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CHAPTER TWO

On Trial: Shakespeare and the Law

The first thing we do, let's kill all the lawyers.
(*Henry VI*, Part 2, Act IV, Scene 2, line 2)

Shakespeare was a playwright who found the law fascinating. And it's no wonder. In early modern England, the arts of the actor and the advocate had much in common. The courts of common law offered performance spaces not dissimilar to the open platform stages of the public playhouses where the vast and irregular business of humanity was presented, interrogated and tried, and where people were put on show. These were places where stories were the medium of exchange, and where testimony and witness was the 'matter' told and contested. In both places words *worked*; language (formally shaped by the rhetorical practices of humanist education, the basis alike of the lawyer's and the playwright's schooling) carried the heavy traffic of argument, debate, advocacy, persuasion. In both places, the unexpected was only to be expected. The next entrance bringing on the next witness might produce evidence that would clinch or collapse the case – or explode it. Tragedy, comedy (and farce) were always on the cards in these 'agonistic' venues, where the stakes were always high even when (perhaps *particularly* when) the matter was footling.

The early modern stage mimicked the Tudor courtroom in regularly recording the deeply boring, slices of 'real life' that were mind-numbing in their tedium. (That magistrate in *Measure for Measure*: is he *ever* going to get to the bottom of what actually happened to Elbow's pregnant wife, her wayward longing for prunes and her dilly-dallying in a public house called The Bunch of Grapes? Is there any legal instrument perspicuous – or hefty – enough to deal with Robert Shallow's broken hedges and Falstaff's poaching of both deer *and* 'merry wives' in Windsor? As claim and counterclaim drone endlessly on, do we spectators wish *we* could flee the courtroom – with Angelo who's supposed to be trying Elbow's case?) But equally, the stage mimicked the courtroom by debating early modern England's biggest ideas: the problem of treason, in the state, in the household and

in the individual conscience; issues of equity and liability, false witness and corrupt justice; the relationship between the rigorous enforcement of statutory law and mercy, God's law versus Man's; the legal duties of parents to children, husbands to wives, the rich to the poor, the dead to the living. From the Jack Cade rebellion in *Henry VI*, Part 2 (c.1590), with the insurrectionists proposing 'The first thing we do, let's kill all the lawyers', to the (divorce) trial of Queen Katherine in *Henry VIII* (c.1613), where the queen discredits the court by exiting its proceedings, Shakespeare thought about the theory and practice of the law. He thought about its majesty, its divinity, its awesomeness; its quips and quilllets; its slippery, pettifogging, corrupt tawdriness – and, above all, its theatricality. For students of law and students of literature, then, Shakespeare provides rich and spacious ground for interdisciplinary study and collaborative work, particularly if those students are interested in the inherent staginess of their disciplines, the way both the law and literature demand performance.

The offer made to prospective students in the new module 'On Trial: Shakespeare and the Law' was bold, and aimed to disturb their settled habits as learners. They would be responsible for working in and across both subject areas; for reading analytically but also historically; for engaging new forms of assessment (including examination by group demonstration); and for participating, week by week, in OSL seminars conducted as workshops. University of Warwick students are used to a syllabus that makes intellectual demands, but 'On Trial' threw them a challenge. They would have to re-imagine the standard academic seminar and themselves as 'standard' students. So it wasn't the material put in the reading list that was going to make them hesitate before signing up to this module – it was the proposed teaching method. In OSL the tutor group forms itself into an ensemble with all that this implies for the transformation from passive to active learning. Expected to explore ideas by putting texts on their feet, students have to tackle head-on the risks inherent in such a method. They confront, as actors do, the possibility of failure, and in so doing defy years of conditioning that encourages them to 'play safe'. For university Law students, this would be a real leap in the dark.

In terms of subject content, the module wanted to think as much about 'real' law as 'real' performance. It set out to consider the Tudor laws that underpin Shakespeare's dramatizations and the ways Shakespeare's theatre plays with the trial motif in scenes that bend the law, sensationalize

courtroom performances, re-gender advocacy and move between representation and metaphor. It focuses on particular pressure points of Tudor law: treason in *The Winter's Tale* (where the accusation is located on the allegedly adulterous body of the queen); contract law, the legal status of aliens and the constitutional relationship between crown and judiciary in *The Merchant of Venice*; and civic magistracy, the surveillance of sex crimes, the force of defamation and slander and the role of the consistory courts – the so-called ‘bawdy courts’ – in *Measure for Measure*. The module pursues certain conceits employed as much by the poets as the lawyers; for example, the idea of London as ‘Troynovant’ or ‘New Troy’, a model for the city-state. It asks questions about how lawyers were trained, from grammar school to the Inns of Court, and about how much Shakespeare knew, technically, of the law. It examines a range of treason trials (Thomas More, Anne Boleyn, Robert Devereux, Walter Raleigh, the Gunpowder Plotters) to examine the extent to which the Crown was able, via the treason trial, to enforce the *imperium* of the monarch.

In the ten-week module, three-week units are blocked out to devote to each play. Each workshop lasts three hours and is structured to include physical warm-up, vocal warm-up, active work on text, chalk-and-talk discussion of legal history and principles, devised student work. We work in an empty space, a white-box rehearsal room that has high ceilings, natural light let in through skylights, exits at either end and a whiteboard fixed along one wall. Students record their engagement with the module in an Elizabethan-style commonplace book (such as would have been kept by pupils at the Tudor Inns of Court) – meant to be a continuous, formative and entirely ‘unfinished’ personal record, submitted as one part of their assessment. Their final examination is a practical demonstration.

The following case study looks at one three-week unit, on *The Winter's Tale*, giving a step-by-step account of the work. Some practical activities – physical, vocal warm-up – are repeated each week. The subject content is delivered progressively.

