

# STAGING LEGAL AUTHORITY: IDEAS OF LAW IN CAROLINE DRAMA

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Submitted in partial fulfilment of the requirements for the award of Doctor of  
Philosophy

English Studies  
University of Stirling

August 2007

## Abstract

This thesis seeks to place drama of the Caroline commercial theatre in its contemporary political and legal context; particularly, it addresses the ways in which the struggle for supremacy between the royal prerogative, common law and local custom is constructed and negotiated in plays of the period.

It argues that as the reign of Charles I progresses, the divine right and absolute power of the monarchy on stage begins to lose its authority, as playwrights, particularly Massinger and Brome, present a decline from divinity into the presentation of an arbitrary man who seeks to impose and increase his authority by enforcing obedience to selfish and wilful actions and demands. This decline from divinity, I argue, allows for the rise of a competing legitimate legal authority in the form of common law.

Engaging with the contemporary discourse of custom, reason and law which pervades legal tracts of the period such as Coke's *Institutes and Reports* and Davies' 'Preface Dedicatory' to *Le Primer Report des Cases & Matters en Ley resolues &*

*adiudges en les Courts del Roy en Ireland*, drama by Brome, Jonson, Massinger and Shirley presents arbitrary absolutism as madness, and adherence to customary common law as reason which restores order. In this climate, the drama suggests, royal manipulation of the law for personal ends, of which Charles I was often accused, destabilises law and legal authority.

This destabilisation of legal authority is examined in a broader context in plays set in areas outwith London, geographically distant from central authority. The thesis places these plays in the context of Charles I's attempts to centralise local law enforcement through such publications as the Book of Orders. When maintaining order in the provinces came into conflict with central legislation, the local officials exercised what Keith Wrightson describes as 'two concepts of order', turning a blind eye to certain activities when strict enforcement of law would create rather than dissolve local tensions. In both attempting to insist on unity between the centre and the provinces through tighter control of local officials, and dividing the centre from the provinces in the dissolution of Parliament, Charles's government was, the plays suggest, in danger not only of destabilising and decentralising legal authority but of fragmenting it.

This thesis argues that drama provides a medium whereby the politico-legal debates of the period may be presented to, and debated by, a wider audience than the more technical contemporary legal arguments, and, during Charles I's personal rule, the theatre became a public forum for debate when Parliament was unavailable.

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## Acknowledgements

First, I would like to thank the AHRC for funding this doctoral thesis. The research could not have been undertaken had it not been for their generous decision to provide financial assistance for three years.

For his time, attention, support and encouragement, I am greatly indebted to my supervisor, Professor James Knowles. I also wish to thank my second supervisor, Professor Neil Keeble for his advice, and Professor John Drakakis for his comments on an early draft chapter, which made me clarify my thinking and approach to the topic.

I would also like to thank the staff of the Department of English Studies for their support, particularly Dr. Robin Sowerby, Professor Angela Smith and Professor Glennis Byron. The friendship and good humour of the English Studies postgraduate students, especially those who share the postgraduate office, has meant a lot to me during the last four years. Also to my friends Graeme Hampton and Murray Harper, who have regularly reminded me that there is more to life than the PhD, I owe a great deal of thanks.

Finally for their love and support (emotional and financial) throughout this process special thanks must be afforded to my family, Janet and Emily Dyson and Brian Taylor.

## Declaration

I declare that this thesis is my own work and that all critical and other sources (literary and electronic) have been specifically and properly acknowledged, as and when they occur in the body of my text.

Signed: J. Dyson

Date: 31<sup>st</sup> August 2007

## Abbreviations and Orthography

### Abbreviations:

- JCS* Bentley, G. E. 1956 *The Jacobean and Caroline Stage*, 7 Vols. Oxford: Clarendon Press
- ODL* *Oxford Dictionary of Law* ed. Elizabeth A Martin and Jonathan Law. Oxford University Press, 2006. *Oxford Reference Online*.  
<[http://www.oxfordreference.com/views/SUBJECT\\_SEARCH.html?subject=s12](http://www.oxfordreference.com/views/SUBJECT_SEARCH.html?subject=s12)>
- ODNB* *Oxford Dictionary of National Biography*. Oxford University Press, 2007 <<http://www.oxforddnb.com/>>
- OED* *Oxford English Dictionary Online*. Oxford University Press, 2007. <<http://dictionary.oed.com/entrance.dtl>>

### *Plays and Poems*

Massinger, Philip 1976 *The Plays and Poems of Philip Massinger*, 5 Vols, edited by Philip Edwards and Colin Gibson. Oxford: Clarendon Press.

### A note on quotations

I have maintained original spellings in quotations except where I have silently standardised ‘v’, ‘u’, ‘i’, ‘j’, ‘vv’ and ‘f’ (long ‘s’), and expanded contractions (prescriptiō becomes prescription).



## Introduction.

A Prerogative Royall, I take two wayes: 1. Either to be an act of meere will and pleasure, above, or beside Reason or Law: Or, an act of dispensation, beside, or against the letter of the Law.

Assert. 1. That which the Royalists call the Prerogative Royall of Princes, is the salt of Absolute Power; and it is a supreme and highest power of a *King*, as a *King*, to doe above, without, or contrary to a Law, or Reason: which is unreasonable.

1. When Gods word speaketh of the power of *Kings* and Judges, *Deut.* 17.15, 16, 17. *Deut.* I. 15, 16, 17. and elsewhere, there is not any footstep, or ground for such a power: and therefore (if we speake according to conscience) there is no such thing in the world: And because *Royalists* cannot give us any warrant, it is to be rejected. (Rutherford, 1644,192-93)

The reign of Charles I saw significant changes in the ways that legal authority was perceived. An increased acceptance of established law as a legitimate authority independent from the king was demonstrated in Charles's trial in 1648, under a law to which some argued he could not be subject. The relative positions of prerogative and law that had been under debate for some time were reassessed in heightened controversy as Charles ruled without Parliament during the 1630s and often in conflict with the spirit, if not the letter, of the law. Whilst legal and political historians have long noted the importance of the politics of law in the period, it has

been conspicuously neglected in studies of Caroline drama. The aim of this thesis is to supply this omission, placing drama from 1625-1642 within the politico-legal context of its production, and in doing so not only emphasise the contemporary legal engagement of playwrights of the commercial theatre - particularly Massinger, Brome, Jonson, Shirley and Ford – but also suggest for the theatre a position of political importance in providing a forum for the public discussion of such issues.

### **Life and Law**

Law defines relationships: person to person, person to property, individual to State, and as such overarches both the social and political world. Indeed, historians have argued that ‘law was perhaps the most important framework for understanding seventeenth century politics and society’ (Hughes, 1991, 78). Levels of litigation increased from the Elizabethan period onwards, and many people of all social strata came into contact with the law through local justices and assize courts, court mediation or litigation. This, Michael Lane argues, ‘must have produced at the very least a veneer of legal knowledge’ (Lane, 1981, 275).<sup>1</sup> There is evidence, he continues, that a more ‘substantive and substantial’ legal knowledge was part of the common culture: private libraries of people from a variety of backgrounds and professions contained a significant number of legal texts, from the rich and powerful to the middle and lower status merchants, shopkeepers and small yeoman farmers (Lane, 1981, 275).

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<sup>1</sup> For information on the increase in litigation see Baker, 1985, 41 and *passim*. Lane also notes that we should not assume ordinary people went to court only in connection with prosecutions: ‘Minor courts mediated in a variety of disputes, disagreements and simple uncertainties that we now regard as either inappropriate or too trivial to warrant seeking legal intervention’ (1981, 276).

The number of gentlemen entering the Inns of Court also increased during this period. Wilfred Prest notes that although numbers at the Inns had been rising from around 1530 and reached a peak during the reign of James VI and I, ‘there is a rally in the 1630s and very little weakening before the outbreak of the Civil War’ (Prest, 1972, 5-7). Particularly important to the debates over common law and prerogative power in the period, and to the argument of this thesis, is the fact that the Inns, unlike the Universities that mostly taught only civil and canon law, educated their students in common law.<sup>2</sup> Lectures were given on subjects of law to the newer members (inner barristers) by the more senior members (readers or benchers), and the students participated in moots and debates on points of law.<sup>3</sup> Students at the Inns were, then, well prepared to debate ‘interpretations of the law by citing the maxims, precedents and principles which were the authorities of his craft’ (Prest, 1972, 116). That a desire to attend an institution which provided an education in law should increase during a period of intense disagreement over legitimate legal authority exacerbated by Charles’s personal rule cannot be a coincidence, whether the education or the discontent with royal legal activities came first.<sup>4</sup> Increased attendance at the Inns brought a broader spectrum of legally educated men, and many of these men took up positions at court or in the House of Commons. Lane notes that in 1593, two out of five members of the House had

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<sup>2</sup> For John Davies, the Inns were ‘the most flourishing & honourable Academy of gentlemen, that ever was established in any nation, for the study & learning of the Municipall lawes thereof’ (1615, sig. \*1v).

