from community concerns. In one of Harman's tales, a constable (retelling this story to Harman at a dinner) claims a Justicer appointed him "for fault of a better" and commanded him to keep watch against rogues. When the rogues later steal a large dinner one night and escape out of town, the constable "laughed in his sleeve" and admits to Harman that he was glad to be rid of the rogues since "they were so stronge and sturdy that I was not able to stand in their handes."<sup>297</sup> The constables jesting with Harman about his own failures reveal his casual attitude towards protecting the community from such rogues. This tale also highlights an important change in the structure of local officials.

While much of local policing fell to the constable's hands, the position dramatically transformed in the late 1500s. Initially, constables were crucial for peacekeeping at a local level—from the common law's origins with local sheriffs to the broader policing with knights in the 1200s. Yet, in the late sixteenth and early seventeenth centuries, the change of command altered at the local level. Justices of the Peace began appointing constables instead of the traditional manorial court elections for the position.<sup>298</sup> Sir Francis Bacon's early Jacobean opinion for appointing constables details this change as it became increasingly the norm for Justices of the Peace to appoint

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<sup>296</sup> See Dekker's *Lanthorn and Candlelight* and Greene's cony-catching pamphlets for more tales including constables.

<sup>297</sup> Harman, *A Caveat or Warning*, 28-9.

<sup>298</sup> Brooks, *Law, Politics and Society*, 263.

local officials rather than go through the process of an election by the people. As a result, we see a stark shift in the local chain of command for mediating processes and the maintenance of local peacekeeping efforts.<sup>299</sup>

A significant result of this change to local policing was in the prioritizing of state officials over local constables, especially in their abilities to resolve criminal activity. At the beginning of the seventeenth century, state writings produced numerous writs containing the word *mandamus* ('we command') to constables that became a means of controlling local authorities under state power. From the time of Coke's chief justiceships, the King's Bench expanded their jurisdiction so that it might order a local authority to do something or else show cause why he did not do as commanded.<sup>300</sup> Elizabeth I included harsh words for constables failing to do their part to fight rogues<sup>301</sup> and later in "Speciall orders and directions" details this new chain of command clearly, ordering justices to:

giue strait order and charge to euery Constable or other inferior officer to whom it may appertaine, that euery of them shall once in euery fifteene dayes search and inquire of the defaults and disorders aforesayd, and shall informe the Iustices of the Peace of the same defaults and disorders if any be, that the offenders therein may therupon be proceeded on and punished according to the law. And if it shall

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<sup>299</sup> Brooks, *Law, Politics, and Society*, 263.

<sup>300</sup> J.H. Baker, *An introduction to English Legal History*, (London: Butterworths LexisNexis Group, 2002), 147.

<sup>301</sup> Elizabeth I, "An acte for punishment of rogues, vagabonds and sturdie beggers," (London, 1598), *Early English Books Online*, Web. 21 July, 2015, <[http://gateway.proquest.com.ezp3.lib.umn.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:21815313](http://gateway.proquest.com.ezp3.lib.umn.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:21815313)>.

seeme to the Iustice that the petty constable be either a Victualler, or one that shall fauour the Victuallers in their faults, then some other meet person to be appointed to make the sayd Inquisition and Certificate.<sup>302</sup>

Elizabeth makes the role of constables clear in these few lines as legal officials that report directly to Justices of the Peace and that Justices have full control over their actions. We can then see how constables became further distanced from community concerns as the more centralized Justices of the Peace appointed constables and used them as they saw fit. In Harman's tale and numerous pamphlets portraying faults and failures of constables, we can feel an increased sense of outside authority overseeing local affairs since the constable could not be less invested in community concerns. The failures of the legal system depicted in cony-catching tales stem from this change into a state-run system that increasingly took power out of local hands. Harman shows us how this change could lead to constables simply laughing in the face of rogues' criminal actions in a community.

While Harman demonstrates the law's failure with a local official, Greene further points to the problem of increased state authority in local judicial proceedings. In Greene's *A Notable Discovery*, local legal authorities are so far removed from community concerns that they are completely unaware of the cony-catchers and their clever cons. Even though the stories are fantastical, they still exemplify this ongoing shift in legal authority and actively participate in the relationship between communities and

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<sup>302</sup> Elizabeth I, "Speciall orders and directions by the Queenes Maiesties commandement to all iustices of peace, and all maiors, shiriffes, and all principall officers of cities, boroughs, and townes corporate, for stay and redresse of [dearth of graine]," (London, 1600). *Early English Books Online*, Web. 21 July 2015, <[http://gateway.proquest.com.ezp3.lib.umn.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:22922465](http://gateway.proquest.com.ezp3.lib.umn.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:22922465)>.

the legal system. One example of many is in a tale about a gang of cony-catchers that have swindled many people, including a poor shoemaker. Eventually, one of the cony-catchers is brought to court and Greene relates how “it was the fortune of this poore shomaker to be there.”<sup>303</sup> When one of the Justices inquires into the rogue’s profession, he replies, “I am a gentleman, and live off my friends.” At this point, the shoemaker claims, “Nay that is a lie...you have a trade, and are by your art a Cony-catcher.” Greene then explains that the bench had “never heard this name before, smilde, attributing the name to the man’s simplicitie, thought he meant a warriner.”<sup>304</sup> After much convincing from local community members, the Justices finally understand what cony-catching means and the crimes associated with the cony-catcher. While the cony-catcher is eventually punished, local forces and the authors themselves need to bring these deeds to light and educate legal authorities on these matters.

This tale, like Harman’s tract, illustrates the increased professionalization of the English legal system with judges at a local level. After 1550, the English legal system experienced increased involvement of professional practitioners over local authorities.<sup>305</sup> Before this transitional moment, legal decisions mostly came to local hands, where local judges settled a majority of disputes. In the later sixteenth century, local adjudicating procedures deteriorated. As Sharpe contends, we can see “an impressionistic sense that local and traditional views on arbitration in criminal cases were similarly rationalized out

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<sup>303</sup> Greene, *A Notably Discovery*, 33.

<sup>304</sup> Ibid.

<sup>305</sup> C.W. Brooks, *Pettyfoggers and Vipers of the Commonwealth: The ‘Lower Branch’ of the Legal Profession in Early Modern England* (Cambridge: Cambridge University Press, 2004).

by stricter ideas on the proper procedures in such matters.”<sup>306</sup> Greene’s portrayal of Justices who are completely unaware of local concerns picks up on this problem of England’s increased professionalization in the legal system and consequent distance between local authorities and communities. As England’s legal system experiences this transition at the height of the cony-catching genre, it is not surprising that the tales demonstrate tensions between local and state authority.

### **Community Justice Prevails Over Cony-Catchers**

The cony-catching tales not only highlight the continued separation of local power and legal authority, but also specifically advocate for citizen action in legal matters. In Harman’s *A Caveat or Warning*, one man finds his missing property by asking the community, while another uses his community network to track down his stolen horse.<sup>307</sup> In Greene’s second pamphlet against cony-catching, there are numerous tales where community forces work together to con the cony-catchers themselves.<sup>308</sup> While members of a community repeatedly replace the roles of legal authority in these tales, the community members of a tale in Greene’s *A Notable Discovery* create their own legal proceeding:

Greene relates that when a cony-catcher (named a Collier) cheats a Flaxewife out of coal, she immediately “cald to her neighbours; being a companie of women,” who had

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<sup>306</sup> Sharpe, *Crime in Early Modern England*, 255.

<sup>307</sup> Harman, *A Caveat or Warning*, 17, 26.

<sup>308</sup> We can also see community justice in “how a Cookes wife in London did lately serve a Collier for his coosnage,” Greene, *A Notable Discovery*, 57-58.

all been cheated.<sup>309</sup> The group of women corner the Collier in the back of a house and tell him, “Sirrha collier, know that we are here all assembled as a grand Jurie, to determine of thy villanies, for selling us false sakes of coales, & know that thou art here indited upon cosnage, therefore hold up thy hand at the bar, & either saie, guiltie, or not guiltie, and by whom thou wilt be tried, for thou must receive condigne punishment for the same ere thou depart.”<sup>310</sup> The Collier believes the women are jesting and tries to talk his way out of the situation, but soon sees the women will not be easily dissuaded. The group then goes through a whole legal proceeding, with the Flaxewife giving evidence as a witness and another woman measuring the coals before the collier’s face in order to pronounce him guilty by their formed jury. One of the women, acting as judge, sentences him to be beaten and robbed of his possessions (which the women happily accomplish), and the Collier is sent on his way. Green ends the tale claiming, “I pray God all such colliers may be so served, and that good wives when they buy such sakes, may geve them such payments, and that the honorable and worshipful of this land, may look into this gross abuse of Colliers.”<sup>311</sup>

In this last phrase, Greene is clear to first praise the women for enacting justice and then ask legal authorities to look into the matter. Greene’s playful praising of this communal act of justice highlights a common anxiety over authority being placed in outside hands over local, potentially more effective, forces. This critical view of centralized authority also occurs in legal discourse of the time. According to an

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<sup>309</sup> Greene, *A Notable Discovery*, 59.

<sup>310</sup> *Ibid.*

<sup>311</sup> *Ibid.*, 61.

Elizabethan expert on the commissions of the peace, William Lambarde, the creation of Justices of the Peace marked a notable step in the decline of community peace-keeping—where the position took “election” of conservators of the peace out of the hands of “the common people” and translated it to the assignment of the monarch.<sup>312</sup> This shift in power also occurred in the diminishing role of juries in manorial courts, where up until the 1590s jurors had the authority to inquire formally into crimes of the community. Greene’s tale demonstrates the value of community forces as an alternative to the increasingly centralized legal system operating at a distance from community concerns.

Greene’s later pamphlet written from the perspective of Cuthbert the Cony-Catcher also depicts this sense of communal ability to enact justice. While Cuthbert explains how various professions cheat people so that they are much worse off than cony-catchers, he includes a tale of community justice against a landowner abusing the community with false deeds and high interest rates. At one point, a family that is unable to pay rent seeks justice from the law, only to find out that of course his high interest rates are completely legal. The mother of the family tells her husband to leave for a few days so she can handle the situation. She then invites the landowner over and corners him, nailing down his ears onto a pillory while the maids of the household scream to block out any noise. The wife then tells him: “For sith thy wealth doth so countenance thee that we cannot have thee punished for thy cozenage, I myself will be justice, judge,

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<sup>312</sup> William Lambarde, *Eirenarcha: or of the office of the iustices of peace in two books*, (London, 1581), *Early English Books Online*, Web. 21 July 2015, <[http://gateway.proquest.com.ezp3.lib.umn.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:99844970](http://gateway.proquest.com.ezp3.lib.umn.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:99844970)>, 20-21.

and executioner.”<sup>313</sup> She then invites all of her neighbors to come in and “behold this spectacle” and using them as witnesses, forces the landlord to confess that he had tricked her husband by offering him a deed of gift only made to him in trust.<sup>314</sup> At this point, she lets the landowner go and in the next days the news of the landowner’s confession reached “the ears of the worshipful of the country,” who punish his trickery, and everyone in the community “praised the wit of the gentlewoman.”<sup>315</sup> This tale again showcases communal adjudication as an alternative means of obtaining justice when proper legal channels fail.

Greene’s tale highlights the shifting power dynamics of the English legal system, where many still valued community justice over increasingly professionalized, state-run institutions. In the late 1500s, many people were displeased with changes in local manorial courts—where changing jurisdictional shifts led to a diminished sense of the local court’s traditional role and function. In Swallowfield (Wiltshire), the manorial court’s disestablishment and the fact that there were sparse Justices of the Peace nearby led the community to draw up a set of bylaws in 1596. In this way, the villagers could “more quietly live together in good love and amytie to the praise of God, and for the better serving of her Majestie.”<sup>316</sup> The residents maintained a written record and pledged not to appeal to centralized legal institutions without first attempting to resolve conflicts amongst community members. The bylaws especially dictated concerns over the

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<sup>313</sup> Robert Greene, *The Defense of Cony-Catching*, (London: 1592), 7.

<sup>314</sup> *Ibid.*, 8.

<sup>315</sup> *Ibid.*

<sup>316</sup> HEHL, MS Ellesmere 6195, as cited in S. Hindle, ‘Hierarchy and Community in the Elizabethan Parish: the Swallowfield Articles of 1596,’ *Historical Journal*, 42 (3) 1999, 835-51.

suppression of “pilfereres, backbyters, hedgebreakers, mischievous persons, and all such as be prowde, dissentious and arrogant.”<sup>317</sup> Even in historical accounts of rogues, the idea that local peacekeeping could be more efficient than involving outside legal professionals remains prominent.