Week 1.i. (20 minutes)

Physical warm-up is designed first of all to put students in touch with their bodies: to loosen up and stretch and to stimulate muscle memory. It aims to remind them of the huge repertoire of movements and gestures they’ve edited out of their everyday ‘behaviour’. In the typical classroom, students

operate within a very narrow band of self-expression. Warm-up games recall unruliness that helps students think their way out of their self-imposed limitations. Significantly, such games aim to activate play. But they are also designed to get students to think, through the body, about the specifics of early modern status, about how bodies carry status and about how they signify, how they tell stories.

We begin each session with 'We're going on a bear hunt' – a particularly appropriate activity for *The Winter's Tale*. It's the kind of activity that Desiderius Erasmus, who theorized the education of children for the Tudors in 1509, might have termed *seria luda* (serious play). The verse from the children's story goes: 'We're going on a bear hunt. We're going to catch a big one. We're not scared. It's a beautiful day.' Moving around the space, repeating the phrases of the verse, imagining and occupying the specifics belonging to words ('bear', 'catch', 'big', 'scared'), students are first simply (and to begin with, painfully self-consciously) following the high-status leader but then, getting the hang of it, breaking out, *becoming*, making their own characters, telling stories that, as the game proceeds, get more and more layered with physical detail. Someone becomes a bear. Someone else, a hunter. Roles get reversed. 'Cowards' flee; big-shots swagger; bodies get used as decoys, shields, make trees, walls; they shuffle, crouch, run, tip-toe, threaten, 'go invisible'. The warmed-up body is an open body, it's receptive to ideas, to mimicry. It becomes an expressive medium. And after fifteen minutes during which *everybody plays*, the bear hunt has flattened inhibitions and conventional classroom hierarchies, turned grown-up university students – and their instructors – back into children, and melded them into a group. Self-consciousness recedes. The individual belongs to a thing the warm-up has made: the creative ensemble. It's silly, but it works. Through play, the serious work gets engaged.

Week 1.ii (10 minutes)

Vocal warm-up is designed to release voices. It's a scary fact of contemporary student life that students spend more time in virtual conversation – texting, emailing, facebooking – than actually talking to each other. Our law students report that they can 'go weeks without saying anything in seminars', that they honestly don't know the public sound of their own voices.

Vocal exercises aim to open up the whole body as a sound-and-speech-producing instrument, beginning, not insignificantly, with making students

aware of how their feet are planted and their torsos positioned. We use tongue-twisters to emphasize consonants, plosives and the work that jaw and lips do ('What I want is a proper cup of coffee/Made in a proper copper coffee pot'). We repeat lines of Shakespeare that familiarize the text even as they demonstrate how open the head cavity has to be and how muscularly fit, how exercised the speech equipment needs to be to speak even the simplest lines: 'A sad tale's best for winter'; 'Your eyeglass is thicker than a cuckold's horn'; 'A callat/Of boundless tongue, who late hath beat her husband/And now baits me!'; 'You lie, you lie: I say, thou liest!' We play speech games with rhythm, antithesis and rhetoric to show the connection between sound and sense, word and wit, and how fast thought travels in this writing: 'Tongue-tied our queen? Speak you'; 'Inch-thick, knee-deep; o'er head and ears a fork'd one'; 'Were my wife's liver/Infected as her life, she could not live/The running of one glass'.

We use the simplest of exchanges to explore voice, story-telling and status. Taken from *Antony and Cleopatra*, this one can be played a dozen times, the double act working out different relationships between 'A' and 'B' – master/servant; equal status friends; male/female; enemy/enemy – before 'A' and 'B' are identified as Antony and Caesar, and *their* history informs the context:

A: Welcome to Rome.

B: Sit.

A: Sit sir.

B: Nay then.

Shakespeare's speeches – even the monosyllabic ones – are never 'mini'. Big ideas come in big bites. In vocal warm-up, making mouths (making, that is, more child's play) we stretch both muscles and minds.

Week 1.iii (1 hour 15 minutes)

In the first week of each new unit, as we start out on each new play, we conduct 'active reading'. It is directed to bring us to our subject focus, the play's trial scene (which in *The Merchant of Venice* happens late, in Act IV; in *Measure for Measure*, early, Act II; in *The Winter's Tale*, right in the middle, Act III). Students come to the workshop having read the entire play, but we want to know *as an ensemble* that we have a good grasp of the story, its characters and its big ideas. Active reading sets us the task of working on the

text as a group, but also gets students used to the idea of shared story-telling and themselves as story-tellers.

We begin with a cut script, one that reduces *The Winter's Tale* to fourteen mini scenes that take the action up to Hermione's trial. The instructor, cast in the role of tribal 'griot' or story-teller, addresses the group in a circle on the floor with the words, 'Once upon a time ...'. It is the job of the griot to fill in the back-story, to bridge the scenes with transitions and to set up the next bit. But the story itself is voiced by the ensemble. Handed the script of each scene and cued (as it were) for performance, they stand up, take their part, speak their speech (which tells the latest chapter of the story), interact in dialogue or as part of a crowd, then sit down again. Roles keep being reassigned; men and women speak gendered roles interchangeably. Active reading fast-forwards the play: you can tell the whole story up to the trial in half an hour. But it also puts Shakespeare into students' mouths. They begin to experience Shakespeare orally, physically, in-body. As part of the story-telling activity, those seated – the listeners – throw questions at the speakers that work to gloss the text and open up its difficulties: Camillo, what do you mean when you say of the child, Mamillius, that he 'physics the subject, makes old hearts fresh'? What, Polixenes, do you mean, when you say that if you and Leontes had remained children, 'boy eternal', you 'should have answer'd heaven/Boldly "not guilty", the imposition clear'd/Hereditary ours'?

Owning speech, working on the difficult images, metaphors, allusions and ideas inscribed in speech transactions, students discover not just how *The Winter's Tale* acts as a philosophical or imaginative or *thought*-full text, but as a machine for action: scenes that deliver plot; speeches that voice interiority; dialogues that wrestle and debate, tell story and discover minds. Here, for example, is the eleventh of our fourteen mini scenes, taken from Act II, Scene 1, just after Hermione has been accused of adultery, conspiracy and treason to a Court who think Leontes's accusations are insane – or at best, criminally misinformed:

LORD:	Beseech your highness, call the queen again.
ANTIGONUS:	Be certain what you do sir.
LORD:	I dare my life lay down: ... the queen is spotless.
ANTIGONUS:	Every inch of woman in the world, Ay, every dram of woman's flesh is false, If she be.