<sup>3</sup> Edward Coke commented that ‘Each of the Houses of Court [the Inns] consist of Readers above twentie: Of Utterbarristers above thrice so many: Of yong Gentlemen, about the number of eight or nine score, who there spend their time in Study of the Law, and in commendable exercises fit for Gentlemen’ (1635b, sig. D4v). For a fuller discussion of the educational activities of the Inns of Court see Prest, 1972, chapter VI. J.H. Baker’s *The Common Law Tradition: Lawyers, Books and the Law* discusses in detail the development of learning at the Inns in ‘Part 1: Lawyers’ (2000, particularly chapters 1 and 3).

<sup>4</sup> It was not the personal rule alone that caused discontent; James VI and I, Butler notes, ruled without Parliament for ten years (1984, 13).

received some legal education; by 1621 this increased to half, and by the 1640 Long Parliament, more than six in ten Commons members had received some legal education, although Lane does include a caveat that far fewer than this had actually been called as barristers (Lane, 1981, 277).

Not all of those who studied at the Inns of Courts pursued law as a profession. The Inns were not structured legal colleges as such; they more closely resembled clubs or societies where young gentlemen went to associate with others in London. Whilst there were lectures on subjects of law, expected attendance was not enforced and many young men went to the Inns to round off their education. Indeed, the Inns provided not only the facilities to study law, but attendance was a route to high office at Court, as the Inns also provided the opportunity to take part in other events which gave training for the well-rounded gentleman and would-be courtier (Finkelpearl, 1969, 51-2). One of these was the performance of Christmas revels, which often included masques, and were sometimes performed at court.<sup>5</sup> The interests of the members of the Inns in theatrical activity were not only in performance; they were also an important source of patronage for players and playwrights, ‘mak[ing] regular use of professional companies in their entertainments’ (Neill, 2007). Several of the Caroline playwrights to be discussed here also had connections with the Inns.<sup>6</sup> Indeed, that the members of the Inns

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<sup>5</sup> See Wigfall Green (*passim*) and Finkelpearl (1969, Chapters 3 and 4), for detailed descriptions of some of the Inns’ revels, and their performance for the Court.

<sup>6</sup> As a member of the Middle Temple from 1602, John Ford should not, perhaps, be described as a layman. James Shirley was admitted to Grey’s Inn in 1634, possibly because of his work on the masque *The Triumph of Peace* which the Inns of Court presented to the King and Queen that year (Leech, 1967, 278). Philip Massinger, although not a member of the Inns himself, had friends there (Garrett, 2007) as he dedicated *The Picture* (1630) to ‘My Honored, and selected friends of the Noble society of the Inner Temple’ (*The Picture*, sig. A3r). Jonson was a friend of such political thinkers as John Selden and Robert Cotton (Butler, 1992, 171), and as Brome was closely connected with Jonson it is likely that he mixed in similar circles, or at least had access to these political and legal ideas.

were avid supporters of the theatre and readers of drama is clear from Francis Lenton's suggestion in *The Young Gallant's Whirligig* (1629) that the Inns' students preferred Jonson's 'book of playes' to their law books (Gurr, 1996, 139), and from records which show that at the Inner Temple, Edward Heath purchased ten play-books between 1629 and 1631, and John Greene paid numerous visits to the Blackfriars and the Cockpit whilst attending Lincoln's Inn (Prest, 1972, 169).

Gurr notes that under Charles I, 'playgoing became socially more respectable than it had ever been', and that 'when the literate and the politically eminent began to pay serious attention to plays, it was inevitable that matters of both state and cultural policy should enter them more strongly' (1996, 138 and 139). With increased attendance at the Inns, legal knowledge widespread in society, and the politics of law raging around the Caroline court, it is unsurprising that debates over law and legitimate legal authority should appear in drama of the period. What is surprising, given this social and legal context, the 'immediate proximity between the professional worlds of theatre and law in the cultural geography of London' (Mukherji, 2006, 3), and the dramatic explorations of the politics of law including wide-ranging comment on particular laws and proclamations in Caroline plays, is the paucity of comment on these issues in literary criticism.<sup>7</sup>

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<sup>7</sup> For example, Brome's *The Court Beggar* presents issues concerning Projectors, and Shirley's *The Lady of Pleasure* deals with Charles I's proclamation of 1632, 'Commaunding the gentry to keep their Residence at the Mansions in the Country, and forbidding them to make their Habitations in London and places adjoining'.

## Interpreting Caroline Drama

Martin Butler's seminal monograph, *Theatre and Crisis 1632-1642*, rescued Caroline theatre from the traditional view which presented drama of the period as unconcerned by the political issues of its time, 'withdrawing into a world of escapism, fantasy and romance, designed to divert its courtly auditors from the reality of their impending doom'. Butler argues that, instead:

Drama of the 1630s, perhaps more than any earlier drama, did persistently engage in debating the political issues of its day, and repeatedly articulated attitudes which can only be labelled 'opposition' or 'puritan'. (Butler, 1984, 1-2)

He makes a distinction between professional and courtly drama in the extent to which they engage with contemporary political issues, but maintains that criticism of court policies can be found in both arenas. He is at pains to point out, however, that "Cavalier" and "puritan", "court" and "country", terms which have previously been used as polarised opposites in discussions of Caroline politics and plays, were 'not fixed norms of sensibility or behaviour to one or other of which every individual conformed' (Butler, 1984, 5). Thus far, I take no issue with his arguments; where I diverge from Butler is in terms of the drama's presentation of monarchic authority. Throughout the period 1632-1642 Butler maintains that drama did not question Charles' power or authority, but insists, rather, that what he faced were problems of government (Butler, 1984, 13, 16). This argument fails to take into account the many challenges, political and dramatic, to Charles' authority in terms of law.

By this I do not wish to suggest that Caroline England, particularly its theatres, was overflowing with republicans; indeed, there is a notable but deliberate absence of republicans in my readings of the plays. The modern meaning of republic, as a state in which supreme power rests in the people and their elected representatives or officers, as opposed to one governed by a king or similar ruler, *was* current in the period, but, as Sanders argues, it was also used to refer to the community of the commonweal, and had an inflected meaning in the sixteenth and seventeenth centuries which was more constitutional: ‘a republic implied a mixed form of government [...] even a monarchy – a limited accountable monarchy – might be republican in its politics’ (Sanders, 1998, 2-3), so the slipperiness of the term makes its use problematic.<sup>8</sup> I have, then, avoided republics and republicans in the chapters which follow, in part because of the ambiguousness of these terms, and in part to avoid temptation or accusations of reading with hindsight in the knowledge that the Civil War and Interregnum were to come. No one in 1629 knew how long Charles would rule without parliament; no one in the mid 1630s knew there would be Civil War within a decade; and no one in the 1630s anticipated an English republic.<sup>9</sup> Revisionist and post-revisionist historians of the period, although they differ on ideas of overarching ideological differences, do agree that the Civil War, and the subsequent execution of the monarch, was in no way inevitable.

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<sup>8</sup> For a discussion of republicanism in a variety of meanings and interpretations in relation to Ben Jonson’s plays, see Julie Sanders’ *Ben Jonson’s Theatrical Republics*.

<sup>9</sup> There is evidence of thinking that a republic without a monarch was at least possible in the documents that were prepared by members of Elizabeth I’s Privy Council whilst there was concern for her safety from the supporters of Mary, Queen of Scots. Usually when the monarch died, the Privy Council and Parliament disbanded and were recalled or reconstituted by the new monarch. Under the proposals put forward in a document which was never approved by the Queen or passed in Parliament, Burghley proposed that in the event of the Queen’s sudden death without named heir, the Privy Council or Parliament or both would not disband and, with judicial officials, would rule in a ‘quasi-republican state of emergency’. For a detailed discussion, see Collinson, 1987, *passim*, quotation on 418.

This is not to say that there was no republican thinking in the period.