In this transitional moment, there are numerous instances where community members felt they were better equipped to handle a situation outside of the traditional legal system. For example, parishioners at Myddle in Shropshire were so fed up with Reece Wenlocke stealing from their hedges for firewood that they filled a larger dry stick of wood with gunpowder so that when Reece stole the stick among other parts of his neighbors’ hedges and put them in the oven, “it blew up the top of it, and set fire on the end of the house.”<sup>318</sup> Outside of this dramatic spectacle, which effectively put an end to Wenlocke’s theft, petty offenders often experienced communal justice rather than being indicted by legal measures—such as when a community bound William Walker to punish him for assaulting a woman and killing the sheep and geese of his neighbours.<sup>319</sup> Accordingly, the cony-catching tales demonstrate this desire to keep community peace using internal forces instead of external legal authority in order to achieve mediation more successfully.

In addition to the cony-catching tales’ depictions of community force, the writers also blatantly call on readers to participate in community justice. Dekker claims we must

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<sup>317</sup> Ibid.

<sup>318</sup> Richard Gough, *The History of Myddle*, ed. Peter Razzell, Caliban Books, 1979, 46. (cited in Sharpe, *Crime in Early Modern England*, 69).

<sup>319</sup> *Collections for a History of Staffordshire*, ed. Burne, vol. 3, 136, (cited in Sharpe, *Crime in Early Modern England*, 69).

all “knit together” to weed out these villains<sup>320</sup>—claiming that the rogues are “out of the reach of Law,” and “it must bee the hand of your authoritie that must fetch in these Rebels to the Weale-publick, and your arme that must strike them.”<sup>321</sup> Here, Dekker chooses the reader as his patron to defend communities from its threats. Greene’s *A Notable Discovery* also calls to his readers, claiming that if Londoners see such “conny-catchers companie,” they “may teach them London law, that is, to defend the poore men that are wronged.”<sup>322</sup> Greene also dedicates his pamphlet to those officials “sworne to punish” or “in their owne love to vertue, wish to have the disorders of a State amended.” Greene conflates legal authorities sworn to perform duties and everyday people who have their own love of virtue, allowing for his reader to equate legal officials to community members amending disorder. The authors then actively call on their readers to perform duties of the law in absence of proper legal action against cony-catchers. In this way, everyone (including the authors revealing these crimes to the public) is performing law except legal officials. This brings us to the tale’s reliance on the idea of performance and conceptual connections to Italy in the characterizations of cony-catchers themselves.

### **Cony-Catchers, Court Culture and the Stage**

The idea of performance, and especially performing law, is central to cony-catching pamphlets as the tales find themselves between the genres of news pamphlets and theater. Scholars have noted that cony-catchers are often more akin to the

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<sup>320</sup> Dekker, *The Belman of London*, 168.

<sup>321</sup> *Ibid.*, 9.

<sup>322</sup> Greene, *A Notable Discovery*, 37.

Elizabethan and Jacobean stage than the common rogues and vagrants of early modern England.<sup>323</sup> Within their clever cons, cony-catchers often exemplify courtly behavior and culture commonly portrayed on the English stage. Throughout the tales, cony-catchers embody core courtly characteristics originating from Italy, such as the art of Castiglione's *sprezzatura* and Machiavellian dissemblance. After all, Greene's pseudonymous Cuthbert Cony-Catcher confidently claims, "He that cannot dissemble cannot live."<sup>324</sup> Here, the cony-catching tales act as a parody of courtly characters seen in Italianate theater, especially courtiers' craft in artifice and disguise. In part, the exploited nature of courtiers points to England's transition from local to state government, as professionalized legal positions increasingly became a means for social advancement and courtly favor. Cony-catching pamphlets employ common stereotypes of courtiers coming from Italy to further critique this change in the power dynamics of local community adjudication, where legal authority was increasingly consolidated with the gentry. This intertextual dynamic to cony-catching tales further reveals tensions between legal authorities and community forces, as the pamphlets equate legal power with the art of cony-catching.

Within the pamphlets' parody of court culture, the cony-catchers' art of dissemblance is the same skill set needed as the social pretence necessary to be a courtier.<sup>325</sup> Rogue literature scholar Craig Dionne connects Frank Whigham's work in *Ambition and Privilege: The Social Tropes of Elizabethan Courtesy Theory* to showcase

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<sup>323</sup> See *Rogues and Early Modern English Culture*, eds. Dionne and Mentz, for detailed case studies.

<sup>324</sup> Greene, *The Defense of Cony-Catching*, 4.

<sup>325</sup> Dionne, "Fashioning Outlaws," 54-55.

the strong interrelations between social tropes of the courtier and the art of cony-catching. Whigham claims “there arose a basic governing principle of the display of effortlessnesse, Castiglione’s *sprezzatura*, designed to imply the natural or given status of one’s social identity and to deny any earned character, any labor or arrival from a social elsewhere.”<sup>326</sup> The cony-catcher then employs this same process of self-fashioning in their own effortless personas necessary for their tricks.<sup>327</sup> The Italianate cony-catchers’ ability to appear “like honest civil gentlemen”<sup>328</sup> allows them to fool their marks, just like modern-day con artists. Greene explains how a part of being a cony-catcher is being a person who “seemeth a skillful man in al things,” embodying Castiglione’s *sprezzatura* or art of displaying knowledge. As cony-catching pamphlets vilify the social pretense stemming from Italian books like Castiglione’s *il cortegiano*, cony-catching tales use this overarching stereotype of a courtier originating from Italy to exemplify elitist power in the English legal system. Within the numerous mentions of Italy or Italian culture in the cony-catching tales,<sup>329</sup> we might see the cony-catchers adept at social pretense as the “Italianated Englishmen” of which Greene is so fretful in the opening of this chapter.

Authors of cony-catching pamphlets often equate cony-catchers to positions of legal authority. Greene claims that when the cony-catcher “talke of matters in law, he hath plenty of Cases at his fingers ends, and he hath seene, and tried, and ruled in the

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<sup>326</sup> Whigham, *Ambition and Privilege*, 33.

<sup>327</sup> Dionne, “Fashioning Outlaws,” 52.

<sup>328</sup> Greene, *A Notable Discovery*, 18.

<sup>329</sup> For example, Dekker claims if a man meets an Italian, he should poison him (*Lanthorne and Candle-Light*, 216); Dekker also includes Italian phrases throughout his tales—such as head cons being called the “signoria” or “magnifico;” Greene also states: “I have smyled with the Italian, and worne the vipers head in my hand, and yet stopt his venome” (*A Noteable Discovery*, 8).

Kinges Courtes”<sup>330</sup> Similarly, Dekker includes a story where cony-catchers appear “justice-like” when interrogating a cony to get his coins.<sup>331</sup> The cony-catchers’ ability to appear as a legal professional again points to the shift in legal power from commoners to the elite. The increased centralization and professionalization of law as England’s legal system continually expanded throughout the early modern period directly resulted in the gentry’s increased participation in legal matters. By the seventeenth century, law became a new means for social advancement as a stable and honorable career. In this process, there were many more gentry in legal positions and those close to the court might more easily manipulate the legal system to control commoners of a community.<sup>332</sup>

In part, the law became the best medium for the aristocracy and gentry to achieve their own objectives as well as political and social ambitions.<sup>333</sup> While local influences were still vital to the overall function of English law, the professionalization of the English legal system also resulted in the increased participation of the wealthy, especially since legal professions could be a profitable means of social advancement. In Elizabeth’s reign, the gentry increasingly occupied legal positions such as commissions of the peace and Justices of the Peace—so much so that there were many more gentry than lawyers employed into these positions of power.<sup>334</sup> This consolidation of legal positions paralleled the crown’s desire for an increased professional environment in the commissions.

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<sup>330</sup> Greene, *A Noteable Discovery*, 10.

<sup>331</sup> Dekker, *The Belman of London*, 83. Harman also describes how rogues will show false documents from Justices with fake seals, 19-20.

<sup>332</sup> Sharpe, *Crime in Early Modern England*, 204; Brooks, *Law, Politics and Society*, 282.

<sup>333</sup> A. Fletcher and J. Stevenson, eds., *Order and Disorder in Early Modern England* (Cambridge, 1985), Introduction.

<sup>334</sup> J.H. Gleason, *The Justices of the Peace in England, 1558 to 1640: a Later Eirenarcha* (Oxford, 1969).

However, legal positions were also tied to political influence. As Brooks argues, “From the point of view of the crown, appointments to the commission became a way to reward loyalty in an age of confessional strife, while the increased affluence of the gentry resulted in a larger pool of squires seeking the local prestige associated with the office.”<sup>335</sup> As legal authority became increasingly equated with the English elite, these appointed legal officials were often more concerned about courtly matters than their own community. We can then imagine how tensions could arise between the elite legal authorities and commoners. The rogues in cony-catching tales, who are so akin to courtiers on stage, critique this increased role of the gentry in community affairs.

Almost all of the cony-catching pamphlets include stories where someone is conned into doing something illegal, such as being involved with a prostitute, so that the cony-catchers can then act as legal authorities and receive bribes for their silence on the matter.<sup>336</sup> Sometimes, the cony-catchers disguise themselves as a Constable or Justice and search for problems in a community to again receive bribes in exchange for their silence.<sup>337</sup> Naturally, Greene mentions how this can “discredite, hinder, and prejudice the court of the Arches, and the Officers belonging to the same.”<sup>338</sup> This ability to perform as a legal authority, using the same sense of social pretense as a courtier, connects the cony-catching tales to the English stage—where the ultimate exaggeration of dissemblance occurs in Italian plays. The pamphlets’ employment of Italian stereotypes common to English theater prompts the reader to think through the concept of performance in

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<sup>335</sup> Brooks, *Law, Politics and Society*, 295.

<sup>336</sup> See Greene’s description of the cross-biting law in *A Notable Discovery*, 42-43.

<sup>337</sup> Greene, *A Notable Discovery*, 46.

<sup>338</sup> *Ibid.* 47.

English law. The tales beg the question: What is really the difference between a cony-catcher performing law and the performance of legal authorities like lawyers and judges in the spectacular nature of a courtroom? Especially when the two might often appear identical on the surface.

As the cony-catching tales force us to equate legal authority with conmen, they also hint at the possibility of law itself being a kind of con. Greene's *A Notable Discovery* places the profession of law and cony-catching on the same table by claiming a poor man "layeth his land to morgadge to gette some Crownes in his purse to see his Lawyer, is drawn in by these divelish Cunny-catchers."<sup>339</sup> Although the tale is about the cony-catchers getting the man's money as he is on his way to see a lawyer, this phrasing rhetorically links cony-catchers with lawyers. And indeed, the growth of lawyer positions in this period also created a common perception that lawyers were adept at swindling money out of their clients.

By 1600, lawyers became such a crucial part of professionalized legal proceedings that legal discourse started to express a sense of excess in their numbers.<sup>340</sup> In *Of the Calling of the Miniserie, Two Treatise* (1607), William Perkins bemoans the fact that bright young minds would rather become lawyers than clergymen since the law offered better career prospects.<sup>341</sup> The widespread employment of lawyers and common practice that one could make a decent living as a lawyer both contributed to the idea that

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<sup>339</sup> Greene, *A Notable Discovery*, 10.

<sup>340</sup> Christopher Brooks, *Lawyers, Litigation and English Society Since 1450*, (London: The Hambledon Press, 1998), Ch 2,4,5.

<sup>341</sup> William Perkins, *Of the Calling of the Ministerie, Two Treatises...*(London: 1607), 6-7.

lawyers themselves could cheat clients for their own gain.<sup>342</sup> Social dynamics between commoners and the gentry also played a part in this perceived corruption. As lawyers in part embodied English common law in their training and employment, this progressively consolidated legal knowledge to the gentry, and this knowledge in turn could be used against commoners of the community. Furthermore, lawyers' pleadings were also often connected with a kind of acting or performing—further associating this profession with the art of cony-catching.<sup>343</sup>

This connection between lawyers and con artists exists throughout the tales, such as the craft of pick-pocketing being named as a “high Lawyer.” Cuthbert the Cony-Catcher specifically equates legal forces with cony-catching when asking the reader: “Do not the lawyers make long pleas, stand upon their demurs, and have their quirks and quiddities to make his poor client a cony? I speak not generally, for so they be the ministers of justice and the patrons of the poor men's right, but particularly of such as hold gains their God, and esteem more of coin than of conscience.”<sup>344</sup> While lawyers are just one aspect of the legal system, these moments clearly associate legal authority with the tricks of cony-catchers. And in part, the cony-catcher's impersonations of legal authority are so effective because of their shared reliance on performing legal knowledge and power. These comparisons between law and cony-catching reveal anxieties of the English legal system, in which power increasingly fell out of local control.