- LEONTES: Hold your peaces.
- ANTIGONUS: It is for you we speak, not for ourselves:
You are abus'd, and by some putter-on
That will be damn'd for it.
- LEONTES: What! Lack I credit? Why, what need we
Commune with you of this, but rather follow
Our forceful instigation? Our prerogative
Calls not your counsels.
- ANTIGONUS: I wish, my liege,
You had only in your silent judgement tried it.
- LEONTES: How could that be? Camillo's flight,
Added to their familiarity ... doth push on this proceeding.
Yet, for a greater confirmation
(For in an act of this importance, twere
Most piteous to be wild), I have dispatch'd in post
To sacred Delphos, to Apollo's temple ... from the Oracle ...
Spiritual counsel ... Shall stop or spur me. Come ...
We are to speak in public ... this business
Will raise us all
- ANTIGONUS: To laughter.

Words like 'spotless', 'familiarity', 'importance', 'wild' – words that look like we know what they mean – need reading historically to see how they mean differently for Shakespeare c.1608. Simultaneously, students who are reading actively *as lawyers* pick out of each extract issues for examination that are themselves part of the story. Here we have issues of accusation and false witness ('by some putter on'), of testimony and credit; the role of the counsellor and his access to free speech; sensationally, the 'forceful instigation' of the king's 'prerogative', an issue at the heart of the debate about the *imperium* of the monarch; private 'judgement' versus public trial, the need for secret crimes that have dynastic consequences to be contested publicly; the appeal from secular, temporal law to eternal law, 'spiritual counsel', to the oracle, to Truth.

Week 1.iv (1 hour)

Having fore-grounded the play's legal subject matter, the active reading of Shakespeare's text prompts what comes next in the workshop – a chalk-and-talk

discussion of the ‘real’ law that underpins the play and, perhaps most significantly in the case of *The Winter’s Tale*, the notion of ‘the *imperium* of the monarch’.

The treason trial in Tudor and Jacobean England became the public symbol of the extent to which the Crown was able to enforce this idea, to which the Acts of Supremacy (1534, 1559) lent a gloss of legitimacy. But the assertion of the monarch’s *imperium* set jurisprudential ideologies in conflict, namely common law versus civil law, with the former supported by the dictum *lex facit regem* (law makes the king), the latter by *quod principi placuit vigorem legis habet* (that which pleases the prince has the force of law). These dicta came into head-on collision in the treason trial of Sir Thomas More who, as Lord Chancellor, held the highest judicial office in England and who, at his trial, was determined to bring all of his experience and training to bear, to defend not only himself and his church, but also the just principles of English common law, notably the accused’s right to silence. These dicta, too, can be applied to *The Winter’s Tale* when the ‘prerogative’ Leontes’ asserts is tested and the legitimacy of the king is interrogated, most robustly by Paulina who requires him to answer the silent evidence of a new-born child.

It’s in the chalk-and-talk session that the ‘On Trial’ module looks most like a conventional seminar, being supported with handouts, court reports, documents and reading lists – materials that provide the law texts to partner Shakespeare’s theatre texts.

Week 2.i (20 minutes)

Physical warm-up.

Week 2.ii (10 minutes)

Vocal warm-up.

Week 2.iii (30 minutes)

In this second workshop, the chalk-and-talk discussion focuses on lawyer training in the Tudor Inns of Court. During his seven or eight years as an ‘inner barrister’, a law student would have been required to participate in twelve ‘grand moots’ at his Inn and twenty-four ‘petty moots’ at an affiliated Inn of Chancery. Writing a contemporary account of these educational exercises, William Dugdale reports their most striking aspect, that of the primacy accorded by the curriculum to performance and debating skills. Dugdale observes of the ‘grand moots’ that they were conducted ‘before three

of the elders or Benchers at the least', who listened as 'some doubtful matter, or question in the law' was 'pleaded and declared ... by such as are young learners', using 'homely Law-french' (a residual and hybrid language that survived only in the Inns, and only for oral exercises). Afterwards, 'an utter-barrister doth rehearse and doth argue and reason' the question 'in the law-french', and 'after him another utter-barrister doth reason in the contrary part, in law-french also'. Finally, the 'three Benchers', the elders who have been listening to this performance, 'declare their minds in English'. This, writes Dugdale, 'is it that they call *mooting*'.

Week 2.iv (2 hours)

The discussion of mootings – supported, as always, by contemporary documents – equips students for this week's task, that of own-devised practical work that hands the workshop over to them to practice both the play and the law while simultaneously developing their skills as collaborators and orators. (Among the 'transferable skills' that this module aims to develop are: the ability to offer ideas; frame an argument and negotiate; find information and deploy it; problem solve; manage time; and produce something definite to show – a result.) While mootings is a mystery to English Literature students, it of course still features in law training, so the law students know all about it and can take the lead (as the English Literature students tend to do in the active reading). Mooting, too, exercises many of the transferable skills we prioritize.

Today, then, students 'moot'. They are divided into two groups, that of prosecution and defence or (*pace* Dugdale) 'part' and 'contrary part'. They are handed a document.

INDICTMENT¹

In the Court of King's Bench, this 15th day of January 2009

Rex v. Dorcas

Rex v. Mopsa

Students recognize the charged. They appear in the sheep-shearing scene, Act IV, Scene 4 of *The Winter's Tale*, as side-kicks to young Perdita, watching her hold her own in an argument with an 'elder', a stranger, about plant breeding. While she insists she won't have 'gillyvors' in her garden because, as hybrids, they are 'nature's bastards', he insists that the technical art of

artificial selection is ‘an art/That nature makes’ – and is therefore legitimate. The Indictment proceeds with the charge and pleadings:

Dorcas is charged that she persuaded another person to cross-pollinate one species of plant with a different species of plant for the purpose of creating a cultivar, contrary to s. 2 (2), The Preservation of Morality (Hybrid Plants) Act 2007.