Markku Peltonen's *Classical Humanism and Republicanism in English Political Thought 1570-1640* traces republican discourse as an alternative set of ideas to those concerning absolutism and the ancient constitution, arguing that:

Although classical republicanism as a constitutional goal was not fully developed in early modern England, a theory of citizenship, public virtue and true nobility based essentially on the classical humanist and republican traditions, was taken up, studied and fully endorsed throughout the period. (Peltonen, 1995, 12)

The only true nobility, humanist republican thought argued, is found in pursuing the *vita activa*, undertaking virtuous acts for the good of the commonwealth.<sup>10</sup> Such a pursuit was not incompatible with support for a strong monarchy (Peltonen, 1995, 165), and thus does not necessarily imply the advocacy of rule without a monarch. Nevertheless, a strain of republican thought was evident in literature of the period, particularly in poetry.<sup>11</sup> Caroline drama, however, whatever it might suggest about tyrannous monarchs, legitimate legal actions, parliamentary activity or constitutional monarchy, does not advocate government without a King. There is a possible exception to this in James Shirley's *The Traytor*, in which Lorenzo, the Duke's kinsman and favourite, uses republican ideas of nobility and active virtue set against the corruption and vice of the court to persuade Sciarrha to help him kill the Duke. Sciarrha believes his promises for a virtuous government but it is clear to the audience that Lorenzo's republican rallying is merely a ruse to gain support; his government would have been as corrupt as the Duke. At the end of the play, with the Duke, Lorenzo and Sciarrha all dead, Cosimo, as 'the next /Of blood' (L1v)

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<sup>10</sup> For a full discussion, see Peltonen, 1995, *passim*, especially Chapter 3. The idea of the virtuous citizen leading the *vita activa* is set against the scholastic idea of the *vita contemplativa* which involved seclusion from public and political life (Peltonen, 1995, 144 and *passim*).

<sup>11</sup> For a detailed discussion, see David Norbrook's *Writing the English Republic: Poetry, Rhetoric and Politics 1627-1660*.



becomes the ruler of Florence. Although the idea of a republic is posited, the play is not able, finally, to institute this kind of government.

Whilst arguments for the *vita activa* of classical humanism and republicanism were developed under James VI and I, Peltonen notes that the 'humanist tradition did not have as strong an ideological significance in the latter part of the 1620s', suggesting that one of the reasons for this was that 'the real issues at stake [...] were such that a juristic vocabulary and more particularly one of the ancient constitution proved perhaps more efficacious in countering the king's policy' (1995, 286 and 288). The challenges presented to Charles' authority in law were not challenges to his position as monarch, but rather to his ability to act above, beyond or outwith the established laws of the country; it was a debate about the nature of kingship, not about whether there should be a king. One of the aims of this thesis is to highlight the ways in which debates over the extent of legitimate monarchical legal authority were played out on the Caroline stage.

Following from Butler's work, Ira Clark's *Professional Playwrights: Massinger, Ford, Shirley and Brome* proposes to enlarge 'Butler's focus on political issues such as absolutism and social mobility, so as to include more social concerns, mainly family and gender relations' (Clark, 1992, 6). Clark devotes a separate chapter to each of his chosen dramatists, and in line with his more social than political approach, he places the dramatists in their own social and theatrical context, first discussing their friendships and patrons, then giving a brief overview of the social and political issues raised in their works, before analysing one play from each dramatist which he sees as representative. The focus holding these

individual discussions together is his analysis of characters, which examines the way that society constructs individuals' social roles and how, conversely, these expected roles construct society. Where my work touches on his is perhaps in my discussion of the construction of the legal role of the King, court, lawyers and Parliament in Caroline drama; his concern, however, is primarily with the representation of the socio-political issues of gender, gentility and social mobility, and although he does make reference to issues of absolutism and sovereignty such analysis is not sustained. He does not allow for an alternative authority of law alongside parliament and monarch for which, I will argue, Caroline drama makes a case.

Julie Sanders' brief but informative *Caroline Drama: The Plays of Massinger, Ford, Shirley and Brome* is the most recent survey of Caroline drama, and provides an introduction to themes, ideas, drama and dramatists of the period. Again, following Butler, Sanders suggests that these plays 'rarely represent escapist indulgences and are more often than not direct engagements with social, political, and indeed theatrical realities in the moment in which they were produced' (Sanders, 1999, 4). This book succinctly combines Butler's political and Clark's social / socio-political approach in offering ways to read these plays in the context of courts and kingship, gender and theatre, town, country and community.<sup>12</sup> The legal climate of Caroline England, however, is once again absent, although the chapter on 'Court and Kingship' does deal briefly with ideas of divine right, absolutism and paternalism, which I will explore in more detail in chapter two.

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<sup>12</sup> Matthew Steggle's recent monograph *Richard Brome: Place and Politics on the Caroline Stage* continues the critical pattern of reading Caroline drama politically, but also pays particular attention to ideas of place, not in broad terms of town and country, but to the importance of particular locations in Brome's plays.

## Early Modern Culture, Law and Literature

Although explorations of law are absent in the major critical works on Caroline drama, discussions of law in early modern literature and culture are flourishing. Lorna Hutson and Victoria Kahn's edited collection on *Rhetoric and Law in Early Modern Europe* contains essays discussing ideas as diverse as 'Classical rhetoric and the English law of evidence', 'Not the King's Two Bodies: Reading the "Body Politic" in Shakespeare's *Henry IV, parts 1 and 2*', and 'Bribery, Buggery and the Fall of Lord Chancellor Bacon'. Looking at points of intersection between law and rhetoric, the point of the collection, Kahn and Hutson assert, is:

less the recovery of the historical personality of the individual lawyer reading or writing rhetorical texts than the investigation of the relations between rhetorical or literary production and legal practice as these discursive fields conceptualized, or produced accounts of, human agency and subjectivity in the early modern period. (Kahn and Hutson, 2001, 2)

This focus on human agency and subjectivity in relation to law is further explored in Luke Wilson's monograph *Theatres of Intention: Drama and the Law in Early Modern England*, which is concerned with the representation of the developing understanding of intentional action and agency in law in the early modern period on the contemporary stage. The connection between rhetoric, evidence and law highlighted by Hutson and Kahn's collection is also discussed by Subha Mukherji in her recent *Law and Representation in Early Modern Drama*, in which her main concern is 'to illuminate the nature and the extent of the engagement between the disciplines and cultural practices of the stage and the court in early modern

England' (Mukherji, 2006, 2).<sup>13</sup> Primarily discussing civil law cases, Mukherji examines the relationship between real and fictionalised trials in terms of how both relate to early modern thinking on probability and evidence, and discusses how drama may present a more rounded view of legal proceedings by giving a voice, albeit fictionalised, to those usually excluded from official court records (Mukherji, 2006, 12-15). Neither Mukherji's work nor the essays in Hutson and Kahn's collection deal in any detail with Caroline dramatic texts or with the wider political issues of law and legitimate legal authority with which my thesis is concerned.<sup>14</sup>

Politico-legal ideas are, however, discussed in the essays in *Literature, Politics and Law in Renaissance England*, edited by Erica Sheen and Lorna Hutson. Essays exploring treason, evidence, equity, libel and martyrdom take as their focus the connections between law, literature and politics in England between 1580-1660 and, the editors argue, move away from the new historicist and cultural materialist tendency to 'stick closely to a generalized Foucauldian model of the juridical and confessional subject'. By contrast, they ally themselves with work which 'develops specific links between literary subjectivity and the languages and procedural structures of the English common law as it was concretely engaged in the political struggles of the early seventeenth century' (Sheen and Hutson, 2004, 2-3). These essays present concrete engagements with law and politics by examining the position of individuals, including the authors discussed, in relation to the law, and indeed particular legal cases (for example, Peter Goodrich's essay concerns the Ship Money debates of the 1630s). My work also moves away from Foucauldian discourses of power and subjectivity in placing Caroline drama within the specific

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<sup>13</sup> Here court refers to courts of law rather than the royal court.

<sup>14</sup> Mukherji's essay 'False Trial in Shakespeare, Massinger and Ford' does, however, deal more closely with two Caroline texts: Massinger's *The Picture*, and Ford's *The Ladies Triall*.

debates and discourse of law and legal authority of the period. Whereas in several of the writers discussed in Sheen and Hutson's collection there is what the editors call an assumption of 'the rhetorical position of martyrs in representing themselves as oppressed by common law' (Sheen and Hutson, 2005, 3), my argument contends that in drama of the commercial theatre under Charles I, common law was associated with rights, liberty and freedom from an oppressive and absolute, central law.