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<sup>342</sup> Sharpe, *Crime in Early Modern England*, 208-9.

<sup>343</sup> Baker, *An Introduction to English Legal History*, 86.

<sup>344</sup> Greene, *The Defense of Cony-Catching*, 10.

As cony-catchers merge the art of performance with legal authority, their tales illustrate the law's strong connection to theater. Dekker even depicts cony-catchers using beautiful theatrical language: "Now when the stage of the world was hung in blacke, they jetted uppe & downe like proud Tragedians."<sup>345</sup> The cony-catchers' ability to appear "like proud Tragedians" when impersonating legal authorities and performing legal duties speaks directly to the shifting dynamics in England's legal environment. Cony-catching tales employ Italian stereotypes common to Italian settings, stories, and characters on the English stage to critique the gentry's new, more powerful role in legal affairs. Within the tales' emphasis on the art of dissemblance in legal affairs, cony-catching pamphlets depict the law's essential theatricality and consequent ability to con or swindle the average "conie." These parallels between cony-catching and the process of performing law contribute to popular opinions of English legal authority and the transitioning legal system.

### **Conclusion:**

Cony-catching pamphlets' place between news pamphlets and theater illustrates the prevailing overlaps occurring in this larger commerce of ideas in popular literature. News practices flooded the English stage. The common greeting, "How now, what news," added to the overarching perception that the stage had become a purveyor of news. Playwrights especially created stage plots from popular accounts of dramatic events. For example, Dekker's successful play *The Merry Devil of Edmonton* (performed

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<sup>345</sup> Dekker, *Lanthorne and Candlelight*, 296.

in 1603 or earlier) adapted a chapbook narrative of the life of magus Peter Fabell, *The Famous Historie of Fryer Bacon*. News pamphlets detailing criminal confessions and speeches at executions also found their way to stage.<sup>346</sup> From the beginning of the seventeenth century on, we also see playwrights reacting to the popularity of news, such as Ben Jonson's *Staple of Newes* and *Newes from the New World*, which built from accounts and also critiqued the work of news reporters. Within this emerging world of news, Cony-catching tales provide new insights into the ways popular literature could represent and actively shape attitudes of the English legal system.

Cony-catching tales not only reveal power dynamics in early modern England, but also actively participate in the relationship between communities and legal authorities in their circulation. The tales' connections to news networks, legal processes, and theatricality all showcase a wider sense of popular English legal knowledge and experience. Italian literature and culture became integral to this circulation, as the tales build from Italian news conventions and also employ common characteristics from Italianate plays on the English stage. In these connections to theater and performing law, the cony-catching tales bring to light an intense commerce of ideas circulating through various genres (such as news writing, legal discourse, and plays), which formed popular knowledge of the legal system in England.

In Italy's material and conceptual space in the cony-catching tales, authors could discuss the power shift from local to centralized authority. Specifically, the tales outline transformations occurring in local authoritative positions, such as constables and sheriffs.

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<sup>346</sup> Raymond, *Pamphlets and Pamphleteering*, 139.

The tales' intertextuality demonstrates how Italianate literature contributed to English legal culture and became involved in lively debates concerning who should possess legal authority in early modern England.

#### Chapter Four: Transforming Juries in John Webster's *The White Devil*

Act three of John Webster's infamous revenge tragedy, *The White Devil*, opens as Vittoria Accoramboni is put on trial for the murder of her husband. As the prosecuting lawyer begins his plea in Latin, Vittoria claims, "What's he?" and then states to her judge: "Pray my Lord, let him speake his usuall tongue,/Ille make no answere else."<sup>347</sup> The judge initially denies Vittoria this request as everyone in the court, including Vittoria, knows Latin well; yet Vittoria asserts: "I do Sir, but amongst this auditory/which come to heare my cause, the halfe or more may bee ignorant in't."<sup>348</sup> Vittoria refers not only to the fictitious communal audience of the trial on stage, but also the English audience of Webster's play—where the lawyer's plea in Latin immediately drove a rift between the fictional Roman canonical court and an English audience familiar with English common law. Vittoria persists when the judge again attempts to continue the trial in Latin, claiming: "By your favour, I will not have my accusation clouded in a strange tongue:/ All this assembly shall heare what you can charge mee with."<sup>349</sup> Vittoria's refusal to use Latin invites the audience into her proceeding so that they too can act as her judge and jury. Accordingly, Webster writes the audience into his theatrical judicial space, where every audience member will have the ability to comprehend the dynamics of the trial. At the same time Webster includes the audience into the legal proceeding,

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<sup>347</sup> 3.2.13-14. John Webster, *The White Devil*, ed. John Russell Brown (Manchester: Manchester University Press, 1996). All quotations are from this edition.

<sup>348</sup> 3.2. 16-17.

<sup>349</sup> 3.2. 18-19.

this moment also reveals legal procedures and structures that can isolate commoners from the law.

Webster sets this central scene of his Italian revenge tragedy in an ecclesiastical court and builds from Italian historical sources about Vittoria Accoramboni, including Italian social and legal experiences central to her history. Yet Webster combines Italian legal practices with English common law by including foreign ambassadors assembled as a jury to judge Vittoria's case. Furthermore, Webster actively encourages the audience to occupy a space on this jury to employ their own sense of judgment in the scene.

Webster's combination of Italian and English legal systems points to core differences between English common law and continental legal practices. As referenced in previous chapters, the primary differentiating factor of English common law was that neighbors and peers judged a plaintiff, bringing their own experience and set of facts to the trial to counteract broader governmental legal authority. Yet, throughout the sixteenth and early seventeenth centuries, the jury's power and authority sharply declined, as jury members themselves were increasingly far removed from the plaintiff's community. I argue Webster combines Italian social and legal experience of his sources to specifically critique changes to the English jury system, where England's communal sense of justice was increasingly fading into state control. While in earlier chapters I illustrate how authoritative positions such as judges and local sheriffs changed in this period, the following analysis details the rapid infiltration of centralized legal power in juries at the perceived core of English common law practices.

Webster's play builds from historical accounts of Vittoria, where writers first inscribed the events of her life within Italian news pamphlets or *avvisi*. *Avvisi* were cheaply printed or written materials that functioned as a means of spreading current events and are perhaps the earliest form of reporting news in early modern Europe.<sup>350</sup> Vittoria attracted particular attention as she married a nephew of Cardinal Montalto (the future Pope Sixtus V) and then opposed both the powerful Orsini and Medici families in her involvement with the Duke of Bracciano, Paolo Giordano I Orsini, whose wife Isabella de Medici died in 1576 under unexplained circumstances. Paolo Giordano and Vittoria's affair involved the mysterious murder of her husband soon after their meeting in 1581, a secret marriage that defied papal authority, and her brief imprisonment in Castel Sant'Angelo as punishment for their union. Roman versions of Vittoria's life focus on the gossip surrounding Vittoria's marriage to Paolo Giordano Orsini. After all, Vittoria's affair with the Duke of Bracciano, as well as her first husband's mysterious murder and the Pope's disapproval of their union, were the exact kinds of scandalous court material Roman *avvisi* aimed to print.

While Roman *avvisi* focused on court and papal politics intertwined with Vittoria, Paudan accounts change the focus of Vittoria's narrative to her murder in Padua and the fate of the man who orchestrated her death, Lodovico Orsini.<sup>351</sup> When the Duke of Bracciano died of seemingly natural causes in 1585, Vittoria went against the Orsini family and fought for his inheritance—an act that quickly provoked Lodovico Orsini to

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<sup>350</sup> Fabrizio Rondolino, *Secondo Avviso* (Torino: Einaudi, 1999); Mario Infelise "Roman *Avvisi*: Information and Politics in the Seventeenth Century." *Court and Politics in Papal Rome, 1492-1700*. (Cambridge: Cambridge University Press, 2002).

<sup>351</sup> As noted in Boklund's survey in *The Sources of the White Devil*, 33.

hire a gang of bandits to assassinate her.<sup>352</sup> As Vittoria's story moves to Padua, the motives behind her narrative change from selling court scandal in Rome to upholding the Paduan justice system and communal order. The legal structuring behind Paduan accounts of Vittoria's death is visible in titles such as: "The wretched compassionate case, which occurred in the City of Padova. With the first and last name of the dead, sentenced, and absolved and the time of condemnation."<sup>353</sup> In such Paduan newsletters, writers characterize Vittoria as an innocent victim whose death was then justified by legal actions in the community. The Paduan *avvisi* also use dramatic, heightened language to describe Lodovico's and his associates' legal punishment, where the pamphlets detail how the criminals met violent ends in the legal system.<sup>354</sup> Webster builds from both Roman and Paduan sources of Vittoria's life in *The White Devil* to showcase two very different legal environments between Roman court politics and Paduan communal justice. I argue Webster builds from both versions in his fictitious trial scene in order to correlate Roman court authority with Vittoria's innocent character upheld in Paduan communal justice.

By drawing on Italian *avvisi*, Webster's play intertwines with the burgeoning international news market of the late sixteenth and early seventeenth centuries. Vittoria's life and death circulated to a greater European audience, where German and English

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<sup>352</sup> For more information on Vittoria's life, see Domenico Gnoli, *Vittoria Accoramboni, Storia del Secolo XVI* (Firenze: Successori Le Monnier, 1890); Brigante Colonna, *La Nepote di Sisto V: il drama di Vittoria Accoramboni*, (Gustavo, 1936); Gunnar Boklund, *The Sources of the White Devil*, (Uppsala: A.B Lundequistska Bokhandeln, 1957); Evelyn Martinengo Cesaresco, *Lombard Studies* (London: T. Fisher Unwin, 1902).

<sup>353</sup> *Il miserabile compassionevol caso*. Biblioteca Vaticana Capponi V. 264. int. 3.

<sup>354</sup> Boklund, *The Sources*, 19.

translations of Paduan *avvisi* were printed throughout Vittoria's life and the news of Vittoria's murder circulated in the English literary milieu surrounding John Webster.<sup>355</sup> *The White Devil* is an important artifact for understanding this newfound and broad ranging European communication network, where news could spread from Italian courts to the English stage. Tracing the transmission of the events of Vittoria's life brings to light larger issues in the news market—including the numerous translations and adaptations a given event might undertake in its "afterlife." Vittoria's textual afterlives, from Italian *avvisi* to *The White Devil*, reveal power dynamics inherent to news reporting as well as social and political forces shaping the transmission of information. In this process, the play is self-reflexive on the importance of controlling the spread of news, especially across borders. *The White Devil* is a case study to illustrate how this information network developed as well as the broad ranging effects of news as a commercial market—especially across Reformation politics dividing England and Italy.

The cross-border dynamics inherent to Webster's play reveal the ways Italian events and news production gave voice to legal ideas and expectations of law in early modern England. While scholars have often read *The White Devil* as another representation of Italian court corruption, the play's central trial scene combines Italian and English legal practices so the English jury ends up looking the most corrupt. Webster then uses the Italian motif of corruption to create a world in which juries become irrelevant when matched with state power. This chapter again demonstrates how *The*

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<sup>355</sup> The earliest known printed document of Vittoria's life actually occurs in John Florio's *A Letter Lately Written from Rome* in London, 1585. For more information on Webster's sources, see Gunnar Boklunk's *The Sources of the White Devil*, (Uppsala: A.B Lundequistska Bokhandeln, 1957).

*White Devil* represents a larger trend in English drama in which playwrights borrow Italian materials to think through where legal authority comes from and how it functions in a community. In *The White Devil*, Webster uses foreign Italian jurisprudence and Italian stereotypes common to the English stage to expose the gap between communal and state justice in English legal experience. As Webster challenges dominant notions of objectivity in English law, the play uncovers the law's own theatrical power of perception intrinsic to the rise of England's central legal system. The transnational legal critique in *The White Devil* is representative of a larger comparative trend in English legal culture—where broader European encounters such as England's jurisdictional break from Rome and the rise of Humanism greatly affected the way law was understood in both England's legal scholastic circles and popular culture.