Mopsa is charged that she aided or abetted another person in knowingly cross-pollinating one species of plant with a different species of plant for the purpose of creating a cultivar, contrary to s. 2(3), The Preservation of Morality (Hybrid Plants) Act 2007.

PLEADINGS:

In 2007, the Bohemian Parliament passed The Preservation of Morality (Hybrid Plants) Act. The intention of the statute was to outlaw the creation by human intervention of new plant cultivars by means of cross-fertilisation, as it was claimed in s.1 of that statute that such precipitate action implied the approval of breeding activities between different races and social groups amongst the population of Bohemia, as prohibited in s. 1(2), The Purity of the People Act 2006.

Prior to the passing of the 2007 Act, the deliberate cross-fertilization of plant species was not an unlawful activity. It had been customary in Bohemia for commercial gardeners to cross-pollinate plants of different species. This served the three-fold interest of enlarging the stock of cultivated plants, increasing the enjoyment of gardeners and enhancing the economy of Bohemia. Also, it is well known to horticulturists that cross-pollination produces stronger plants. Prior to its prohibition under The Preservation of Morality (Hybrid Plants) Act 2007, an annual flower festival had taken place in Bohemia to celebrate the emergence of new plant cultivars.

In 2008, Dorcas (a horticulturist and the owner of a plant nursery in Bohemia) successfully bred a new cultivar of gillyflower, by crossing one species with another. The process involved collecting pollen (using a small paint-brush) from the stamens of one species and spreading it over the stigmas belonging to plants of another species. Dorcas delegated this task to

her assistant, Mopsa. Dorcas did not tell Mopsa that the expected outcome of this technique was the creation of a new cultivar. Mopsa had no technical knowledge of horticulture. She worked in Dorcas's nursery only as a means of earning extra cash with which to support her aged, widowed father.

Some additional information is given, including directions for sentencing (which reproduces the judicial pronouncement upon those found guilty in Tudor treason trials):

The Preservation of Morality (Hybrid Plants) Act 2007 includes the following provisions:

- s. 2(1): It shall be an offence for any person or persons knowingly to cross-pollinate one species of plant with a different species of plant for the purpose of creating a cultivar;
- s. 2(2): It shall be an offence for any person to persuade any other person or persons to cross-pollinate one species of plant with a different species of plant for the purpose of creating a cultivar;
- s. 2(3): It shall be an offence for any person to aid or abet any other person or persons in knowingly cross-pollinating one species of plant with a different species of plant for the purpose of creating a cultivar;
- s. 3(1): Any person or persons found guilty by a court of law under s. 2 above shall be sentenced as follows: That they should return to the place from whence they came, from thence be drawn to the Common place of Execution upon Hurdles, and there to be Hanged by the Necks, then cut down alive, their Privy-Members cut off, and Bowels taken out to be burned before their Faces, their Heads to be severed from their Bodies, and their Bodies divided into four parts, to be disposed of as the King should think fit.
- s. 3(2): There is no appeal or right of appeal from a finding of guilt and/or a sentence of death, under s. 2 and s. 3 above.

Dorcas and Mopsa have been charged with offences under s. 2(2) and s. 2(3) respectively.

In their groups, students are given one hour to work on the Indictment, where Shakespeare's play offers the material evidence for the moot, and

their knowledge of law training provides its structure and methodology. In this first hour, they have to work out what line they're going to take either to defend or prosecute the two accused, so they have to know the play *and* the law. In the second hour, they conduct the moot. They move, then, from research to performance in a 'courtroom' full of spectators and participants, calling witnesses, challenging testimony, making arguments, observing the formal protocols of this courtroom where one of the instructors sits as 'Bencher'. It's rhetorical tennis, with Shakespeare serving as the net; the play serves as balls lobbed, aced and rallied, while the students' ability is the racquets. Staging the moot, students are 'doing' their subject.

Week 3.i (30 minutes)

Physical warm-up. Leontes's courtroom is gendered space. This week we add to our status games some warm-up activity that puts gender difference squarely in view. We cross-dress our students, taking from our costume skip rehearsal smocks, corsets and skirts to put on the men, and doublets for the women. Walking, standing, sitting, the cross-dressed body gets a feel for its freedom of movement, or not, and its spatial significance. Women in Tudor court dress potentially occupy much more space on the early modern stage than men do, but the woman who is stripped to her smock – Hermione in the trial scene? – is a significantly diminished, as well as humiliated, woman. For the undergraduate used to jeans and shirts, *all* Elizabethan dressing is power dressing that structures the body and operates regimes of behaviour and movement upon it.

Week 3.ii (10 minutes)

Vocal warm-up.

Week 3.iii (30 minutes)

Today's chalk-and-talk discussion focuses on the female body, adultery and the law. Committed by a queen, Hermione's adultery (if proven) constitutes high treason. Her fictional case has obvious parallels with the historic trials for adultery and treason of Anne Boleyn (Henry VIII's second wife, Elizabeth I's mother) and Katherine Howard (his fifth wife). On the scaffold in May 1536, Anne said: 'I am come hither to die, for according to the law, and by the law I am judged to die, and therefore I will speak nothing against it. I am

come hither to accuse no man, nor to speak anything of that, whereof I am accused and condemned to die.' The resigned tone of her speech bears strong comparison with Hermione's post-sentencing speech at her trial – and where Anne's implies a big 'but', Hermione's actually speaks that dissidence to the Crown's sentence.

In the discussion, we think about the idea of the 'fair trial' in early modern England (including issues such as evidence, alibis, cross-examination of witnesses and legal representation), while also noticing the legal status of women, and particularly the appeal Hermione makes from the civil court to the divine – 'Apollo be my judge!' – a move that both Portia and Isabella in *The Merchant of Venice* and *Measure for Measure* also make. So, we ask, can the woman only achieve a 'fair trial' if God is her judge?