In terms of law and early modern culture, Paul Raffield's monograph *Images and Cultures of Law in Early Modern England: Justice and Political Power, 1558-1660* examines the relationship between the law, the Inns of Court and theatrical entertainments. Raffield argues that the Inns of Court 'acted out' an ideal constitutional state in the structures and symbols of their own government, showing by example the benefits of such a state, and this was further illustrated in their presentations of appropriate use of law in their masques and revels through which they sought to influence the monarchy. This influence, he argues, shifts to lawyers in parliament under Charles and to pamphleteering during the interregnum. Although Raffield often makes reference to 'theatre', his work does not refer to the commercial theatre or public performance, and despite the broader implications of his title, the study is only concerned with the images, symbols and cultures of law at or extending from the Inns of Court. Where I touch on Raffield's work is in his identification of ideas of reason and rationality in entertainments concerned with law and legal authority: Jacobean masques by the Inns, he argues, present the common lawyers allegorically as divine bodies, and as representing human reason (Raffield, 2004, 138-9). My concern is not with these entertainments, but with the

connection between reason and law he raises which, I will argue, is fundamental to the common lawyers' arguments for the supremacy of common law under Charles and is employed by Caroline playwrights, thus presenting contemporary legal discourses on the Caroline stage.

That Raffield as a legal scholar should be interested in producing an interdisciplinary examination of issues of law (which includes cultural practices, architecture, law and theatrical entertainment), and that the body of critical work on law in early modern literature is growing, may in part be due to the expansion of the law and literature movement, although as Anthony Julius notes, this 'movement is largely confined to law faculties and does not tend to figure in general accounts of modern literary theory' (Julius, 1999, xvii).<sup>15</sup> The reason for this can be found in the two main areas explored by the law and literature movement: 'law *as* literature' and 'law *in* literature'. The former 'seeks to apply the techniques of literary criticism to legal texts'; the latter examines 'the possible relevance of literary texts, particularly those which present themselves as telling a legal story, as texts appropriate for study by legal scholars' (Ward, 1995, 3).<sup>16</sup> What both areas have in

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<sup>15</sup> This is, perhaps, exemplified in the fact that in Patrick Hanafin, Adam Gearey and Joseph Brooker's *Law and Literature* collection, only two of the contributors are not members of law departments: one of these is Brooker and the other, Morris Kaplan, is a Philosophy Professor who had been a Visiting Fellow at Birkbeck's Law School.

<sup>16</sup> Julius suggests the movement has four, rather than two, main elements: law relating to literature (laws of literature); the literary properties of legal texts (law as literature); method of interpretation of legal and literary texts (legal and literary hermeneutics); and the representation of law and legal processes in literature (law in literature) (Julius, 1999, xiii), but the 'law as' and 'law in' literature division is more common. Although censorship, which would fall into Julius's 'laws of literature' category was to a greater or lesser extent an influence on playwrights throughout the period, it is not a primary concern of this thesis. See Richard Dutton's *Mastering the Revels: the regulation and censorship of English Renaissance Drama* for a discussion of licensing and censorship to 1626, and his *Licensing, Censorship and Authorship in Early Modern England* further examines censorship until the closure of the theatres in 1642 and how censorship impacted on the concept of authorship. For an overview of critical positions on the nature and extent of censorship, see Andrew Hadfield's 'Introduction' to *Literature and censorship in Renaissance England*. The essays in this volume examine the theatre and censorship, religious censorship and political censorship. Martin Butler (1992a) also discusses Jonson's *The Magnetic Lady* in relation to ecclesiastical censorship.

common is, Lenora Ledwon suggests, ‘a keen interest in interpretation and narrative’ (Ledwon, 1996, ix) which makes them suitable for such interdisciplinary study. Although Richard Posner asserts that ‘the study of law and literature seeks to use legal insights to enhance understanding of literature, not just literary insights to enhance understanding of law’ (Posner, 1988, 1), both of the described approaches favour the use of literature and literary critical practice for a better understanding of the law, rather than examining law as a means to a fuller understanding of a literary text. However, literary scholars seem to be expanding the boundaries of ‘law and literature’ in a variety of ways: Mukherji states that she examines ‘law in literature’ in her approach to early modern drama, and Sheen and Hutson’s collection deals with law *and* literature if not necessarily in the main ways described above. Ian Ward’s *Law and Literature: Possibilities and Perspectives* also suggests a tangent to law and literature in the use of literary texts to explore legal history (Ward, 1995, 59), and it is here that my thesis touches on the law and literature movement. My approach is almost the reverse of Ward, who sees literature as an ‘educative supplement to the study of law’ (1995, 59). Not only does drama suggest how the playwrights understood politico-legal argument, but knowledge of contemporary legal debate allows a fuller understanding of the plays themselves, and their own position within this debate.<sup>17</sup> Ward holds up Shakespeare as the richest source of literary engagement with legal history; I hope this study will show that Caroline drama is equally rich in its theatrical involvement with contemporary legal debates, perhaps more so in presenting a legitimate alternative to the legal authority of the monarch.

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<sup>17</sup> There is, of course, difficulty in stating with any certainty what the audiences understood from the plays. Nevertheless, there would be little point in Caroline playwrights of the commercial theatre staging contemporary legal ideas or using legal terminology if these were not in some ways familiar to their audiences.

### Staging Legal Authority

Under Charles I, there was no debate over whether the country should be governed by rule of law; the conflict arose over whose law should take precedence: the law of the king or the common law. Many lawyers believed that the king had no extra-legal powers, and the king's prerogative was nothing more than those rights which he possessed under the law. Absolutists, on the other hand, accepted no limitation to the royal prerogative. This was not a new debate. The extent of the royal prerogative and the relative position of prerogative and law had been under discussion for some time amongst absolutists and advocates of the supremacy of the common law:

The idea that the royal prerogative was derived from and limited by law was orthodox among Tudor lawyers. Moreover, the Tudor monarchs themselves accepted legal limitations upon their powers in practice, whatever high views of their authority they may have held in theory. James and Charles, by contrast, proved far more willing to test their theoretical claims at law. (Sommerville, 1999, 99)<sup>18</sup>

James's public professions of his commitment to customary ways and established legal methods, Roger Lockyer suggests, had the effect of preserving the image of the king as a constitutional ruler despite his recourse to unpopular prerogative measures such as Impositions (Lockyer, 1999, 240-1), and whatever his claims to

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<sup>18</sup> Algernon Sidney's *Discourses concerning government* (1698) argued that since the death of Henry V:

Princes had almost continuously attempted 'to advance their prerogative' at the cost of the people's liberty. The only exception had been Queen Elizabeth. Following Henry, she had not set 'about to mangle acts of Parliament' but had maintained the virtuous nature of the people and thereby the principles of 'the mixed monarchies'. (Peltonen, 1995, 18)



absolute rule may have been elsewhere.<sup>19</sup> Charles, on the other hand, made no attempt to cushion his claims to the prerogative in terms of the common law, and it was this, Glenn Burgess argues, which disrupted the Jacobean political consensus. Burgess argues that under James, discourses of common law and absolutism were not contradictory because they were used within particular parameters; thus James could claim a right to absolute monarchy in the theological discourse separating him from the Pope, and still claim supremacy for the common law without contradiction. Charles, however, either did not know or chose to ignore these conventions of political ‘languages’ that maintained a steady consensus under James, claiming an absolute prerogative not only in the theological discourses, but also in discourses of common law (Burgess, 1992, 179-181).<sup>20</sup>

The terms Rutherford employs in the passage from *Lex Rex* with which I opened this introduction – prerogative, will, law and reason – were the key terms of legal debate in the Caroline period, and on the stage they become instrumental in establishing the common law as a legitimate legal authority higher than the king’s prerogative.<sup>21</sup> I do not intend, here, to describe in detail the legal theories and arguments to which they belong; a fuller discussion of ideas of divine right and the ancient constitution will be given in the appropriate chapters where their importance

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<sup>19</sup> See Chapter 2 for a discussion of absolutist arguments, especially pp. 74-85.

<sup>20</sup> For a detailed examination of these political languages, see Burgess, 1992, chapter 5. J. P. Sommerville disputes the existence of these languages, but does not suggest an alternative reason for a breakdown in legal and political relations in the Caroline period (Sommerville, 1996, 44-45).