### **Webster's Sources: How Legal Ideas Travel in News Networks and Theater**

Webster's *The White Devil* arises from the broader European communication network that established itself in the sixteenth and early seventeenth centuries. This network was one of the main avenues for continental legal practices to circulate in England, especially when writers transformed international news in popular pamphlets and the stage. News from Italy was particularly prevalent in English drama, as many playwrights built from Italian histories and dramatic news reports circulating in England.<sup>356</sup> In the communication networks of seventeenth-century Britain and Europe, Joad Raymond claims we might see a wider sense of how news shapes geographic

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<sup>356</sup> See a list of plays based on Italian current events in Michael Redmond's *Shakespeare, Politics and Italy*, (Farnham: Ashgate Publishing Limited).

boundaries, governs cross-cultural interactions, and even structures social conventions.<sup>357</sup> 137

Accordingly, tracing the news network from which Webster's play emerges is important for understanding the ways in which legal ideas travel in literature as well as how such information shaped English understandings of the legal system. Webster's Italian sources in *The White Devil* emphasize the cross-geographical transmissions and receptions of legal ideas between news pamphlets and theater. This study brings to light Webster's participation in the larger commerce of ideas moving from pamphlets to the stage as well as the power dynamics intertwined with controlling information as it could spread to new avenues within a public literary audience.

Webster's *The White Devil* builds from a highly developed commercial market for news periodicals. News as a product for wider public consumption began in the late sixteenth century, where scholars like Mario Infelise and Brendan Dooley have noted that this new wave of organized and regulated information in Europe originated with Italian *avvisi*. The *avvisi* were handwritten newsletters collected periodically on a range of topics, including military and political news that was of more public interest.<sup>358</sup> As the genre developed, the pamphlets went by a few different names, including: *gazzette*, *ragguagli*, *menante* in Rome, and *reporti* in Venice—where the *reportista* correlated to a compiler of newsletters. As news pamphlets emerged in broader Europe, and especially

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<sup>357</sup> Joad Raymond, "Introduction," *News Networks in Seventeenth Century Britain and Europe* (New York: Routledge, 2006), 1-17.

<sup>358</sup> For more in depth studies on the *avvisi* genre, see Mario Infelise, "News Networks between Italy and Europe," *The Dissemination of News and the Emergence of Contemporaneity in Early Modern Europe*, ed. Brendan Dooley (Farnham: Ashgate, 2010), 51-67; Mario Infelise, *Prima dei giornali: Alle origini della pubblica informazione* (Roma: Laterza, 2005); and Brendan Dooley, *The Social History of Skepticism*, (Baltimore: The Johns Hopkins University Press, 1999).

England, both state and religious powers worked to control this new avenue of public information. Throughout the European Reformation, vendors in Protestant and Catholic nations would increasingly reproduce only news that would further the cause of their respective religious side.<sup>359</sup> Thus, both Sovereign and Papal authorities quickly adopted strict censorship policies over information, and this led to authors adapting and changing news stories as “fiction” to avoid censorship issues.

England’s print market, building from the established network and conventions of Italian news pamphlets, quickly began to adapt news events to avoid tensions with state or religious authorities. News from Italy in particular offered a large collection of events to adapt for English short stories, pamphlets, and the stage. The ambiguous status of news pamphlets and increasingly present flair for drama in English news production is perhaps best illustrated in two editions of John Florio’s Italian-English dictionary. In the 1598 edition, the term *gazette* is defined as “the daily newse or intelligence written from Italie, tales running newes,” with a *gazzettierie* defined as “an intelligencer” and the verb *gazzettare* meaning “to write or report daily occurences one to another,”<sup>360</sup> In the second edition of the text in 1611, Florio adds to the definition of a *gazzettiere*: “flim flam tales that are daily written from Italie, namely from Rome and Venice.”<sup>361</sup> The term *gazzettierie* also changes from “an intelligencer” to “a writer or reporter of gazettes.”

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<sup>359</sup> See Raymond, *News Networks in Seventeenth Century Britain and Europe*.

<sup>360</sup> John Florio, *A Worlde of Wordes*, (London: Blount, 1598), 145.

<sup>361</sup> John Florio, *Queen Anna’s New Worlde of Words* (London: Bradwood, 1611), 205.

Florio's changing definition demonstrates the development of the news pamphlet genre from a place to report events to a space to tell entertaining tales.<sup>362</sup>

The written conventions in news pamphlets also spread to numerous literary forms and particularly English drama. Playwrights dramatize current affairs in spectacles like Shakespeare's *Henry VI* and *Much Ado about Nothing*, Jonson's various masques, and Marlowe's *Massacre at Paris*. As plays might build from news pamphlets or literary representations of news reports, the afterlife of a given event could spread to countless translations and alterations. Legal ideas on the English stage would often have travelled through an intricate, overlapping and messy system of textual adaptation before reaching the stage. Reports on criminal actions and legal proceedings, like Vittoria Accoramboni's murder, became more sensationalized as a form of entertainment. However, these sensational stories from Italy also contributed to a growing sense of popular legal knowledge when adapted for the English stage.

Webster's portrayal of Vittoria Acoramboni in *The White Devil* amalgamates two different narratives of her life as inscribed in Italian *avvisi*. News pamphlets from Rome and Padua compile the primary written texts circulated regarding events of Vittoria's life and death. While in Roman *avvisi*, Vittoria's story becomes intertwined with court and papal politics; in Paduan *avvisi*, her death creates a narrative of legal triumph and communal justice. Webster builds from Vittoria's interactions with both Roman and Paduan legal environments when transforming his sources for an English audience familiar with an English jury system. Analyzing these *avvisi* not only illustrates how

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<sup>362</sup> Infelise, "News Networks," 54.

Vittoria's story filters through power structures when circulating in Italy and broader Europe, but also points to how Webster employs his Italian sources to think through where legal power originates from in a community. Thus, Webster adapts both Roman court politics and Paduan communal adjudication in his illustration of a jury trial to showcase the diminishing power of communal forces in England's legal environment. In this process, Webster borrows from both accounts of Vittoria Accoramboni to illustrate how courtly power was continually overshadowing the perceived communal backbone of English common law in the early seventeenth century.

### **Vittoria's Scandal in Roman Court Power**

The initial Roman pamphlets detailing Vittoria's life place her into a narrative of court politics and scandal. In Roman *avvisi*, the broader community has little influence in court affairs and is completely separate from any legal actions in Vittoria's story. Vittoria's relationship with the Duke of Bracciano gathered a lot of attention, especially in their opposition to the Pope, and was exactly the kind of shocking material *avvisi* aimed to print. Roman *avvisi* offer detailed accounts of Vittoria's first husband's death as well as the following murder investigation. In the most popular Roman versions of these events, including the *avvisi* "Seppesi ai 26 di Dicembre" and "Vittoria Accoramboni figlia di Claudio nobile da Gubbio," Paolo Giordano Orsini is implicated as responsible for her husband's death from common talk or opinion in the community ["la fama

commune.”]”<sup>363</sup> Considering the importance of fama in legal investigations, the *avvisi* also explain that Paolo Giordano Orsini’s social status protects him from the law.<sup>364</sup> Thus, even though the Roman community may believe the Duke is involved in general rumor circulating in the city, the pamphlets claim there is little chance of his being put on trial given his courtly status. In this moment, we can easily see the grave distance between members of the court and the broader community.

Roman *avvisi* also implicate Vittoria’s family in her husband’s death. Numerous *avvisi* writers blame for the murder Vittoria’s brothers, who presumably killed Peretti to further their own ambition.<sup>365</sup> While Vittoria is not usually personally implicated in the crime,<sup>366</sup> she is still portrayed in a negative light for wishing to marry the Duke so soon after her husband’s death. Roman accounts then highlight Vittoria’s papal imprisonment at Castel Sant’Angelo for her relationship with the Duke. Even after Vittoria’s murder, the main focus of Roman *avvisi* remains in Peretti’s death and the ensuing drama of Vittoria’s marriage in opposition to papal authority. When Vittoria’s death at Padua is mentioned at all, there is very little detail of the event and consequent fate of her murderers. Instead, the Roman *avvisi* are invested in what sells best in Rome: political scandal among rivaling court families. The commanding Roman narrative of Vittoria’s

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<sup>363</sup> As cited in Boklund, *The Sources*, 34. Each avviso was copied in at least 13 other versions that spread into the surrounding Roman news network.

<sup>364</sup> For detailed discussions of fama, see *Fama The Politics of Talk & Reputations in Medieval Europe*, Ed. Thelma Fenster and Daniel Lord Smail (Ithaca and London: Cornell University Press, 2003).

<sup>365</sup> F. Ordici, *Vittoria Accoramboni nipote di Sisto Quinto*, 19.

<sup>366</sup> However, Vittoria is implicated in the murder in two manuscripts, “Story of L’Anomino del Campidoglio” and “Claudio Accoramboni” where she is mentioned in a culprit’s confession (as cited in Boklund, *The Sources*, 111).

life then stems from a cultural environment where court powers and actions propelled *avvisi* production as well as the surrounding news network.

The driving force of courtly power in Roman accounts of Vittoria's life and death is also captured in an outlying *avviso* entitled "Relatione della Discordia tra Francesco Peretti, Orsini, e la famiglia Caccio, e Farnese."<sup>367</sup> Here Vittoria's husband, Peretti, is described as ugly ["brutto di viso"] with numerous character flaws ["vitii d'animo"] that made him detestable to both Vittoria and her family. The narrative explains how Peretti frequently offended members of important Roman families, and his murder is described as a betrayal from one of his own friends ["tradito dagli stessi suoi amici."] There's no listed or assumed perpetrator of the crime, and, claiming such talk is unfounded gossip, the writer dismisses rumors that a member from the Accoramboni or Orsini family killed Peretti. By evaluating Peretti's character and downplaying his murder, this pamphlet clearly aims to defend the honor of the Orsini and Accoramboni families. The defensive tone in this pamphlet points to the *avvisi*'s foundation in rivaling Italian courts, where each court desired to project a particular public image. In this atmosphere, many courts developed strategies to control information, and pamphlets like this one could be one way to spread a specific narrative benefiting the reputation of one's court. Thus building a strong relationship with an *avvisi* writer would be one way of preventing injurious news from reaching a wider audience, including audiences across national borders.<sup>368</sup>

We can see how news reports on courtly activity and especially legal actions might damage one's reputation on an international scale when tracing Vittoria's story

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<sup>367</sup> MS Urb. Lat. 1644 (Biblioteca Vaticana), ff. 306-312.

<sup>368</sup> Infelise, "News Networks," 61.

from Italy into a broader European context. Here, the motives for courts to control information are clear as one of the first printed accounts of Vittoria's life, John Florio's *A Letter Written Latelý from Rome* (1585), builds from the Roman version of Vittoria's life described above. Based in Rome, John Florio was an important figure for Italian-English relations as a writer, Italian-language tutor for the English court, and a prominent figure in the connection between Italian and English literature.<sup>369</sup> *A Letter Written Latelý from Rome* describes the election of Sixtus V and seems to have been a primary source for Webster's dramatization of the papal election in *The White Devil*.<sup>370</sup> The letter also details Vittoria's exploits in Rome and Florio's descriptions of the Papal election includes the newly elected Pope's antagonism with Vittoria and Paolo Giordano:

The Pope had not many yeeres agoe a Nephew, a young man of comely stature and personage, who viewing on a time a beautifull Damosell of Corambonis de Augubbio, fell so in love with her, that in short space he won her and wedded her, but he enjoyed her not long, for shortly after hee was slaine with a gunne, and it was thought that Lord Paulo had procured his death, for that not long after he became very familiar with the Gentlewoman.<sup>371</sup>

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<sup>369</sup> See Michael Wyatt, *The Italian Encounter with Tudor England: A Cultural Politics of Translation* (Cambridge: Cambridge University Press, 2005) and Frances A. Yates, *John Florio. The Life of an Italian in Shakespeare's England* (Cambridge: Cambridge University Press, 1934) for more details on Florio's life.

<sup>370</sup> Boklund, *The Sources*, 31 and Lucas, Vol I, 246. The other perceived source for Webster's papal election is Hierome Bignon's *A Briefe, but an Effectuall Treatise of the Election of Popes* (London 1605).

<sup>371</sup> John Florio, *A Letter latelý written from Rome, by an Italian Gentleman, to a freende of his in Lyons in Fraunce* (London: 1585).

In this moment, the commanding Roman narrative of Vittoria's life and legal affairs becomes a part of foreign news detailing the Papal election. This text demonstrates how more scandalous material might blend into international reports and thus stresses the importance for courts to maintain a good public figure in news accounts sent abroad. In this case, Vittoria's reputation is caught up in the expanding European news network as her husband's death and scandal of her remarriage reaches an international audience.