Week 3.iv (1 hour 45 minutes)

As practical preparation for a devised activity to follow, students conduct active reading to stage Shakespeare's trial scene up to its interruption at Act III, Scene 2, line 141. These first 140 lines proceed from the pronouncement of the sessions in open court to the entrance of the accused queen and the speaking of the indictment, to her defence and the interjected interrogatories of the king, to her appeal (including her counter-accusation that she is being tried on 'surmises' not 'proofs'), and finally to Leontes's rejecting the Oracle and his determination that 'the sessions shall proceed'. As in week 1, active reading allows for close textual investigation as well as 'to-be-performedness'. (Where is Hermione standing? Where is Leontes? How is she dressed? What story of her imprisonment – during which time she has given birth – is written on her body? Does Leontes appear as monarch, or husband? Who else attends? What story is being told in their silent witness? And so on.)

On the back of this rehearsal using Shakespeare's words, students then conduct their own trial, using their own words. They have been given a document at the end of the previous week's session and assigned roles to prepare, supported by some additional information:

*Rex v. Hermione*²
House of Lords
Before Lord Raffield of Splott
Thursday 22nd January 2009

INDICTMENT:

Hermione, Queen to the worthy Leontes, King of Sicilia, thou art here accused and arraigned of high treason, in committing adultery with Polixenes, King of Bohemia, and conspiring with Camillo to take away the life of our sovereign lord the king, the royal husband: the pretence thereof being circumstances partly laid open, thou, Hermione, contrary to the faith and allegiance of a true subject, didst counsel and aid them, for their better safety, to fly away by night.

Counsel for the Crown

Counsel for the Defendant

Witnesses for the Crown

1. His Majesty Leontes King of Sicilia
2. Lord Camillo (under the terms of an extradition agreement between Sicilia and Bohemia, Camillo has been required to return from Bohemia to Sicilia; he has been subpoenaed by the Crown to appear as a witness in the case of *Rex v. Hermione*).
3. Sir Marmaduke Thwing (a gentleman attendant on King Leontes; although unreported by Shakespeare, unknown to Hermione and Polixenes, Sir Marmaduke witnessed their conversation in Act I, Scene 2, in which Hermione persuaded Polixenes to remain in Sicilia; Sir Marmaduke is one of the unnamed 'lords' in Act II, Scene 1).
4. Cleomenes
5. Dion

Witnesses for the Defence

1. Her Majesty, Hermione Queen of Sicilia
2. Paulina
3. His Royal Highness Mamillius Prince of Sicilia (although it is reported in Act III, Scene 2 that the prince has died, in fact, that report was premature; he only fainted).
4. Emilia (a lady attending on the queen during her imprisonment, and present at the birth of her baby daughter)
5. His Imperial Highness Prince Popopov of Russia (Hermione's younger brother; at her trial, Hermione refers to her father, the Emperor of

Russia, sadly, now deceased. Her brother, not noticed by Shakespeare, is called by the Defence as a character witness.)

The Jury

Along with the Indictment and the assignment of the parts they would play, the students are given a helpful and detailed brief, provided by an experienced Benchler, that enables them to prepare their case in the week between receiving their trial documents and appearing in court:

The evidence concerning the alleged offences by Hermione – adultery; conspiracy to pervert the course of justice; high treason – is as reported in *The Winter's Tale*.

As in any criminal trial, the indictment is read to the Defendant at the start of proceedings (prisoners in this period were usually brought into court, chained at the ankles, and had their shackles removed only immediately prior to pleading to the indictment). The Defendant is asked to plead to the indictment. Upon a plea of 'Not Guilty', a jury is sworn in. The Crown presents its opening remarks, followed by those of the Defence. The Crown then calls its witnesses, who may be cross-examined by the Defence. The Defence then calls its witnesses, who may be cross-examined by the Crown. The Crown then submits its concluding statement, followed by that of the Defence. The judge sums up, before the jury retires to consider its verdict. After the jury returns with its verdict, the prisoner is either discharged or remanded for sentence.

Leading Counsel for each side is assisted by Junior Counsel, as specified above: all of you should participate equally in examination and cross-examination of witnesses (the precise division of which, to be decided by each team of Counsellors).

You must be familiar not only with the trial scene (Act III, Scene 2), but also with the action preceding it, especially Act I, Scene 2. (The principal sources of circumstantial evidence for Crown and Defence are: the conversation between, and conduct of, Hermione and Polixenes; the actions of Camillo; the conversation between Polixenes and Camillo).

Also, Act II, Scene 1 is very important, as this takes the form of the pre-trial interrogation – a common feature of all Tudor actions for treason. Act II, Scene 2 should provide some useful character witnesses, in the persons of Paulina and Emilia. Act III, Scene 3 is relevant, in a procedural context, to the dramatic conflict between witnesses for the Crown and the Defence: Leontes and Paulina. Act III, Scene 1 is a useful source of evidential conjecture, both for Crown and Defence: have Cleomenes and Dion interfered with the evidence provided by the Oracle? The introduction of other, incidental characters (Sir Marmaduke Thwing, Emilia, Prince Popopov, Mamillius) – who are able to provide evidence not only surrounding the events in question, but also as to the character of the Defendant – is intended to imply the enormous significance of peripheral witnesses to the decision regarding any findings of fact in juridical proceedings.

In the final hour and fifteen minutes of this session, students stage a new trial of Hermione, playing multiple parts, cross-gendering roles, writing up the court report and, at the end, when the jury has returned the verdict and sentence is pronounced, reflecting upon the whole process, including the effectiveness of their own performances.

There's no point, of course, offering students innovative teaching if the assessment isn't equally innovative. By the same token, however, it needs to be recognized that while students may be prepared to take huge risks in the rehearsal room, they'll probably instinctively grab for the safety harness when they think about examination. After all, what they do in a workshop is provisional. The module mark is definitive. Introducing new forms of assessment, instructors must therefore be prepared to put time into familiarizing students with the methodology. If, ordinarily, they hand out essay/research questions and leave students to get on with their writing, here they will have to talk through the new assessment a number of times, provide examples (it's an advantage to be teaching this module the *second* time), offer supervision, and most importantly, theorize for students the relevance of the new assessment, why it *matters*.