<sup>21</sup> Blair Worden argues that the rule of law rather than the rule of men was a significant part of republican thinking in the seventeenth century:

Law was the embodiment of reason: men who ruled other than in the service of law became the slaves of will, lust, and passion, while those who served or supported them were guilty of idolatry, of the enslavement and debasement of the will. A commonwealth where law prevailed, whether or not it had a king, was a ‘free state’: its antithesis was tyranny. (Worden, 1991, 448)

In this respect, the vocabulary of law, reason, passion and will with which this thesis is concerned overlap with the concerns of later republicanism.

in drama in bringing legal discourse on to the Caroline stage will be explored. The argument of this thesis is structured around the decentralisation and fragmentation of legitimate legal authority as it was presented in drama of the commercial theatre. Beginning with the concrete expression of the crisis in legal relations between Parliament, the law(yers) and the king in the Petition of Right, the chapters then move in stages away from the dramatic presentation of divinely appointed absolute monarchy, through the establishment of an alternative legitimate legal authority in the common law, to the divorce of a benevolent local authority from an absolutist central authority and finally the destabilisation to the point of absence of a legitimate legal authority.

Chapter One, 'Rights, Prerogatives and Law: The Petition of Right' takes as its focus the debates surrounding the Petition of Right in 1628. The Petition makes reference to several important legal issues of the period which tested the relative positions of the king's will and the common law, such as granting monopolies, military billeting, prerogative taxation and arbitrary imprisonment. In doing so, it provides a useful introduction to the notions of right, privilege and law which form the background to the concepts debated in the subsequent chapters: the position of the king in relation to the law, and the foundations for arguments against an extensive royal prerogative in the ancient constitution and in Magna Charta. The dramatic engagement with the Petition of Right in Jonson's *The New Inn* and, less directly, Brome's *The Love-Sick Court* demonstrates a theatrical involvement in specific legal and political debates, and, in the same way that the Petition itself points towards the main arguments in law, these texts are indicative of the ways in which contemporary debate over legitimate legal authority was presented on stage

throughout the period. *The New Inn* nods towards a perceived wilfulness in the monarch which is explored in Chapter Two, and presents a mock-sovereign presiding over an imagined court leading towards the ideas of trial and judicial authority explored in Chapter Five. Chapter Three develops the connection made between reason and law in *The Love-sick Court*, and this play's presentation of a separate but centrally-connected authority in the countryside opens the possibilities of an alternative local legal authority which is the focus of Chapter Four.

Arguments for and against unlimited royal prerogative in theories of divine right rule, patriarchalism and non-resistance are the subject of Chapter Two, 'Shaking the foundations of royal authority: from divine right to the king's will'. This chapter argues, through a chronological discussion of three of Massinger's Caroline plays, that during the period there was a change in the way that the monarch's authority was presented on stage. Whilst Massinger's *The Roman Actor* presents ideas of the irrefutable divine right and absolute power of kings, this claim to absolute authority through an intrinsic divinity is questioned in *The Emperour of the East* which presents the monarch as a fallible and wilful man. Arguments of bad counsel which were common to defences of unpopular monarchical actions are also explored in this latter play. The decline from divinity in the stage-monarch to the point at which the insistence on the unlimited prerogative comes to be seen as the enforcement of the arbitrary acts of a wilful, and entirely mortal, man rather than the wishes of a divinely protected and authorised king is examined through a reading of *The Guardian*.

This decline from divinity to wilfulness allows the possibility of an alternative legal authority which functions to moderate the king's will. Chapter Three, 'Debating legal authorities: common law and prerogative', puts forward the common law as such an alternative. It begins by establishing the legitimacy of the common law as a legal authority through its connection with custom and the ancient constitution, explored in the theatre in Brome's *The Queenes Exchange*. Royal absolutism in this chapter is set against a rationality which contemporary legal discourse associates with custom and common law, and in this play and the others to be discussed here, *The Antipodes* and *The Queen and Concubine*, arbitrary absolutism comes to be represented as the opposite of reason: madness. This madness, I argue, is not only self-destructive but also creates a kind of madness in the country as the plays suggest that an effect of royal disregard for established law is the destabilising of legal authority. When royal will competes with established common law, what exactly the law is, and where authority lies, is brought into doubt.

Attempts to enforce prerogative law were compounded by an attempt to centralise systems of local government. Chapter Four, 'Decentralising legal authority: from the centre to the provinces', is concerned with the idea and implementation of legal authority in the localities, and focuses on figures of local justice such as constables and Justices of the Peace. It argues, through a reading of Brome's *The Weeding of Covent Garden* and Jonson's *A Tale of a Tub*, that Justices of the Peace represent royal absolutism, and that constables, in line with Keith Wrightson's two concepts of order (Wrightson, 1980, *passim*), are more liminal figures, selective in their implementation of established law and keeping a balance

between the strict enforcement of law and local public relations. Like the destabilising of legal authority caused by wilful action discussed in Chapter Three, *A Tale of a Tub* suggests that the manipulation of law for their own ends by representatives of crown authority destabilises local order, and makes the local officers' positions untenable. In presenting the debates on arbitrary prerogative and reasonable law in a provincial context, I argue, plays such as Brome's *A Jovial Crew* suggest that Charles I's attempts to enforce central law more strictly in the provinces, and thus centralise legal authority, polarised legal positions, not only destabilising but potentially fragmenting legal authority.

Chapter Five, 'The theatre of the courtroom', discusses dramatic trial scenes in the context of contemporary court procedures and the political and legal debates outlined in the chapters above. The focus of this chapter is the connection between the law court and the theatre, examining the interplay between court, theatre, law and legitimate legal authority. The trial in Massinger's *The Roman Actor* is essentially a trial of theatre, and reminds the audience of the precarious position censorship created for actors and dramatists. However, this chapter will argue that the theatre also provides a courtroom in which to judge legal authorities and processes. *The Roman Actor* acknowledges the emperor as absolute judge despite his absence from the trial, but this position of authority is questioned and undermined in later plays. Ford's *The Ladies Triall* places the 'monarch as judge' into a domestic sphere to question unnecessary royal trials of loyalty, and to reinforce the need for a monarch to obey his own laws as established by the plays discussed in Chapter Three. The acted trials (as forms of 'plays within the plays') in Shirley's *The Traitor* and Brome's *The Antipodes* examine the ways in which trials

were conducted, and find both the legal system and the judicial authorities wanting. More than this, though, the lack of a true figure of legal authority in these trials, this chapter will argue, is representative of the destabilising and fragmentation of legal authority caused by attempts to enforce the king's will and circumvent established legal and local authorities.

### **Inclusions and exclusions**

Finally, some words on the scope of this study: in terms of its literary coverage, my focus is chiefly on the works of Massinger, Brome, Jonson, Shirley and Ford as representative of the Caroline professional theatre. Their Caroline plays were primarily staged at the private indoor theatres of the Blackfriars, Cockpit/Phoenix and Salisbury Court by the royally patronised King's Men, Queen's Men and the King and Queen's Young Company (Beeston's Boys).<sup>22</sup> A comparison of the professional playwrights' attitudes to legitimate legal authority with that of the courtly dramatists would be an interesting avenue to pursue with more time and space.<sup>23</sup> The more expensive indoor venues suggest a wealthy, well educated audience; Blackfriars and the Cockpit were 'the favourite resort[s] of the gentry' (*JCS*, VI. 47), and the gentlemen of the Inns of Court 'provided an influential segment of the play-going public' at these theatres (Neill, 2007). Thus the plays concerning the law and legitimate legal authority to be discussed here

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<sup>22</sup> The King's Men and the Queen's Men were adult companies; the King and Queen's Young Company was not a traditional boy's acting group, but a combination of adult and child actors (*JCS* I, 324, note 1).

<sup>23</sup> Butler notes that the King's Men incorporated courtier plays into their repertory (1984, 101).

were performed to an audience for whom they would be particularly resonant, in a place where this audience could interact less formally than at court:

The theatres were neutral zones, independent of the court, where the gentry gathered casually, but also on a regular basis and with interests that were widely shared, and where ideas and attitudes were actively exchanged. They were both public settings and areas of unrivalled personal interchange. (Butler, 1984, 110)

The theatres thus created a venue for development of a public sphere, in which legal argument and political discussion could thrive. Whilst it may seem that this only included the gentry, some of the plays were also performed at the Globe, as the King's Men alternated by season between the Globe and Blackfriars (Gurr, 1996, 150), suggesting a broader, more socially diverse audience for the same legal arguments.<sup>24</sup>

In legal terms, my concern in this thesis is with the competing claims of custom, common law and royal prerogative made central to Caroline politico-legal debate by Charles' insistence on the unlimited scope of his prerogative powers; the constraints of time and space prevent a discussion of civil, ecclesiastical and admiralty law. Whilst I have read widely in the legal texts of the period, choices of what to include here were guided to some extent by the discussion of these issues in the work of legal and political historians, particularly J. G. A. Pocock's *The Ancient Constitution and the Feudal Law*, Glenn Burgess's *The Politics of the Ancient Constitution: An Introduction to English Political Thought, 1603-1642*, and J. P. Sommerville's *Royalists and Patriots. Politics and Ideology in England 1603-1640*.