In addition to English accounts like John Florio's *A Letter*, another important source for Webster's *The White Devil* exists in the German Fugger archive. The Fugger archive possesses one of the largest collections of *avvisi*, which were collected from the Fugger family that hired numerous *avvisi* writers and producers in Rome and Venice.<sup>372</sup> As a merchant and banking family, the Fuggers of Augsburg benefited from being at the heart of the developing network of commercial news across Europe, specifically in the *avvisi* market.<sup>373</sup> One *avviso* in the collection, entitled "Neue Zeitung von einem ja'mmerlichen Mordst'uck," is a German translation of an Italian *avviso* that is thought to have originally circulated in England as a significant source for Webster's *The White Devil*.<sup>374</sup> Within the larger cross-border transmission of Italian events, one's reputation extended across European news networks. It could then be very strategic to damage a rival court's reputation abroad, where we can again see courtly motives behind dominate news narratives and the filtration of information. Webster's inclusion of these sources

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<sup>372</sup> Pettegree, *The Invention of News*, 143, 177.

<sup>373</sup> The Fugger family had hired numerous *avvisi* writers and producers in Rome and Venice to circulate across Europe. See Pettegree, *The Invention of News*, 114.

<sup>374</sup> Boklund, *The Sources*, 24-5, 52.

and dramatization of court politics is a part of a larger phenomenon where courts might use criminal events for the benefit of their own reputations.

Webster highlights this relationship between court power and accounts of crime in the context of Vittoria's arraignment for her husband's murder in *The White Devil*. Before the trial begins, Francisco de Medici and Cardinal Monticelso discuss the importance of securing foreign ambassadors at her trial to act as a jury. Since these two characters are bent on destroying Vittoria, the strategy of inviting the ambassadors is specifically to damage Vittoria's reputation. Monticelso reminds the prince:

For sir you know we have nought but circumstances  
To charge her with, about her husbands death;  
Their approbation therefore to the proofes  
Of her blacke lust, shall make her infamous  
To all our neighbouring kingdoms.<sup>375</sup>

This moment demonstrates not only the power of courts in news networking but also the court's influence in legal affairs. The courtly powers here invite foreign ambassadors with the specific strategy of controlling information sent abroad about this case. The prince and cardinal use a legal space to bring together foreign ambassadors in order to tarnish Vittoria's international reputation. In this moment, courtly powers are in full control not only of the trial, but whatever narrative results from this legal affair to the local and broader international community.

The dynamics involved in the circulation of Webster's Roman sources point to larger issues in the commercialization of news—including the power dynamics inherent to news reports within court politics and strategy. Yet most importantly, the Roman

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<sup>375</sup> 3.1. 5-8.

accounts highlight the fact that the broader community has no affect on her life. Instead, Vittoria's narrative remains in a courtly environment where news productions could be used to damage the reputations of rivaling families. At the same time, Vittoria's story as it is involved in legal affairs is especially removed from community dynamics. Even though the common talk or fama in Rome claims the Duke killed Vittoria's husband, the *avvisi* describe how he is put "above the law"<sup>376</sup> because of his social standing. In a later legal action, again separate from the community, the Pope decides to imprison Vittoria in Castel Sant'Angelo because of her affair with the Duke. While Vittoria's scandal sells pamphlets and engages in court drama, her narrative drastically changes as the events of her life move to Padua. Paduan *avvisi* are not involved in rivaling court politics and are instead invested in a crime that has been committed in Paduan territory.

### **An Innocent Victim Vindicated in Paduan Communal Justice**

The Paduan *avvisi*, which outnumber the Roman accounts about four to one, offer a completely different picture of Vittoria's life and are especially important for Webster's portrayal of her character in *The White Devil*. Unlike Roman *avvisi* tied to a court and papal environment, Paduan accounts highlight communal relations in legal affairs vindicating Vittoria's murder. In the Paduan *avvisi*, Vittoria's Roman exploits are hardly described at all and there is no mention of the scandal regarding her husband's murder. Instead, the pamphlets are primarily interested in the events of her death and consequent legal actions enforced on her murderers. As Paduan legal authorities, working under the

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<sup>376</sup> This statement parallels Bracciano's lines in *The White Devil*, in which he tells Vittoria he will seat her "above law and scandal" (1.2. 264).

Venetian state, stepped in to condemn this crime, Vittoria's death becomes a narrative that highlights the law's triumph in administering justice in the Paduan community. The Paduan *avvisi* highlight Vittoria's burial and Lodovico's capture and death, as well as the public executions of many of his hired men that took part in her murder. In addition to circulated pamphlets, the Paduan account of Vittoria's life is also the dominant narrative produced in larger historical accounts of the time.<sup>377</sup> As Vittoria's story moves to Padua, the events of her death transform into an Italian legal environment focused on communal relations in law, unlike the courtly powers above the community in Rome. These texts then illustrate the law's influence in creating a sense of community justice in narratives as they travel in news networks and become inscribed as "history."

When describing Vittoria's murder, the Paduan *avvisi* emphasize her innocent and virtuous character. Vittoria's murderers find her praying either in front of a crucifix or an image of the Virgin Mary. The pamphlets detail how Vittoria is praying with her rosary and even pardons her murderers in many pamphlets before whispering "giesù, giesù" as she is stabbed.<sup>378</sup> In one account from Biblioteca Marciana,<sup>379</sup> Vittoria's death makes an intense impression on her murderers. After she asks Jesus to pardon her killers [ne lei mai resto' di dire: 'Giesù, Giesù perdono'], the murderers are so struck by her character that their hearts change forever and Vittoria becomes a saintly figure: ["fino a l'estremo fiato con vivo esempio di focosa pieta' e tale che superando la insuperabile crudelta' de proprii

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<sup>377</sup> See numerous examples of Paduan *avvisi* in Boklund, *The Sources*, 57.

<sup>378</sup> See CF. MSS Cicogna 3723 a and b, Marc. It. VII. 1233 b and 2173 b (Biblioteca Civica, Padua). For "gesu" see MS. II. IV. 498, p. 540.

<sup>379</sup> MS Marc. It. VI. 45.

ucisori rimase, per questa atonia la stimoravano santa.]”<sup>380</sup> Vittoria’s saintly figure acts as a stark contrapposto to her character in Roman accounts. Gnoli also notes these stark differences in Vittoria’s character in poems and epitaffi originating from both places—where the texts either highlight her scandal or virtue.<sup>381</sup> Accordingly, these texts illustrate Vittoria’s changing persona in accounts from Padua. This depiction of Vittoria as an innocent victim is then useful for the dominant Paduan narrative that focuses on the triumphs of Paduan law and justifies the lethal legal punishments for her murderers. Webster builds from both of these personas in creating his complicated heroine for *The White Devil*.

In Paduan narratives, Vittoria’s murder prompts immediate legal action from the community. The *avvisi* illustrate Paduan citizens’ wrath resulting from her death and consequent demands for justice. In one pamphlet, entitled, “Doppo la subitanea morte,” the writer describes this communal rage as “dentibus fren[d]ebant.”<sup>382</sup> A few accounts paint a more compelling picture of community unrest, claiming the students in Padua had armed themselves and cried out ‘Justice, Justice!’<sup>383</sup> Another account describes this unrest in larger numbers: “near on six hundred burghers paraded in arms and cried ‘Justice, Justice!’”<sup>384</sup> The Paduan pamphlets then emphasize that the surrounding community prompted the need for legal action to vindicate Vittoria’s murder. When the authorities siege the palace where Lodovico and his men are held up, the pamphlets detail

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<sup>380</sup> MS Marc. It. VI. 45, f. 6 v.

<sup>381</sup> Gnoli, *Vittoria Accoramboni*, 373-76.

<sup>382</sup> Boklund, *The Sources*, 45.

<sup>383</sup> Gnoli, *Vittoria Accoramboni*, 374.

<sup>384</sup> *Ibid.*, 375.

that a few of Lodovico's men are torn to pieces by the public mob. Thus these pamphlets illustrate how Vittoria's murder creates a sense of unrest in the community—where a wrong must be made right in the legal system. Accordingly, the pamphlets elucidate how the legal actions that take place against Lodovico and his men are necessary to maintain peace in the community. In this narrative, the trauma of Vittoria's murder in the Paduan community has to be resolved in the justice system.

Lodovico, as the orchestrator of Vittoria's murder, is a central figure in Paduan pamphlets. After describing the horrors of Vittoria's death, the pamphlets detail how the Paduan legal authorities promptly react to Lodovico's actions. The Paduan accounts often illustrate interviews between Lodovico and the *rettori* of Padua in which he mostly states something similar to: “che a questo non erano tenuti i pari suoi, ne mene ad essere essaminati.”<sup>385</sup> One Italian document, *Il miserabil e compassionevol caso*, even has the same line Lodovico states when Vittoria's murder is discovered in *The White Devil*: “sed manet altamente rispostum.” After Lodovico denies any involvement in the crime, the pamphlets illustrate Lodovico's confession and emphasize his terrible nature. One pamphlet even quotes other murders Lodovico had orchestrated throughout his lifetime.<sup>386</sup> The *avvisi* then describe the promptness of Lodovico's legal punishment and process by which Lodovico is killed—where because of his status, Lodovico is strangled in his prison cell instead of publicly executed. In addition to Lodovico's death, the *avvisi* also illustrate the just, bitter ends for each of the *banditi* involved in Vittoria's death. After the criminals are publically quartered and executed, their bodies are placed upon

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<sup>385</sup> Boklund, *The Sources*, 45-50.

<sup>386</sup> Boklund, *The Sources*, 57.

the city walls [“morti e nudati, fu ciascuno in quattro parti diviso, e I quarti fuori le porte della citta sospesi alle forche”].<sup>387</sup> Gnoli has noted that the swiftness and spectacular nature of Lodovico’s and his men’s punishment was in part because the Venetian republic ruling over Padua wished to create a dramatic example [voler dare un terribile esempio] of how such crimes would be penalized in the justice system.<sup>388</sup> While certainly gruesome, the Paduan pamphlets create a legal narrative, where an innocent, almost saintly Vittoria is brutally murdered and the Paduan community craves justice, so that their legal punishments are the epitome of justice. In this narrative, Vittoria’s death is heroically vindicated in the Paduan community and legal system.

The Paduan pamphlets outlining Vittoria’s murder and consequent legal actions against her murderers are an excellent example of where law and literature collide. The *avvisi* exemplify not only how legal ideas might travel in the news network, but also how events can be folded into a legal narrative of communal justice. Vittoria’s death then becomes useful to a particular narrative upholding the Paduan justice system after the initial community outrage of these criminal actions. Lodovico and his men are all dealt with appropriately in line with commanding ideals of laws and justice. As law-legal scholarship has demonstrated, there are numerous linguistic techniques and language constructions that contribute to narratives like Vittoria’s Paduan account.<sup>389</sup> These

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<sup>387</sup> Gnoli, *Vittoria Accoramboni*, 367.

<sup>388</sup> *Ibid.*, 364.

<sup>389</sup> Building from scholarship such as Natalie Davis’s *Fiction in the Archives*, recent work in Law-Literature studies continues to highlight legal fictions crafted inside and outside the courtroom. See, for example, Randy D. Gordon, *Rehumanizing Law* (Toronto: University of Toronto Press, 2011); Kieran Dolin, *A Critical Introduction to Law and*

criminal pamphlets reveal the foundation of narrative construction in both law and the humanities as well as how narratives become institutionalized within social and cultural factors. In this process, literary-legal scholars like David Gurnham have argued that memory and imagination, often located in literary texts, allows an audience to think through moral and legal concerns of a culture.<sup>390</sup> When tracing the textual afterlives of Vittoria Accoramboni, the Paduan accounts of Vittoria inscribe her death within a narrative that upholds community involvement in law. Vittoria's changing portrayals reveal the intense legal influences in narrative production. At the same time, the Paduan accounts provide Webster a contrasting legal viewpoint to the Roman *avvisi* focused on court power. In *The White Devil*, Webster builds from the Paduan versions of Vittoria's persona and ideals of community justice in the pamphlets when creating his revenge tragedy. The play's tragedy stems from Webster's reversal of the legal order and communal justice in Paduan pamphlets, so that the play's legal environment of corruption and Roman court power unravels into violent disorder.

Webster's portrayal of Lodovico in *The White Devil* showcases the playwright's adoption and reversal of Paduan accounts. While Lodovico's capture and punishment are used as a means of illustrating swift justice in Padua, Webster's Lodovico is a constant reminder of the law's subservience to court power. Webster's Lodovico, as the go-to henchmen for noble powers, changes identities from banished criminal, pirate, pardoned citizen, accomplice in the Medici's vendetta for Isabella's death, and finally back to

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*Literature* (Cambridge, Cambridge University Press, 2007); and W.N. Osborough, *Literature, Judges, and the Law* (Dublin: Four Courts Press, 2008).