Aiming to develop cognitive skills that emphasize creative independence of mind (undertaking independent research, making informed but independent judgements, finding and weighing evidence from historical and literary sources, making productive links between theoretical ideas and practical

applications – skills that put the onus on the student to frame the subject area), ‘On Trial’ discards the conventional 5,000-word academic essay submitted at the end of the module. Instead, students are asked to compile a commonplace book throughout the module.³ This working journal is a kind of bibliographic ‘cabinet of curiosities’ inspired by early modern pedagogic practice that records the student’s continuous engagement with the module. The book is informal and idiosyncratic, a genuinely personal archive registering thought. It may contain notes, quotations, images, photographs, newspaper clippings, postcards, doodles, extracts from critical essays or law reports with marginal annotation, physical objects, commentary.

Not surprisingly, even where students can be shown examples of commonplace books, they are perplexed by this writing/compiling assignment, and anxious or suspicious on two counts – they’ve never done anything like it before, and they can’t quite believe that normal academic expectations are being so insouciantly flipped over. The conventional essay aims to test what they can make of a subject. The commonplace book demonstrates what the subject is making of them. The former is a product to satisfy the demands of the teacher; the latter is work-in-progress recording the students’ conversation with material they’re finding. Their book, then, becomes evidence of the almost archaeological layering of the material, week by week, in their mental space.

One commonplace book submitted in 2009 shows this brilliantly. To begin with, the student uses his book to record his bewilderment at what he’s been asked to do.⁴ The frontispiece inscribes the bald instruction: ‘Compile an Elizabethan-style Commonplace book for Shakespeare and the Law’, and the student puts below that an enigmatic gloss, quoting *Othello* Act IV, Scene 3: ‘Tis neither here nor there’. The first page states: ‘This book contains no Communist propaganda whatsoever’. The next seventeen pages collect a whole range of stuff, including images of Henry VIII, Francis Bacon, Barack Obama; notes on sumptuary laws, the psychology of colour and power dressing; rhetorical questions. (‘What makes a great lawyer?’ floats over a portrait of Edmund Coke in an Elizabethan ruff, speech bubbles drawn to his imagined brain showing ‘logic’, ‘rhetoric’, ‘tradition’, ‘politics’ as the answers to the question.)

Then, on page 18, there’s a break-through. The student has pasted in several pages of Allen Boyer’s article, ‘Sir Edmund Coke, Ciceronianus’ (1997), and has scribbled in its margins, underscoring phrases in a section of the essay titled ‘The Commonplace Book as Pedagogical Methodology’. Boyer has written: ‘A commonplace book is a journal in which an apprentice

orator copies down material to be used in subsequent orations ... pupils keep notebooks and write down in them phrases ... apt quotations ... exempla ... any persuasive example'. The student annotates these pages: 'Interesting! The idea is that it [the commonplace book] becomes this massive tome of knowledge you can pick at.' 'It's like a dictionary of persuasive thoughts.' 'Where better to find anecdotes than in a play?' Then at the bottom of the next page he writes, 'I think I'm starting to get it'. His book, which finally 'got it', finished up as the kind of resource that Boyer describes and that Coke – and thousands of Tudor lawyers and students before and after him, including Shakespeare's Prince Hamlet – compiled. In the commonplace book, material matters *matter*.

The examination on this module is a three-part invention: (1) a practical demonstration, (2) a *viva* immediately following the practical and (3) a reflective essay (maximum 1,500 words) submitted within twenty-four hours of the examination. Students work in groups. Their examination assignment is to plan and deliver a half-hour demonstration that reflects their understanding of the plays studied and their relationship to the English legal system of the early modern period. The practical is observed by three members of the academic staff and video-recorded for external assessment. The *viva* allows students to reflect understanding of the relationship between teaching, learning and performance and also, drawn out by questions from the examiners, to expand upon ideas their work has shown, to show the examiners their process. The reflective essay that's submitted twenty-four hours later elaborates the methodology adopted by the group for the practical but, submitted individually, allows each student to account for his or her contribution to the project and gives an opportunity for critical evaluation. It also acts as a safety net, a place to talk about what went wrong, didn't work. It's part of the contract underwriting the risk level of this new assessment that failure is respected. A good idea that doesn't come off still counts.

In 2009, both groups into which the seminar had been divided for the purpose of assessment elected to stage 'new' trials from Shakespeare for their practical. Left entirely to their own devices, and with no requirement that they should produce a scripted performance, they collaborated extensively – devising possible scenarios, writing scripts, rehearsing, sourcing props and costumes, and setting up stages as courtrooms in the rehearsal room to play out their plays. They exceeded any expectations the instructors may have had. They were over-achievers.

Group 1 staged 'Venice v. Iago'.⁵ The trial was set on Cyprus and heard by the Governor of the Venetian military garrison, Othello. Arraigned in this case, Iago was accused of slandering Desdemona, and while the indictment entered this initially as a private offence, it alleged further that here slander was effectively an offence against the state. Calumniating Desdemona, Iago's 'words and actions ... undermined the authority of the Lord Governor, Othello, leader of the armed services', and of course husband to Desdemona. Witnesses were called – Michael Cassio, Desdemona, Emilia – whose testimony contradicted the accusation. But then a spectacular interruption set the court in uproar. One Roderigo, a Venetian and a civilian hanger-on around the garrison, burst in, demanding to be sworn and to give evidence – detailed, urgent, persuasive and damaging evidence, it turned out. Called to defend himself, Iago discredited the prime witness and the court. He also challenged the legitimacy of the presiding judge. He was, however, found guilty and convicted. The court adjourned for sentencing.