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<sup>24</sup> Brome's *The Northern Lasse* and Massinger's *The Emperour of the East* are known to have been performed in both theatres. Shirley's *The Doubtful Heir* was written to be performed in Ireland. On return to England a performance was planned for Blackfriars but it was actually played at the Globe. Massinger's *The Guardian*, Brome's *The Northern Lasse*, Jonson's *A Tale of a Tub* and Shirley's *The Dukes Mistris* were also acted at court.

Except where English translations were necessary, wherever possible I have used for both legal tracts and dramatic texts editions that would have been available to contemporary readers and audiences, as the circulation of such texts in print provided further opportunities for the discussion of the legal ideas contained in them.<sup>25</sup>

The plays and playwrights to be discussed here were deeply concerned with issues of divine right, absolute monarchy, the ancient constitution, laws and liberties. In the chapters which follow, this thesis will argue that Charles I's attempts to gain greater and tighter control over the laws of the kingdom, asserting himself as the highest legal authority, led to an equal assertion of alternative legitimate legal authorities. The plays of the foremost playwrights of the Caroline commercial stage, by employing the terms of contemporary legal discourse, present and juxtapose these authorities, allowing their audience to see and debate the potential consequences of adherence to royal will or rule according to common law or local practice. In over-asserting kingly and central authority, the plays suggest, Charles's policies raise the possibilities of destabilisation, fragmentation and disintegration of legitimate legal authority.

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<sup>25</sup> Where Caroline editions of the plays were not available, I have used the first printed edition. See David Zaret (1992, *passim*) for a discussion of the development of a public sphere through print.



## Chapter 1

**Rights, Prerogatives and Law:  
The Petition of Right**

*'Soit droit fait come est desiré'* was the long awaited and sought after second response from King Charles I to the Petition of Right in 1628. 'Let right be done as is desired' recognised that wrongs had been done to Charles's subjects, and stated the king's will that the same wrongs would not affect his subjects again. In recognising the validity of the Petition in this particular way, Charles was seen to be acknowledging his subjects' rights under the law and the limits to his own prerogative, and as such, this response was met with joy by those who had fought for the Petition's acceptance; Francis Nethersole, member of the House of Commons, wrote to Princess Elizabeth that the bells of London were ringing and men were making bonfires at every door in celebration (Foster, 1974a, 22).<sup>1</sup> That the king realised these implications was made clear in his decision to have the Petition reprinted after parliament's authorised version, changing his printed response back to that of his first answer:

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<sup>1</sup> E. R. Adair states that the second response to the petition was invented by those presenting it, in order that the reply directly suited the petition (1920, 102), but Elizabeth Read Foster describes this only as the usual response to private petitions which sought to give redress to subjects who had been mistreated by the king or under the law (1974a, 43). L. J. Reeve suggests this is a combination of the forms of assent to a private petition of right and to a private bill (1986, 260).

The King willeth that right be done according to the laws and customs of the realm, and that the statutes be put in due execution, that the subject may have no just cause to complain of any wrong or oppressions contrary to their rights and just liberties, to the preservation whereof he holds himself in conscience as well obliged as of his prerogative. (cited in Russell, 1979, 377)<sup>2</sup>

This first reply had been a royal attempt to respond to the petition without limiting Charles's prerogative, admitting wrong action on the king's part, or providing a written explication of the law. As such, it was not an appropriate answer to the Petition and was unacceptable to parliament which began, as in the dissolved session of 1626, to debate taking action against the Duke of Buckingham whose influence they blamed in part for the divide between the people and the King. Finally, in the House of Lords, Buckingham and Saye arranged to petition the King to change his response, and asked the Commons if they would join them. This resulted in Charles's second, and much more acceptable, response, with the added qualification that he meant no more by it than his first, and that the Parliament neither meant to, nor could, hurt his prerogative.<sup>3</sup> The presentation on the Caroline stage of the relationship between rights, prerogatives and law highlighted in these different responses and encapsulated in the concerns voiced in and debates held over the Petition of Right is the focus of this chapter.

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<sup>2</sup> Parliament was still in session at the first printing of the Petition. Foster notes that the second printing, including not only the earlier answer but also a 'declaration concerning the true intent hereof', would have circulated much more widely than the first, as it was printed with the public acts passed at the end of the Parliamentary session (1974b, 82). Thus the unsatisfactory response which was less damaging to Charles's prerogative was more widely known than the second answer.

<sup>3</sup> Charles understood his prerogative to be divinely given and invulnerable, and this was the understanding of some in the House of Lords: 'the king had "a royal prerogative, intrinsic to his sovereignty and entrusted him withal from God for the common safety of the whole people and not for their destruction"' (Russell, 1979, 353). Factions in Parliament argued that they could not damage the King's prerogative in their list of grievances in the Petition of Right because in those things he had no prerogative (Russell, 1979, 362). For the debates in both the Lords and the Commons see Russell, 1979, *passim*, especially 378-383. ; Reeve, 1986, *passim*, Harrison, 1988, *passim*. Flemion, 1973, discusses the way in which the lords came to support the Commons in the Petition, and Flemion, 1991, deals with how the Lords understood the petition and discusses the attempts in the Lords to preserve the king's prerogative. Much of this section is based on these discussions.

Performed in the aftermath of the parliament which passed the Petition of Right, and immediately before the meeting of the 1629 parliament, Ben Jonson's *The New Inn* (1629), this chapter will argue, examines the use and abuse of prerogative through a background of common law rights based in Magna Charta, and addresses many of the Petition's grievances in the immediate court and parliamentary context of 1628/9. The theatrical engagement with the Petition of Right is continued in Richard Brome's *The Love-sick Court* (1626 - 1640), which will be discussed in the final section of the chapter.<sup>4</sup> This play deals less specifically with the particular grievances and instead uses the Petition of Right and the idea of petitioning as a means to examine the structure of relationships between king, court and parliament, thus engaging not only in a discussion of earlier political structures and arguments, but also commenting on contemporary activity at court. The first section of this chapter will summarise the main points of contention between the king, parliament and the law which led to, and were highlighted in, the Petition of Right; the following sections will then discuss the dramatic explorations of these ideas in *The New Inn* and *The Love-sick Court*.

### **Issues of Right; Problems of Law**

Petitioning was a common way to approach the monarch or Privy Council for assistance. There were two main forms of petition: the petition of right, and the petition of grace. Private petitions of right asked the king to provide justice to an

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<sup>4</sup> The dating of *The Love-sick Court* is particularly unclear. Most critics now agree that the play was composed in the 1630s. For a more detailed discussion of the dating of this play, see Appendix.

injured party, seeking redress for specific identified and investigated grievances, and those of grace sought mercy or exemption for a subject from an aspect of law.<sup>5</sup> What was unusual about the Petition of Right in 1628 was that it was presented collectively by both Houses of Parliament on behalf of the country to gain redress for grievances caused by the king's manipulation of law regarding taxation and imprisonment. Members of Parliament sought a royal explanation of those laws by which he claimed to act, or the institution of further laws to confirm the liberties of his subjects. Although Charles was prepared to confirm existing laws, including Magna Charta (which was usually appealed to in cases of dispute between the sovereign and subject over rights and liberties), he was not prepared to create new laws, or to provide a legally binding explicit elaboration of the meaning of such existing laws, which could potentially limit his scope for interpretation or prerogative action. A further ratification of Magna Charta did not go far enough for many of those sitting in Parliament; it had been confirmed several times in the past by a variety of monarchs, and had not provided sufficient guarantee of the subjects' liberties, depending as it did on the king's interpretations and enactment of its provisions. After some debate, the House of Commons decided to present the Petition of Right. In using this form of petition, they were not merely presenting a complaint over unsubstantiated grievances; rather, a petition of right was a statement that wrong had been done, and that the monarch had to take action to rectify the issues stated. Although the king had refused to clarify the law, the Petition also provided a bridge between complaint and legislation: gaining royal

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<sup>5</sup> See Foster for a discussion of the development of petitioning under Elizabeth and James VI and I (1974a, 27-35) and the distinction between petition of right and grace (1974a, 35-5).

assent to a petition of right was an archaic method of passing law. Nevertheless, the extent to which the Petition could be seen as a statute was and is heavily debated.<sup>6</sup>