<sup>390</sup> David Gurnham, *Memory, Imagination, Justice* (Burlington: Ashgate, 2009).

condemned criminal when discovered killing Vittoria, Zanche, and Flamineo at the end of the play. Webster reverses the legal triumph felt in Paduan *avvisi* and the effects of this reversal are illustrated throughout Lodovico's role in the play. *The White Devil* opens with Lodovico lamenting his recent banishment from Rome. When his friend, Gasparo, explains that Lodovico is lucky this is the only punishment he is receiving for committing murders, Lodovico states: "So, but I wonder then some great men scape this banishment."<sup>391</sup> Lodovico then evokes this imagery: "Great men sell sheep, thus to be cut in peeces,/When first they have shorne them bare and sold their fleeces."<sup>392</sup> Rather than using Lodovico's legal punishment to praise legal authorities, as occurs in the Paduan pamphlets, Webster's Lodovico continually reminds us of the court powers that control legal actions.

As Webster adapts both Roman and Paduan versions of Vittoria's life, the play builds from the Italian social and legal experience contextualizing these narratives.<sup>393</sup> Here, Webster is again a case study for how legal ideas travel as writers could adapt and transform narratives in the news network across Europe. To add to this would be whatever Webster may have heard of Vittoria's story in London, for example, when the Duke of Bracciano's son, Virginio Orsini, came to visit Queen Elizabeth in 1601 as a Florentine Ambassador.<sup>394</sup> While Webster's play is a product of an expanding news network, the playwright also actively adapts, shapes and alters the legal proceedings of

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<sup>391</sup> 1.1. 38.

<sup>392</sup> 1.1. 61-2.

<sup>393</sup> Robert William Dent, *John Webster's Borrowing* (Oakland: University of California Press, 1960).

<sup>394</sup> Clifford Bax, *The Life of the White Devil*, (Edinburgh: University Press, 1940), 205.

the play to get at larger questions of the law's narrative force. Webster moves the focal point of legal practices from the prosecutions of Vittoria's murderers to a self-created trial scene where Vittoria is implicated for her husband's murder. In this process, Webster places Vittoria's innocent persona and ideals of community justice from Paduan accounts into a Roman, courtly legal space in order to reverse the Paduan narrative of legal justice and order. Instead, the play's aesthetic chaos emerges from court corruption in legal affairs. As will be argued in the next session, Webster creates a legal atmosphere merging these two Italian versions with an English jury system to critique the consolidation of legal power under the English crown.

### **Law and Community Forces in *The White Devil***

Webster's plot in *The White Devil* emerges from two very different Italian legal environments contextualizing the pamphlets of Vittoria Accoramboni's life. Before Webster's central trial scene, the play opens as the Duke of Brachiano and Vittoria Corombona begin a relationship, even though they are both married to other people. As rumors of the affair have been circulating, Francisco de Medici and Cardinal Monticelso come to Brachiano's court to chastise the Duke and reconcile his relationship with Francisco's sister, Isabella de Medici. Meanwhile, Vittoria's brother, Flamineo, schemes with Brachiano to kill the Duke's wife and Vittoria's husband Camillo, the Cardinal's nephew. After they murder Camillo, Vittoria is put on trial and although there is no real evidence against her, Cardinal Monticelso condemns her as a prisoner to a convent for penitent whores. A messenger announces Isabella's death directly following Vittoria's

trial scene, with both Francisco de Medici and Count Lodovico plotting revenge. Cardinal Monticelso becomes the new elected Pope and swiftly excommunicates the now married Vittoria and Brachiano, who flee to Padua and there are murdered. While the play illustrates Vittoria's heroic character in her death scene, Webster moves the legal focus in the narrative from the fate of Vittoria's murders to his own invented courtroom scene in which Vittoria is wrongly put on trial for the death of her husband. As someone with vast legal knowledge from his time in London's Inns of Court, Webster comparatively synthesizes the Italian legal experiences in his sources and places them into an English legal frame.

#### Webster's Invented Trial and England's Break from Rome

Act three of Webster's *The White Devil* opens as Vittoria is put on trial for the murder of her first husband, Camillo. Camillo's uncle, Cardinal Monticelso, and Francisco de Medici organize the trial, inviting foreign ambassadors to serve as a jury. While the trial begins with a lawyer starting his plea against Vittoria, she is able to easily manipulate him and defend herself against the lawyer's accusations. At first, she refuses to conduct the trial in Latin and when the lawyer eventually switches to a loquacious plea in English, she claims:

Surely my Lords this lawier here hath swallowed  
Some Poticaryes bils, or proclamations,  
And now the hard and undegestable wordes,  
Come up like stones wee use give Haukes for phisicke.  
Why this is Welch to Lattin.<sup>395</sup>

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<sup>395</sup> 3.2. 35-39.

Vittoria uses the lawyer's learned language against him, claiming his verbose language makes no credible sense as an accusation. At this point, Monticelso and Francisco take over the trial so that the proceedings end up operating like a papal court in which the Cardinal is the sole legal authority enacting judgment. Francisco, speaking in scorn, dismisses the lawyer as both the Cardinal and Francisco replace him to direct the lines of questioning.<sup>396</sup> Vittoria makes the audience aware of this unjust power shift in the proceedings, claiming: "It doth not sute a reverend Cardinall/ to play the lawyer thus."<sup>397</sup> The result of the Cardinal's sentencing of Vittoria mirrors the historical papal actions that put her in Castel Sant'Angelo for her relationship with the Duke. The change of power from the lawyers and ambassadors to the Cardinal as both judge and jury illustrates a stark division between people and state seen in the Roman *avvisi* of Vittoria's life. Thus, Webster builds from and transforms the *avvisi* accounts, adapting the social experience in these narratives to highlight the court power dynamics of the trial.

Webster portrays an ecclesiastical court dynamic that is ripe with corruption and other Italian stereotypes common to English revenge tragedies. Cardinal Monticelso's scarlet dress is a signal to his moral and judicial authority as a physical representation of justice in a holy court and he makes a show of Christian virtue.<sup>398</sup> Yet his character continually reflects his desire for revenge for Camillo's murder, and he later orchestrates

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<sup>396</sup> 3.2. 50.

<sup>397</sup> 3.2. 60-1.

<sup>398</sup> The Cardinal's scarlet dress is also mentioned in Subha Mukerji, *Law and Representation in Early Modern Drama* (Cambridge: Cambridge University Press, 2006), 146.

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Bracciano's murder using his "black book" of murderers and other villains for hire.<sup>399</sup> As Monticelso embodies the face of the Catholic Church that has the capability to excommunicate Vittoria and Bracciano, Forker notes: "If we could set aside the popularly antipapist response of a Jacobean audience, his ecclesiastical robes might suggest the law of love, but his actions disclose the power broker—a man absorbed by dissimulation, malice, and worldly ambition."<sup>400</sup> Webster portrays the ultimate legal authority of the trial as a corrupt, clever, and cruel judge.<sup>401</sup> The audience then experiences how the Cardinal easily manipulates the trial dynamics, including the lawyer and foreign ambassadors, to produce his own calculated outcome. This kind of legal power, far removed from any communal forces, is what Webster illustrates an English state centralized system could become when authority is continually consolidated under the Crown.

Webster's ecclesiastical trial setting also reflects broader Anglo-Italian legal connections occurring from England's break from Rome. Webster's *The White Devil* builds from a Catholic environment, as the plot transforms Roman accounts of the papal election and the invented trial mirrors the Pope's actions confining Vittoria in Castel Sant'Angelo. Yet the Catholic dynamics of Webster's trial also point to the lasting effects of England's break from Rome, including increased central, monarchic legal power in English law. Webster's *The White Devil* showcases larger changes to the English legal system stemming from policies under the reign of Henry VIII. In this negative, cynical

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<sup>399</sup> 4.1. 33.

<sup>400</sup> Forker, *Skull Beneath the Skin*, 265.

<sup>401</sup> Webster even compares the Cardinal's character to a cony-catcher in 3.1. 23.

portrayal of state or court authority, the play dramatizes the Sovereign's legal power in early modern English law. Although the trial is imagined, Webster transforms his Roman Italian sources to comparatively analyze legal authority and uncover state power in legal affairs in the fallout of the English Reformation.

England's jurisdictional break from Rome exemplified connections between political instability, legal reform and state control. The large impact of Reformation politics on English law under Henry VIII was first noted in print by the mid-seventeenth century jurist Sir Matthew Hale, who recognized a range of technical, but significant, changes in common law in this period, which allowed for completely new areas of jurisdiction. Henry VIII used law to control his subjects close to the court and shaped law to more accurately achieve his own personal and political ambitions. This resulted in a larger legal engineering project that further consolidated law under centralized authority.<sup>402</sup> The wide expansion of government controlled, central court litigation directly produced a decline in local adjudication processes. We can see a sharp increase in legal professional employment by the state and numerous government statutes, as well as a specific overtaking of local traditional common law into state actions throughout Henry's reign.<sup>403</sup>

The Reformation in England also prompted an intense expansion of the legal profession—where by the end of the sixteenth century, legal learning was sought as one

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<sup>402</sup> John Baker, *The Oxford History of the Laws of England*. vol. VI: 1483-1558 (Oxford: Oxford University Press, 2003), 35.

<sup>403</sup> Baker, *An Introduction to English Legal History*, 130-2.

of the main avenues for social advancement.<sup>404</sup> Wilfrid R. Prest even claims the rate of annual admissions to the Inns of Court quadrupled between 1500 and 1600.<sup>405</sup> In this process, there was an increasing divide between communities and those who govern those communities. While England's common law tradition emerged from communal mediation and adjudication, England's break from Rome ignited a larger systematic process that diminished local community power in legal affairs. Webster's Cardinal Monticelso, who occupies singular legal authority in spite of the jury assembled to judge the trial, illustrates this growing power of the state over any other legal process.

One crucial result of this larger systematic process initiating from the Reformation is that it broke open the question of where legal authority ultimately lay. The Act of Restraint of Appeals under Henry VIII was a procedural measure designed to prevent Catherine of Aragon from appealing any decisions made in an English court to Rome's authority.<sup>406</sup> Yet this also prevented anyone else from going through that same process of appeal, further consolidating authority under the English sovereign as the head of state and church. At the same time, the Star Chamber, under Wolsey, was often criticized as employing Romano-canonical forms of procedure that effectively made the king's council both judge and jury.<sup>407</sup> Webster's invented trial in *The White Devil* reproduces the methods by which Reformation politics had consolidated state authority into legal power.

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<sup>404</sup> Forker, *Skull Beneath the Skin*, 41.

<sup>405</sup> Wilfred R. Prest, *The Inns of Court under Elizabeth I and the Early Stuarts, 1590-1640* (Totowa, N.J.: Rowman and Littlefield, 1972), 7.

<sup>406</sup> Christopher Brooks, *Law, Politics, and Society*, (Cambridge: Cambridge University Press, 2008), 45.

<sup>407</sup> *Ibid.*, 39.

Not everyone agreed with this new shift in legal power, as there existed real tensions over changing legal procedures resulting from the Reformation. For example, Sir Thomas More's pamphlet wars with St. German, who continually argued for canon law to be subjugated under English common law, illustrates conflicts between lawyers and members of the church that continued throughout the Reformation.<sup>408</sup> Those that remained attached to older Roman canon traditions, like More and Robert Aske, became political targets as they voiced their concerns with a new legal order separate from Rome. Such conflicts reveal a broader tension felt in England between a sense of civic devotion to the state and individual consciences that were continually reopened throughout sixteenth and seventeenth centuries.<sup>409</sup> *The White Devil* uses an Italian legal setup as a comparative space to dramatize contested negotiations for legal power and procedures in early modern England—especially as the role of local communities in legal adjudication diminished. Specifically, Cardinal Monticelso's commanding legal power in the trial exemplifies issues of whether Sovereign authorities can possess too much authority and if commoners of a community have any real ability to confront the legal authority of the court.

The Cardinal also raises questions of appearance in legal perceptions and ideology. The Cardinal's dual nature as sacred authority dressed in scarlet and cruel schemer out for revenge is best summed up in Vittoria's line: "O poore charity! Thou art seldome found in scarlet."<sup>410</sup> Vittoria uncovers the sharp divide between appearance and

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<sup>408</sup> Brooks, *Law, Politics, and Society*, 46.

<sup>409</sup> Ibid.