In terms of acknowledging Shakespeare, this script cannily interwove lines from *Othello* that, removed from their original setting, played powerfully in this new drama. In terms of demonstrating knowledge of the law, it offered as a supporting document a schedule of 'textual content', extracted from the play, that listed the occasions of slander that would be entered in the arraignment (from 'an old black ram is tugging your white ewe' to 'I heard him say ...') But it also thought specifically about defamation as an early modern offence, and about the particulars of *this* trial – essentially a court martial where the presiding officer was also materially concerned with the verdict. Iago was given a line challenging the court's authority: 'Othello ... Husband and judge? Desdemona ... Victim and wife? Am I expected to see justice?' The central judicial principle at stake here is *nemo iudex in causa sua* (no one should judge his own cause).

Group 2 staged the double trial of Quintus and Martius, sons of Titus Andronicus, who are accused of the murder of Bassianus, their own brother-in-law and brother to the emperor of Rome, Saturninus.⁶ As this group pointed out, 'Such is the surfeit of violence in *Titus Andronicus*', they 'could have easily staged the trial of Titus for the murder of [his own son] Mutius, or Demetrius and Chiron for the rape and mutilation of Lavinia'. However, they hit on this murder because 'Fratricide would naturally give rise to a charge of treason, encouraging parallels with both Shakespeare, as in the trial of

Hermione, and real events, most notably the cases of Thomas More and Anne Boleyn'. In this trial,

there were two innocent men accused, faced with a strong prosecution case and a wealth of evidence against them. There was a 'political' motive, with the newly crowned empress seeking revenge against her enemy. Moreover, as with the murder of the Clown, Saturninus's retribution for his brother's death encapsulates the themes that Shakespeare had focussed on in the play as a whole: *terras Astraea reliquit* [justice has fled the earth], the inherent injustice of autocratic rule and the eventual descent of the state into bloody tyranny.

In addition, a trial scene 'offered a fantastic forum to examine other areas, such as the inherent distrust of foreigners and the unwillingness to tolerate dissent. These were fundamental features of the socio-political landscape of late Elizabethan and early Stuart England, and are reflected by Shakespeare in *Titus Andronicus*'.⁷

This group brought on the defendants as dolls. They were dressed in togas and had their war medals pinned to their chests. But they were also bloody, mutilated. (Had they been tortured in Saturninus's prisons? Or was the blood matted in their hair Bassianus's?) The defendants as dolls were infantilized, diminished, objectified, muted. They would be able to say nothing in their own defence. So this was going to be a show trial – but the show was important. As the prosecutor said to the judge, 'The public need to see that you have granted them their Roman rights. We must openly proceed in justice'. Making Saturninus judge in this case reflected the trial of Hermione, where Leontes sits in judgement, and that choice allowed this trial to illustrate the inherent faults of despotic rule while exploring the legal principle of *nemo iudex in sua causa*, so problematic to early modern trials where the monarch was concerned.

To give more 'play' to their set-up – where, it must be remembered, the guilt of the accused was a foregone conclusion in Saturninus's decadent fifth-century AD Rome – this group decided to resurrect from Augustan Rome (500 years earlier) two great 'real life' orators, Hortensius and Cicero, to play the advocates, a decision that prompted the writers of this script to put in their mouths speeches that captured the habits of early modern rhetoric. Brilliant, shrewd and notoriously corrupt, Hortensius prosecuted

the case – and clearly expected no defence. Cicero was Marcus's idea: brother to Titus Andronicus, uncle to the accused, Marcus had to work hard to convince Cicero to take the case:

CICERO: What if they refuse to let me speak?

MARCUS: Then surprise them! They will not be expecting you. Indeed, choose your moment well and Hortensius unwittingly becomes our ally. The gothic queen may have no concern for the law and custom of Rome, but Hortensius has spent his life manipulating them. They [Quintus, Martius] have a right to defence and he knows it. He would not risk ruining his reputation by being seen as corrupt.

CICERO: But everyone knows he's crooked

MARCUS: Not so! ...

When Saturninus wondered whether it was really *necessary* to call a witness when the guilt of the defendants was evident, Hortensius quietly insisted: 'My Lord, it would help the public perception of these proceedings if a witness were to tell everyone here the full story of what occurred. Someone needs to tell *them* [gesturing at the spectators]'. Aaron the Moor was called. His testimony was devastating – so damning that Saturninus called 'Enough. Their guilt is plain.' He was just winding into a long speech congratulating the advocate when there was an interruption. Cicero stepped forward and took on the defence, beginning with a rhetorical attack discrediting the 'alien' Moor, then giving a point-by-point dismantling of the state's case. He didn't prevail. He was ultimately hustled from the courtroom, but not silenced:

CICERO: If you proceed in this path then you will show to all in Rome that no man is safe in her sanctuary. If you cannot see reason, then all the goodness of justice will have taken flight from this earth.

In the final moments of this trial, after Martius and Quintus had been sentenced to crucifixion – 'stripped, scourged and taken through the Esquiline gate to a dedicated place, whereupon two crosses shall be erected and your bodies nailed to them until death shall take you' – old Titus Andronicus was left, as he is in Shakespeare's play when his sons are sent to execution, appealing to deaf ears and an emptying courtroom, 'Hear me

grave fathers, noble tribunes stay/For pity of mine age whose youth was spent/In dangerous wars while you securely slept./... O gentle aged men,/Cost me not my sons'. The silence at the end was terrible.