The Petition of Right does, however, provide a statement of the developing contemporary concern that the structure of legal authority was not sufficiently clear or defined. It was, L. J. Reeve claims:

an early and clear sign of the problems of Charles's reign. They included his own inclination to govern of arbitrary will, his losing the support of powerful individuals in the house of lords... Perhaps the most critical problem of all was the widespread refusal to trust Charles, and the insistence by his subjects on legal guarantees, when fundamental interests or principles were at stake. (Reeve, 1986, 275)

According to Conrad Russell, however, the problem that Parliament sought to resolve through the Petition was not merely a lack of trust in the King, but a lack of confidence in the law, particularly as a safe guarantee of liberty (1979, 350, 348). It was because the law no longer seemed to provide the 'legal guarantees' Reeve describes that the Commons sought a clarification of the law from the King. The Petition described the particular grievances for which it sought redress, and asked:

[t]hat no man hereafter be compelled to make or yield any gift, loan, benevolence, tax or such like charge without common consent by act of parliament, and that none be called to make answer or take such oath or to give attendance or be confined or otherwise molested or disquieted concerning the same or for refusal thereof. And that no freeman in any such manner as is before mentioned be imprisoned or detained. And that your Majesty would be pleased to remove the said soldiers and mariners, and that your people may not be so burdened in time to come. And that the aforesaid commissions for proceeding by martial law may be revoked and annulled. And that hereafter no commissions of like nature may issue forth to any

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<sup>6</sup> For more information on the legal status of the Petition of Right see Reeve, 1986, *passim*. Reeve argues that using a Petition was a deliberately antiquarian attempt to revert to an older method of legislation (1986, 369). In the 1628 Parliament, Coryton objected that legislation had not been made by petition and answer since the fifteenth century (Guy, 1982, 311). William Prynne discussed the Petition as a law at a reading at the Inns of Court in 1661 because, he argued, 'it is a law originally framed, prosecuted and passed according to the ancientest and most usual parliamentary way; to wit not by bill, as of late times, but by petition' (Forster, 1974a, 24).

person or persons whatsoever to be executed as aforesaid, lest by colour of them any of your Majesty's subjects be destroyed or put to death contrary to the laws and franchises of the land. (Kenyon, 1986, 70)

'Franchise', Coke clarified during the 1628 Commons debates, 'is a French word, and in Latin it is liberty. In Magna Carta, *nullus* imprisonetur nor put out of his liberty or franchise' (cited in Russell, 1979, 351). This connection with Magna Charta will be discussed below.

In presenting a statement of his subjects' rights, the Petition of Right also implicitly brought into question the rights to the prerogative powers that the king claimed. One of the main crisis points between the asserted legal rights of his subjects and those of the king was the Five Knights' Case of 1627.<sup>7</sup> Sir Thomas Darnel, Sir John Heveningham, Sir Walter Erle, Sir John Corbet, and Sir Edmund Hampden, gaoled without cause shown for refusing to pay the Forced Loan of 1626, sought release through a writ of *habeas corpus*.<sup>8</sup> Had the King's Attorney returned that they were held for refusal to pay the Loan, their writ should have allowed the judges the opportunity to make a ruling on the legality of the Loan, as well as on the legality of the knights' detention. However, the answer returned was that they had been imprisoned, and continued to be so, '*per speciale mandatum domini regis*' ('by his majesty's special command'). J. A. Guy argues that this form of words was a direct response to the prisoners' presumed strategy, and prevented a judicial review of the Loan's legality; rather, it shifted the debate to the extent of the royal prerogative (1982, 291). As no further defence could be made, the prisoners were refused bail and returned to gaol.

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<sup>7</sup> For a detailed discussion of the Five Knights' case, see Christianson, 1985, *passim*; see also Russell, 1979, 334-335 and Guy, 1982, *passim*. Cust gives a more detailed discussion of the Five Knights' Case in relation to the Forced Loan (1987, *passim*, especially 58-62).

<sup>8</sup> This meant that the true reason for their imprisonment had to be made known to a court in order to determine the legality of their detention. See *ODL*, 'habeas corpus'.

Was imprisonment at the king's command without further cause stated acceptable under the law? Magna Charta, the Petition of Right reminded the King, stated that no man could be 'imprisoned... outlawed or exiled or in any manner destroyed, but by the lawful judgment of his peers or by the law of the land' (Kenyon, 1986, 69); however, this left the problem of what exactly the law of the land (*lex terrae*) was. Coke argued that 'If I have any law, *lex terrae* is the common law' (quoted in Reeve, 1986, 265), which meant that prerogative imprisonment was against the stipulations of Magna Charta. The king and privy councillors, however, argued that the king had the right to detain potential felons for reasons of state without giving more specific cause. There were precedents for incarceration without cause shown: Guy Fawkes, for example, had been held for reasons of state without complaints of infringement of liberties or applications of *habeas corpus* (Russell, 1979, 347), and in 1592 the Elizabethan judges had explained the propriety of prerogative imprisonment:

If any person be committed by her Majesty's commandment from her person, or by order from the Council Board, or if any one or two of her Council commit one for high treason, such persons so in the case before committed may not be delivered by any of her courts without due trial by the law, and judgement of acquittal had. (quoted in Guy, 1982, 293-4)

Guy notes, however, that although this allowed the monarch or the Privy Council to imprison without bail, it also points towards an intended trial (for which the cause of imprisonment would have to be given); it is not licence for indefinite arbitrary imprisonment. That Charles had returned an answer of '*per speciale mandatum domini regis*' to the knights' writ of *habeas corpus* meant that they would be detained indefinitely, as no defence could be mounted without substantive charges

to answer.<sup>9</sup> Reeve argues that ‘the practice by which Charles had had the knights remanded constituted not the manipulation but rather the *prevention* of due process’ (1986, 267). It was in this prevention of due process of law that Charles contravened the stipulations of Magna Charta’s *lex terrae* clause (Christianson, 1985, 68). The further difference was that in this case the prisoners were not held on suspicion of plotting treason, but for refusal to pay the Forced Loan; Charles had clearly abused his right to prerogative imprisonment for reasons of state as a political tool to punish those who displeased him and to prevent judicial review of the Forced Loan (Reeve, 1986, 263).

It was not only arbitrary imprisonment and the Forced Loan which led to the Petition of Right, however. Russell argues that the presence of so many soldiers billeted in civilians’ homes, however ‘unpaid and mutinous’ and ‘unfit to stand against a continental enemy’ they might have been, carried the implicit threat of military force to impose the king’s will (1979, 335-336). Billeting was, in fact, one of the specified grievances of the Petition:

[O]f late great companies of soldiers and mariners have been dispersed into divers counties of the realm, and the inhabitants against their wills have been compelled to receive them into their houses, and there to suffer them to sojourn against the laws and customs of this realm, and to the great grievance and vexation of the people. (Kenyon, 1986, 69)

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<sup>9</sup> Guy points out that:

there was little point in seeking further writs of *alias habeas* in political actions at this time, because a rule of King’s Bench would not be changed unless new factual grounds were produced to show that bail could be granted, which could never happen until the returns to writs of *alias habeas* were amended by the Crown to reveal the ‘cause of the cause’ of detention. (Guy, 1982, 293)

Until the king gave the reason behind their imprisonment for reasons of state, they were unable to mount a further defence or ask the judges of Kings Bench to overturn the refusal of bail.



Not only was billeting a great expense to those upon whom it was forced without adequate financial redress, it also brought military practices into a domestic sphere.<sup>10</sup> Thus, closely related to billeting, the Petition also addressed the exercise of martial law. Although it was accepted that martial law was a suitable way of maintaining order amongst troops in war time, the concern was that such systems of law and justice were being, or would be, imposed upon the king's non-military subjects.<sup>11</sup> Again, as with prerogative imprisonment, an arbitrary, summary law threatened to override the rule and due process of established statute and customary law which supposedly guaranteed the liberties of the subject. It is with the negotiation between prerogative, liberties, parliament and law in *The New Inn* and *The Love-sick Court* that the rest of this chapter is concerned.

### **Assuming Authority: *The New Inn***

The main plot of Ben Jonson's *The New Inn* explores the appropriate extent of the royal prerogative and parliamentary advice through the establishment of a mock court (potentially royal, legal and parliamentary), presided over by the servant Pru as Queen for the day. This pretended court organised by women, the disputations of love and valour which it hears, and the backdrop of the Barnet Inn called 'The Light Heart' have led Julie Sanders to read the play in terms of the

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<sup>10</sup> Russell states that 'Not merely was [billeting] one of the most expensive of all the war demands: it also, in the most literal sense, brought the war home to the people' (1979, 336).