<sup>410</sup> 3.2. 71.

substance in the Cardinal's role as a legal authority, which opens up larger questions of legal appearances. If Monticelso can both appear as an embodiment of divine justice and also be inherently dishonest and corrupt, what other aspects of law are only appearing impartial to power dynamics or the forces of corruption? Thus, the legal dishonesty of the play reflects larger anxieties in England's legal atmosphere, especially within these negotiations for power in post-Reformation politics.

While Webster emphasizes the divide between England and Rome, in turn highlighting conflicts in legal experience, the power dynamics involved in Vittoria's trial also add to the common reading of Webster's play as representing fraud and distortion in Italian courts. Indeed, the popularity of court drama in Italian settings created a common trope of Italian corruption, which was freely employed on the English stage. Yet when Webster uses this common convention, the play renders the legal influence of court power visible. Vittoria openly expresses to her audience the unfair power relationships involved throughout the trial. The Cardinal's eventual judgment sentencing Vittoria to a "House of Converites" is met with Vittoria's violent imagery that the Cardinal has "ravisht justice, forc't her to do your pleasure."<sup>411</sup> The inequitable legal forces in Vittoria's trial are easily apparent in the scene, and this is precisely the point to illustrate how court power can control legal narratives. When Webster includes an English-style jury into the trial, the scene makes it clear that the jury can do nothing when matched with the Cardinal's overpowering state authority as judge, jury, and lawyer in the trial's proceedings. Webster's mixing of Italian corruption with an English jury leads to

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<sup>411</sup> 3.2. 276.

Webster's critique of current notions of neutrality and anti-corruption forces in the English jury composition of the early seventeenth century.

### **The Inns of Court and Popular Legal Knowledge**

Webster's trial scene builds from his active participation in London's booming atmosphere for legal learning. Records state that after the writer's grammar schools years at Merchant Taylors', "Master John Webster, lately of the New Inn" moved into The Middle Temple in August 1598.<sup>412</sup> While the Inns were technically independent, the four Inns, including Lincoln's, Gray's, and the Middle and Inner Temples operated as a university with the Inns of Chancery. John Stow, in *A Survey of London*, includes a description of the Inns in 1598: "There is in and about this Citie, a whole Uniuersitie, as it were, of students practisers or pleaders and Iudges of the lawes of this realme."<sup>413</sup> This academia of legal learning employed a strict hierarchy and continually practiced ritualized celebrations mirroring court activities. Students in Inns of Court staged moots, or mock debates, and the hall of an Inn was often arranged to resemble a courtly environment with students learning fencing, dancing, and other social activities.<sup>414</sup> As theatricality played a crucial routine for legal training in various kinds of banquets and entertaining, it is no surprise there existed a strong relationship between the Inns and theater in the early seventeenth century. Students from the Inns often patronized theaters,

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<sup>412</sup> See Forker, *Skull Beneath the Skin*, 40-1; and John Bradbrook, *John Webster, Citizen and Dramatist* (New York: Columbia University Press, 1980) for Webster's legal education and background.

<sup>413</sup> Stow, *A Survey of London*, ed. Kingsford, I, 76-77.

<sup>414</sup> Baker, *An Introduction to English Legal History*, 161-2.

and many playwrights emerged from the Inns, including John Webster, John Marston, and John Ford. The experience of these playwrights with legal learning at the Inns often transferred to their plays, and Webster in particular includes numerous scenes paralleling ceremonies at the Inns in *The White Devil*, *The Duchess of Malfi*, and *The Devil's Law-Case*.<sup>415</sup>

This relationship between the Inns of Court and English theater also greatly influenced broader conceptions of English common law. Inns were sights of legal knowledge in an English legal system that operated within a collective possession of law. Rather than adhering to written, codified rules, court judgments originated from past legal cases and opinions. As a result, English legal knowledge largely existed in student commonplace books and in the students' own experience with trials from the legal Inns.<sup>416</sup> As a main function of the Inns was to detail and preserve real court actions and cases, the Inns were a central part of making English law into a coherent discipline. Furthermore, the Inns shaped and refined legal thinking that would then be passed on to future legislators and judges. Webster's experience at the Inns eventually translates into his role as a playwright, as his plays became a means of creating common, popular knowledge of law in the broader public. In this process, Webster specifically brought these processes of legal knowledge to his Italian revenge tragedies like *The Duchess of Malfi* and *The White Devil*. Webster's penchant for both legal ideas and Italian revenge

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<sup>415</sup> See an account of parallel scenes in Forker, *Skull Beneath the Skin*, 51.

<sup>416</sup> JH Baker, *Readers and Readings in the Inns of Court and Chancery*, (Selden Society, 2001).

plots come together in Vittoria's invented trial, where the scene mixes a Papal court with an English-style jury.

Webster's transformation of these two Italian legal narratives, adapting both papal, court authority and Paduan communal justice, illustrates the diminishing community power of the English jury. Accordingly, Webster's corrupt trial explicates what English law might become with this increasing distance between legal authority and community forces. In this process, Webster's play also reveals the law's power of perception in news and other popular literary genres—where literature contributes to common conceptions and expectations of English law and its relationship to community forces. Webster challenges the communal aspect of English law using Italian texts to show how the English jury was increasingly under the control of centralized powers completely separate from communal mediation.

### **The Jury as *The White Devil***

Vittoria repeatedly calls on the jury within the scene and the play's wider audience to see through the court dynamics of the trial. After one of the Cardinal's accusations to her character, Vittoria asserts:

Who saies so but your selfe? If you bee my accuser  
Pray cease to be my Judge, come from the Bench,  
Give in your evidence 'gainst me, and let these  
Be moderators....<sup>417</sup>

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<sup>417</sup> 3.2. 225-8.

Vittoria clearly expresses the unfair power dynamics of the trial, keeping the audience focused on the foreign ambassadors here assembled as a jury to moderate the case. Yet the foreign ambassadors remain subservient to court authority throughout the trial, and even the invitation of these ambassadors occurred through the court power controlling this legal environment. As mentioned previously, Cardinal Monticelso and Francisco invite the foreign ambassadors to denounce Vittoria's reputation and make her "infamous" to neighboring countries.<sup>418</sup> Thus, in the trial's very existence, Monticelso and Francisco fully realize they have no real evidence against her for Camillo's murder and are instead using a legal space, as well as the foreign ambassadors assembled as a jury, to fulfill their own political agenda.

The arrival and departure of the ambassadors on the scene similarly identify the trial within a courtly legal environment. The audience witnesses a ceremonial "*passage of the lieger Ambassadors over the Stage severally*" framing the trial scene.<sup>419</sup> The pageant-like ambassadorial parade is commented on in the dialogue between lawyer's high praise and Flamineo's scathing utterances insulting each ambassador for their courtly talents.<sup>420</sup> While the ambassadors are there in theory to enact objective judgment, the audience is aware from the start of the trial that they have been invited for show and are more active in the theatrical processions than in the actual trial proceedings. Thus, the trial itself is a courtly show with the aim to injure a rival's reputation. Webster creates this narrative of

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<sup>418</sup> 3.1. 5-8.

<sup>419</sup> 3.1. 64.

<sup>420</sup> 3.1. 60-75.

court control in law using his sources in Italian Roman *avvisi*, where court powers could use the law to protect their own appearances or injure others.

In the actual trial, the ambassadors fail to be objective jury members to counteract court power and instead simply fall into the apparent court corruption. While Webster makes the legal distortion extremely evident in the trial, the foreign ambassadors present to hear the evidence against Vittoria never bat an eye at Francisco and Monticelso's legal games, concluding that the proofs provided in the proceedings make Vittoria's faults evident. Apart from the English ambassador's assertion that Vittoria has a brave spirit, the only lines the ambassadors even say in the trial are the French ambassador's claim that, "Shee hath lived ill" and the English ambassador's response, "Trew, but the Cardinals too bitter."<sup>421</sup> Even after the apparent biases involved in Vittoria's trial are accounted for, the French Ambassador still claims "the proofes are evident." to sentence Vittoria.<sup>422</sup> The legal power of the ambassadorial jury assembled in the play becomes irrelevant as the Cardinal and Francisco de Medici completely control the trial's narrative. Yet the audience might find the ambassadors' easily influenced conclusion that the courtly prosecutors have provided convincing proof of Vittoria's guilt even more disturbing.

While scholars like Michael Redmond have asserted Webster's trial showcases the pitfalls of Italian law in stark contrast to English legal practices,<sup>423</sup> Webster uses the commanding trope of Italian court corruption to taint the ideology behind an English jury

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<sup>421</sup> 3.2. 107-8.

<sup>422</sup> 3.3. 17.

<sup>423</sup> Redmond, *Shakespeare, Politics, and Italy*.

system—so that the English jury system ends up looking potentially even *more* corrupt than the Italian ecclesiastical court fictionalized here. At the end of the trial, Vittoria's brother Flamineo responds to the French ambassador's assertion of proof and reasserts what the audience knows to be true, "Proofe! t'was corruption."<sup>424</sup> Vittoria's trial shows us that objective "proof" and "facts" are just as easy to falsify in a jury environment as they would be in a Roman court. The failures of the ambassadors to see past the obvious court corruption points to larger changes in England's jury system, where jury members were increasingly distant from the trial's circumstances, and thus could more easily be persuaded by legal authorities in trials. The enhanced theatricality of Webster's trial also mirrors the law's power of appearances, where an English jury system might appear on the surface as less corrupt but actually has potential to become irrelevant when overtaken by state authorities in the courtroom.

### **Transforming Juries in Early Modern England**

The futility of Webster's imagined jury picks up on a broader change occurring in the English jury system throughout the sixteenth and seventeenth centuries. The foundation of English common law as it is distinct from continental legal practices is in the ideal that legal authority rests in commoners of the community.<sup>425</sup> The commanding principles for English common law in its origins were for legal procedures to have less emphasis on judges following codified legislation and statutes, and stress a communal

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<sup>424</sup> 3.3. 18.

<sup>425</sup> See, for example: Trevor Dean, *Crime in Medieval Europe*, (London: Pearson Education Limited, 2001), 5; and JH Baker, *The Common law Tradition: Lawyers, Books, and the Law* (London: The Hambledon Press, 2000), 112.

sense of ownership over legal decisions. The English jury was the perceived heart of this communal adjudicating process, where in its beginnings, the jury was made up of neighbors who would already have a sense of the truth they brought to the case from their history with the plaintiff going into the trial. A jury trial then heavily relied on communal dynamics as jury members themselves also employed a kind of character witness role.<sup>426</sup> Juries in the fourteenth and fifteenth centuries were also in charge of the processes of fact-finding and building a case before the trial even began, where jury members would decide if an accusation was founded enough to warrant a trial.<sup>427</sup> Thus, in its earlier practices, the jury was at the core of English legal authority and remained the symbol of perceived differences between English common law and continental legal practices stemming from Roman canon law.

This perceived difference between English common law and Roman canon law can be best illustrated in Sir John Fortescue's *In Praise of the Laws of England* from the 1460s. As a former English chief justice living in France, Foretescue claimed that English common law was far superior to continental legal practices. In particular, the English jury had far less risk of being corrupted because of the fact that plaintiffs and witnesses spoke before a jury assembled from the community, who would presumably already know each person's credibility.<sup>428</sup> Foretesque concludes: "Who then in England can die unjustly for a crime, when he can have so many aids in favour of his life, and none save his

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<sup>426</sup> Baker, *An Introduction to English Legal History*, 75.

<sup>427</sup> JA Sharpe, *Crime in Early Modern England, 1550-1750*, 54-55.

<sup>428</sup> Sir John Fortescue, *On the Laws and Governance of England*, ed. S. Lockwood (Cambridge, 1997), 30-47.

neighbours...can condemn him?”<sup>429</sup> This ideal of neighbors judging neighbors to produce precise justice was not without its challenges. In fact, there are numerous instances of tensions arising from the divide between the values of royal justice and local communities occupying juries. As local communities had more legal authority, juries aimed to protect local men of standing against complaints from outsiders. In contrast, royal justices aimed to ensure social order so that all criminal activity would meet punishment in the legal system.<sup>430</sup> The tension between different versions of justice from communal or broader government perspectives continues on in Webster’s play, where we witness the real threat of corruption that might occur when the local community is completely absent from the trial. Fortescue’s description is consequently the exact ideal appearance of the English jury system that Webster twists in *The White Devil*—where the jury has no real authority. Webster then dramatizes the results of these long-held tensions between local communities and state authority as the jury system changed in the centralized, state English legal system of the sixteenth century.