In their *vivas*, students were able to demonstrate the depth of their knowledge of the law that had informed their piece. One student commented that, for him

the exchange between Cicero and Aaron was the most interesting to write. Not only did it provide endless scope for Aaron's innuendo, but we were also able to incorporate the 'Shylock' notion of the untrustworthy outsider. One of Cicero's favoured tactics was to discredit the evidence of foreigners and instead appeal to the security of the Empire, as he famously did with the untrustworthy Caus in *Pro Fonteio*. In *Pro Flaccus*, Cicero can be seen to highlight the loyalty of the defendant to Rome as against the prosecution's dubious witnesses. I was very keen to incorporate these ideas into the play, always aware of the vital importance of rhetoric in both Rome and early modern England.⁸

Another student commented:

I felt that the nature of Othello's situation in being married to the slandered party, yet presiding judge, would also allow the group to explore the relationship between the concept of the 'body public', his status as husband and male, and that of the 'body politick', concerning his position as Lord Governor, and in writing the exchanges between Desdemona and Othello, I was conscious of this contention at all times.⁹

In their reflective essays, they thought seriously about the whole procedure. One student's observation, quoted at length, can be taken as representative of the depth of reflection going on:

In my opinion, the most successful aspects of our performance revolved around the theatricality of the trial: the outlandish characterization, setting and use of props. The lead characters in particular, the cravat-clad Saturninus and the tigress Tamora, Aaron the Moor and Cicero, created an interesting coterie of personalities that really came together in the final performance. Even up to Tuesday evening, we were debating on

how best to depict these characters: should Saturninus follow Taymor's vision of a camp, lavish emperor? Should Aaron utterly embody 'the other' both in garb and through a distinct accent? Indeed, it was only on the morning of the final performance, for example, that I decided to attempt the *Last King of Scotland*-inspired accent for Aaron, and Chris settled on the final portrayal of Saturnine. It is also an interesting thought that the emperor's discussion with Hortensius in the initial diptych paralleled *The Merchant of Venice* to such a successful extent that the audience – as one of the examiners commented – felt convinced of the only possible course of this show trial. The image of the King as judge was, as we discussed later, a reflection of King James I and his position as judge in Star Chamber; the entire piece, as such, an exposition on the Justinian maxim *quod principi placuit legis habet vigorem* – that which pleases the prince has the force of the law.

Another aspect of today's performance I felt really delivered effectively was the sometimes ludicrous cross-referencing in setting. One of the examiner's comments was that in our play one could see an almost Stoppard-esque 'ahistoricism', akin also to Shakespeare's transposition of Early Modern England to different settings such as Venice in the *Merchant* and Rome in *Titus*. I think this truly worked for us in the performance: the rhetoric of Cicero and Hortensius, Rome's great legal minds, contrasted effectively with an Early Modern treason court. So too did the portrayal of Titus – the military man – in soviet regalia. In a strange way, elements which I admittedly was initially undecided about (and we were trying to come to a conclusion on them right up until the performance), such as the depiction of the guard in a mock Roman helmet, worked perfectly in performance. So too, did the striking image of the two mutilated baby dolls in togas. This, I feel, was our *pièce de résistance*: a shocking portrayal of the disfigured body politic and a depiction of questionable innocence – I wonder what was racing through the heads of the audience the moment the guard placed them down on the defendant's stand! In retrospect, it seems that our success lay in inadvertently taking the idea of the mishmash Commonplace book to heart not only as grounding for the script's rhetorical approach ('sway these stone tribunes, move these immutable men') but also as inspiration for the strange and effective juxtapositions in costume and setting on the stage itself.¹⁰

In their final comments upon the practical examination and the module as a whole, they gave their instructors plenty to think – and be pleased – about. This chapter ends, finally, giving students the last words:

I am extremely grateful for having had the opportunity to take this course and deliver this final examination. I am amazed we managed to bring the whole performance together as we did and feel that we managed to successfully capture the theatricality of both real treason and Shakespearean trials – if only just for an instant. Curiously, our success seems to have derived from the more controversial aspects of our production, and in reflection I feel our weaknesses are the result of not completely incorporating the basic stage elements into our final performance. Ultimately, our play has reinforced my conviction that this method of examination is absolutely valid and a most welcome change to the dull three-hour book exams we have to sit each year as law students.¹¹

I can say nothing other than that this was the best exam I have ever done! It was a great and very fulfilling experience to bring an idea to life like this. It was also very instructive, because in the excitement of creating characters and getting into your own character, you think about it so much more than you would normally do. I feel that when thinking like a lawyer, you put yourself in the place of the person you defend, but in the back of your mind there is always a part that keeps thinking about what *needs* to be said to reach your goal. And this keeps you from really becoming and thinking like that other person. Doing exactly that in our performance was a very liberating experience for me.¹²

On a final note, from the point of view of an international student with no previous Shakespeare experience whatsoever, I would definitely recommend this module to other (international) students. I found Shakespeare difficult to read, but with the discussions during our sessions in the CAPITAL Centre a lot of it fell into place. It encourages a different way of thinking than we learn in our law education; more layered somehow. The fact that we learned to 'loosen up' during our sessions and that we got rid of a lot of our shame, made this module one I'll never forget. A truly intense and satisfying experience!¹³

From a law point of view, I am generally hostile towards any form of group work as in the past it seems to have been used for the sake of it, whereas with this module I have enjoyed working with a group over a long period of time to see something develop into a final product. I enjoyed how each member of the group would spontaneously come up with an idea and then we would edit and incorporate that idea into our project, demonstrating the importance of being open to an ever-changing environment. When studying law, it doesn't change that often as one of the key principles of law is the need for 'certainty'. Shakespeare and the Law has forced me, in a good way, to be open to ideas that constantly change and having to respond to them.¹⁴

It is perhaps a shame, for the Law Department, that I have probably learnt and developed more transferable skills toward a legal career doing this module than I would have done with any module run solely by the Law Department.¹⁵

Yesterday's performance was the first time I had ever performed – in an acting capacity at least – in front of an audience. I elected to undertake this module knowing that it was outside my comfort zone; it was intended as a leap of faith. I had my inhibitions and after that first workshop, reservations loomed large. In the end, however, these fears have all proved to be unfounded. With the performance marking the end of this journey, I leave this module with great memories and an abundance of life skills in hand; team work, an appreciation of the interdependency of discourses and a confidence in oneself, to name but a few. But I also leave this course a little wiser, reassured in the fact that taking risks really does pay off and saddened in the knowledge that never again will I be able to say on a law course that, 'today ... we're all going on a bear hunt'.¹⁶