While initially juries embodied an enormous amount of legal power, which in turn invested a great deal of legal authority in the common neighbors of a community, the professionalization of English law and changes in jurisdictions occurring throughout the sixteenth century greatly changed the jury’s role and function. As England developed an overlapping system of local and central courts consolidated under state power, there was increasing central authority and royal supervision permeating and diminishing community involvement in courts. In part, this new professionalized legal system arose

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<sup>429</sup> Fortescue, *On the Laws*, 30-47.

<sup>430</sup> Dean, *Crime in Medieval Europe*, 15.

from increased use of the courts, where it was no longer possible for jurors to be in charge of fact-finding and other legal processes. Instead, legal scholars have noted numerous cases where it appears jurors would simply bring in a verdict as directed by the judge presiding over the case.<sup>431</sup> In the more centralized courts of the late Elizabethan and Jacobean periods, an assize judge might try “over 100 felons at the rate of one every ten or twenty minutes over a period of two days.”<sup>432</sup> This number of cases made the traditional role of juries in trials impractical, and English legal authorities made necessary changes to handle this volume of cases. However, this change also led to a departure from the significance of local communal dynamics in English common law. The changes made to a jury’s composition in particular reflect how state power could increasingly infiltrate and overpower communal legal authority.

While neighbors primarily composed English juries through the fifteenth century, beginning in the early 1500s, there was increasingly little correlation between jurors’ residence and the circumstances of a trial. As juries were gradually more removed from local environments, jurors were no longer neighbors bringing their own set of experience to the case.<sup>433</sup> This systematic change to jury compositions challenges ideals of English common law that still remained in its distinctions from legal procedures of continental Europe. For example, William Lambarde in the 1590s still confidently claimed of English law, “We are not to be peremptorily sentenced by the mouth of the judge, as other peoples are, but by the oath and verdict of jurors that be our equals, and the same not

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<sup>431</sup> Sharpe, *Crime in Early Modern England*, 55.

<sup>432</sup> Ibid.

<sup>433</sup> Dean, *Crime in Medieval Europe*, 13.

strangers born but our own countrymen, nor far dwelling but of the nearest neighborhood that we have.”<sup>434</sup> While the ideal remained that only neighbors would have the power to condemn an English person, this was increasingly impossible to achieve given the amount of litigation occurring on a day-to-day basis in early modern England. Thus this ideal of English law grew further and further apart from the reality of English legal experience. Webster’s invented jury, composed of foreign ambassadors, in *The White Devil* picks up on this significant change in English legal procedures—where a jury was increasingly “foreign” from the circumstances and people involved in the trial.

These changes to jury compositions also affected the mentality of individual jury members in a trial. Juries that were composed of outsiders to a given community could not employ their own, previous information on the defendant as a kind of character witness. Instead, there became a new model that enforced a sense of objective judgment where more “foreign” jury members were there to evaluate the testimony and presented “facts” of the case.<sup>435</sup> As jury members assessed these facts and various evidence prosecuting forces provided, a new ideal of neutral judgment emerged as separate from communal adjudicating forces. Yet Webster illustrates how this new culture of assessing objective facts can more easily tip the legal power dynamics of a trial in the court’s favor. Webster’s emphasis on the collective ambassadors’ belief that the “proofs are evident” to condemn Vittoria puts this new ideal of objectivity under scrutiny for the audience. Here, Webster shows how easily proof can be weaved into court power dynamics. Webster then

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<sup>434</sup> *Lambarde and Local Government*, 102 (as cited in Brooks, *Law Politics and Society*, 92).

<sup>435</sup> Mukerji, *Law and Representation*, 148; Shapiro, *Culture of Facts*, 13.

challenges these new notions of neutrality and objectivity in the English jury—where state power might more easily manipulate a jury composed of foreigners to produce an unjust sentence.

One specific result from these changes in a jury's role, composition, and mentality was the ability for legal authorities to more easily influence the dynamics of a trial. The capacity for lawyers and judges to sway juries unfamiliar with their plaintiff was a significant problem in the English legal environment contextualizing Webster's play.<sup>436</sup> In the trial scene, Webster reveals how the lawyer and other legal authorities of the trial, as outsiders to the case, control his invented jury. While Vittoria adequately defends herself in her trial, both Francisco and Monticelso direct the line of questioning, provide counter-arguments to Vittoria's assertions, and make their own assessments to the surrounding foreign ambassadors. For example, when Francisco brings up the death of Vittoria's husband, Monticelso and Francisco dialogue back and forth in their questioning to raise suspicion of her involvement in Camillo's death. Once Vittoria adequately defends herself from this attack, Francisco quickly changes the tone of the trial in order to accomplish their goal of slandering her reputation with the lines, "I do not thinke she hath a soule so blacke/to act a deed so bloody [.....] the act of bloud let passe, onely descent to matter of incontinence."<sup>437</sup> Following Francisco's directive language, the rest of the trial centers on punishing Vittoria for her affair with the Duke. Although Vittoria continues to defend herself, Monticelso and Francisco actively shape the narrative of the trial and

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<sup>436</sup> See Baker, *An Introduction to English Legal History*, 71.

<sup>437</sup> 3.2.183-189.

consequently the opinions of the foreign ambassadors. Webster's trial scene then picks up on real anxieties over diminishing community relations in the English legal system.

The emphasis on proof in Vittoria's trial and ability for court powers to manipulate Webster's foreign jury each point to the rise of legal positivism occurring within these larger jurisdictional changes in early modern England. As legal decisions became less reliant on communal relations and individual relationships, legal procedures put confidence into this ideal of objectivity in the process of providing facts for a case. Baker notes that "the sixteenth century saw a new judicial confidence, a willingness to make authoritative decisions, and a corresponding desire in the legal profession and its clientele to have the law clearly stated upon known or admitted facts."<sup>438</sup> Jury members themselves, like the foreign ambassadors of Webster's play, embody this new judicial confidence to a tragic and unjust end. Accordingly, Webster uncovers how this positivist means of discussing legal facts could lead to increasing forces of corruption and injustice within this new confidence for judgment based on proven "facts." Specifically, Webster dramatizes the importance of appearances in legal positivism throughout Vittoria's trial, where the proof against her must be visibly evident,<sup>439</sup> to elucidate how appearance is often far removed from substance. The tensions of the play are not resolved in the dramatic spectacle of Vittoria's trial as it relies solely on appearances, not substance. As a result, the unraveling of morality in this revenge tragedy stems from the law's reliance on appearances and consequent failures to restore social order.

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<sup>438</sup>Baker, *An Introduction to English Legal History*, 82.

<sup>439</sup>Mukerji notes Vittoria's blushing in the court becomes a part of this positivist viewpoint in *Law and Representation in Early Modern Drama*.

Given Webster's emphasis on conflict between appearance and substance, we might read the trial scene as a reference to the play's title that borrows from the Elizabethan proverb: "The white devil is worse than the black." This proverb, which is mentioned in plays such as Middleton's *Revenger's Tragedy* and Shakespeare's *Othello*, asserts that a corrupt person who *seems* good is more dangerous to a community than an immoral person who appears the same. Webster makes the obvious court corruption in Vittoria's trial plain to his audience so that the "proof" and "objective" ambassadors become a part of this injustice. Webster then reveals how the English jury's confidence in objective facts is far more threatening to justice than palpable court power. Webster challenges this newfound judicial confidence in legal positivism to render visible how such confidence in juries grants the state even more legal power in its ability to control a jury unfamiliar with the defendant. Webster's dark, violent revenge tragedy reveals the real danger behind the ideology of objectivity—where state power dynamics grasp a stronger hold in a community when such power is invisible and acting as a "white devil." Within the ambassadors' failures to enact justice in Vittoria's trial, Webster uncovers how the English jury itself has the potential to become irrelevant within the increasing gap between local communities and state power.

### **Law Incites Webster's Aesthetic Chaos**

The remaining acts of Webster's *The White Devil* showcase the fallout from legal positivism, where Webster's structured, aesthetic chaos ensues from the failures of his legal spectacle. The revenge tragedy spirals into murder upon murder since the legal

proceedings of the play are unable to enforce that sense of law and order found in Paduan *avvisi* and instead foster continued corruption within court power. The law's repeated dysfunction under court authority is visible throughout the play, and we can specifically see the dangers of court power within Webster's changes to Lodovico's character.

Webster transforms his characterization of Lodovico from his Italian sources to showcase the disastrous results of legal positivism and objective ideology within power dynamics. In this process, Webster uses common Italian tropes on the English stage to reveal state power in English common law and to illustrate the pitfalls in believing that common community members are still invested with legal power. Webster then dramatizes for his audience a prediction of what might happen in English law as legal affairs become increasingly organized and controlled by state authorities far removed from the community.

Webster's revenge tragedy unravels into chaos resulting from the unjust nature of Vittoria's trial. In the final scene of the play, the young prince Giovanni confidently states: "Away with them to prison, and to torture;/ All that have hands in this, shall taste our justice"<sup>440</sup> and concludes the play with the lines, "Let guilty men remember their blacke deedes/Do leane on crutches made of slender reedes."<sup>441</sup> While these lines sound defiant, they are stated after Lodovico has already asserted he is acting on orders from Francisco de Medici. Thus, in Webster's version, the primary orchestrator of these crimes completely escapes legal punishment. The legal resolution felt in Webster's sources turns to a sense of injustice—where there are characters like Francesco de Medici who sit

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<sup>440</sup> 5.6. 287-88.

<sup>441</sup> 5.6. 295-6.

above the law. By illuminating both Francisco's and Cardinal Monticelso's control over the lives of virtually every other character in the play, Webster shows his audience how such court power can easily lead to chaos as well as the inability for the broader community to challenge such power.

At the core of Webster's *The White Devil* lies the tension between various spectacles that make an appearance of public order and the underlying corrupting chaos of a revenge tragedy. This ironic juxtaposition is most evident in Vittoria's trial scene—which Webster builds from both historical accounts of Vittoria as well as common Italian stereotypes on the English stage. Here, Webster uses Italian legal and social experience to critique the increasing gap between local adjudicating processes and state power within England's rising centralized legal system. In the jury's failure to counteract or even identify court corruption, Webster dramatizes how misguided ideals of objectivity in England's changing jury system are potentially more adversarial to justice than the trial's visible corruption with the Cardinal and Francisco. Vittoria's textual afterlives leading to Webster's play then point to larger themes in Anglo-Italian exchange of legal ideas—where Italy became a useful space to understand and uncover faults in English common law. In Vittoria's dramatic, yet heroic death, Webster creates a startling image of the violent chaos that might ensue from the state's increasing influence in the English jury system.

## Conclusion

The connections between Italy and England in news networks, legal cultures, and literary genres outlined in this dissertation all culminated on the early modern English stage. Writers such as William Shakespeare, Thomas Dekker, and John Webster transformed Italian stories to draw audiences into tales of cruel crimes and violent deaths left unresolved in legal actions. The law's inability to mitigate conflict in these Italian spectacles prompted wider public reflection regarding who should possess legal power in society. In particular, plays and pamphlets building from Italian sources offer a vicious image of state authority in legal affairs and illustrate growing centralized power in English common law procedures.

This dissertation has showcased Italy's material and conceptual space in early modern English theatre. The larger trend of adapting Italian short stories and other sources even appears in Shakespeare's play-within-a-play staged in front of Claudius in *Hamlet*, where Hamlet claims, "the story is extant, and written in very choice Italian."<sup>442</sup> In addition to these sources, however, playwrights continually adapted common Italian stereotypes circulating in England, such as Machiavellian dissemblance and court corruption. One clear motive behind this Italian phenomenon was to avoid strict censorship policies. Yet, more importantly, Italian sources provided a collective body of materials for English playwrights to understand and think through the relationships between legal authorities and communities. Here, the playwrights' actual process of

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<sup>442</sup> William Shakespeare, *Hamlet*, 3.2.261-4, (as cited in Redmond, *Shakespeare, Politics, and Italy*, 18).

appropriating and adapting Italian texts prompted new perspectives on English common law.

The force of these Italianate plays on the English stage can perhaps best be described using a moment from Alberico Gentili's *De legationibus libri tres* (1585). As a professor of law at Oxford, Gentili defended Machiavelli's political writings, claiming: "It was not his purpose to instruct the tyrant, but by revealing his secret counsels, to strip him bare, and expose him to the suffering nations."<sup>443</sup> In the same way Gentili illustrated the subversive power of Machiavelli's text, English playwrights exposed increasing centralized power in the English legal system. As tensions between local communities and Monarchic power continued to escalate in this period, leading to the English Civil Wars, these plays contributed to the shifting and often contested legal landscape of early modern England.

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<sup>443</sup> Alberico Gentili, *De legationibus libri tres*, tr. Gordon L. Laing (New York: Oxford University Press, 1924), II, 156.

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