<sup>11</sup> In May 1625, a commission of martial law was sent to the mayor of Plymouth against soldiers or 'other dissolute persons joining with them' (Boynton, 1964, 260). Russell argues that the real concern over martial law was that it 'created a real possibility that soldiers would be used to interfere with the most cherished of all English liberties: the autonomy of county government', and was brought about by Charles's government's attempts to centralise administration to fund and organize the war (1979, 359). For a discussion of attempted centralisation, the relation between local and central authority, and its presentation on the Caroline stage, see Chapter 4.

politics of female acting, the socially inclusive environment of the inn, sumptuary laws, and the *saloniste* brand of neo-Platonism espoused by the Countess of Carlisle.<sup>12</sup> The play's relationship with the politics and parliamentary activities of 1628 and 1629 has been noted by Martin Butler, although he chooses rather to read the play as a comment on a possible rapprochement of king and parliament on the death of Buckingham rather than an exploration of the political ideas of the Petition. Indeed, he reads the direct reference to the Petition of Right in Act II as a 'disparaging echo of the most important legislative enactment of the 1628 Parliament' (1992b, 172-176, quotation at 173). I will argue that *The New Inn*'s engagement with the Petition of Right is more detailed and more positive than Butler allows, suggesting that the play advocates the balance of subjects' rights against a moderated, if not curtailed, royal prerogative. As the main plot focuses on the position of the prerogative, the sub plot addresses specific grievances of the Petition of Right such as billeting and martial law.

From very early in the play, it is clear that *The New Inn* participates in the discourses of rights, liberties and the appropriate use of prerogative that the Petition of Right raised. Goodstocke, the Host of The Light Heart Inn, declares to Lovel, his melancholy guest, in Act I, scene ii: 'It is against my free-hold, my inheritance, / My *Magna charta*, *Cor laetificat*, / To drinke such balder dash, or bonny clabbee!' (*New Inn*, sigs. B2r-B2v). Although the Host is here ostensibly doing nothing more than commenting on the quality of particular drinks, his terms of reference are political, and particularly relevant to subjects' freedom from arbitrary imprisonment and to their right to hold their own property inviolate to the prerogative claims of

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<sup>12</sup> See Sanders, 1996, *passim*; 1998, 144-163; 2002b, *passim*; and 2000a, *passim*.

forced loans and extra parliamentary taxation.<sup>13</sup> His appropriation of these terms, however, is not allowed to pass without comment:

Lov[el]:                   Humerous Host.  
 Host: I care not if I be.  
 Lov:                        But airy also.  
           Not to defraud you of your rights, or trench  
           Upo' your priviledges, or great charter,  
           (For those are every hostlers language now)  
           Say, you were borne beneath those smiling starres,  
           Have made you Lord, and owner of the Heart,  
           Of the Light Heart in *Barnet*; suffer us  
           Who are more *Saturnine*, t' enjoy the shade  
           Of your round roofe yet. (*New Inn*, sig. B2v)

Although the discussion is framed in light-hearted terms surrounding the humours of the host and his guests, thus connecting this play with Jonson's earlier drama and drawing attention to the play as a theatrical event, Lovel's comments that 'rights', 'priviledges' and the 'great charter' 'are every hostlers language now' suggest a public familiarity with these terms and their meaning. Inns and taverns were potentially places of political discussion in the seventeenth century; that the host of an inn should be familiar with these terms is not unlikely.<sup>14</sup> Butler's assertion that

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<sup>13</sup> Russell makes the connection between liberties and inherited property explicit in his description of the Petition of Right:

A liberty based on the common law will be a series of franchises, particular liberties, and immunities granted or adjudged on particular occasions. Such an approach to liberty leads easily to the identification of liberty with property, and of liberties with inheritances. As the Petition of Right itself said, it was designed to confirm the liberties the subjects had inherited. Liberties, like title-deeds, were traced back to an original grant, in this case mainly to Magna Carta. (Russell, 1979, 351)

Some common lawyers were doubtful about attributing these rights to Magna Charta as this would provide an origin for them, and arguments for the authority of common law hinged on the idea that it was customary and immemorial (see Chapter 3). If the rights that the common law protected were rooted in Magna Charta, which had been granted and confirmed by Kings, then the law was not independent of the king.

<sup>14</sup> Adam Smyth notes that inns became increasingly important as locations for meetings between town merchants, county justices, and landowners (2004, xx), and Michelle O'Callaghan discusses taverns (slightly different spaces in terms of the social hierarchy of drinking establishments but similar in providing a space for lawyers and gentlemen to meet socially) as the location to foster

this ‘sadly acknowledges that every innkeeper with a grudge against the great has started to pick up such loose constitutional terms’ (1992b, 173) assumes an irritation in Lovel’s response which is not merited by the rest of their conversation:

Goodstocke is the Host of the Inn, this is a good-natured conversation and Lovel remains polite even in his melancholy. There is no reason that his comment should not be a reply to the Host in his own terms. That Goodstocke is, as is later revealed, actually the missing Lord Frampul, and is therefore, as his name suggests, of the ‘good stock’ of aristocratic descent, may also contribute to his concern with inheritance and familiarity with these terms.<sup>15</sup>

It is against this discourse of Magna Charta, and backdrop of rights, inheritance, and liberties that Pru and Lady Frampul set up their mock court where Pru is queen for the day and in which, with Goodstocke’s permission, all at the Light Heart become subject to her rule. The inclusion of all the play’s characters in this performance is emphasised in the ladies’ disappointment that Stuff, the tailor, has not delivered Pru’s monarchical gown: ‘If he had but broke with me, I had not car’d, /But with the company, the body politique’ (*New Inn*, sig. C2v). Stuff has failed to play his part in the illusion, breaking faith with the newly constituted State under Pru, and with the ‘company’, both social and dramatic (acting company). This dramatic metaphor is continued in their conversation over the dress Lady Frampul lends to Pru instead:

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‘new forms of sociability among an urban elite’ (2004, 37) providing a space for educated men to meet for literary and political discussion. Particularly interesting in terms of the political significance of tavern societies, she notes a coincidence in the early seventeenth century in the members of a particular tavern fraternity supporting each other’s activities in parliament (2004, 49).<sup>15</sup> Inheritance and heraldry are significant themes in this play. See Sheila Walsh (1999, *passim*) for a discussion of the ways in which the play advocates inheritance by daughters, and explores contemporary English colonial activity in Ireland through Shelee-nien who is also the missing Lady Frampul.

Lad: 'Twill fit the *Players* yet,  
When thou hast done with it, and yield thee somewhat.

Pru: That were illiberal, madam, and mere sordid  
In me, to let a sute of yours come there.

Lad: Tut all are *Players*, and but serve the *Scene*. (*New Inn*, sig. C3r)<sup>16</sup>

In terms of the acting of this play, most of the main characters are, at some point, acting a role: Lord Frampul as Goodstock, the Host; Laetitia Frampul as Frank (Goodstocke's son) as Laetitia (a relative and companion of Lady Frampul); Pru as the Sovereign; Pinnacia Stuff as a Lady, and Stuff as her footman.<sup>17</sup> The deliberate, self-conscious recognition that 'all are Players', that everyone in the play is acting a part (both as actors on the stage, and as disguised or costumed characters) also draws attention to the idea that all of the characters serve a purpose, they 'but serve the scene'. Michael Hattaway also draws attention to the significance of the setting of the play in terms of its self-conscious theatricality:

We know that actors imitate real people, but setting the action in a place of resort or revelry reminds us that imitation or acting is characteristic of life as well as of art, that men and women as actors perform and play games, maintain illusions, ape and reflect one another's roles. (Hattaway, 1984, 17)

This suggests a licence for social experiment and inversion at the Inn which is elaborated on at the mock court with its servant-sovereign, described as the 'dayes sports devised i'the Inne' (*New Inn*, sig. B8r). Whilst 'sport' suggests that this will be the day's entertainment, it also hints towards the amorous encounters to be had at this court, and once again is an indication of the theatricality of the occasion: these

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<sup>16</sup> Julie Sanders argues that throughout the play the conversations that Lady Frampul and Pru hold about Pru's dress emphasise Lady Frampul's superiority both in beauty and power over Pru, despite the apparent overturning of authority during the 'dayes sports' (Sanders, 2002b, *passim*). In the same article, Sanders notes that Pru's concerns over selling expensive clothes to acting companies would have been familiar to early modern audiences as part of anti-theatrical tracts, and concerns over appropriate clothing during the period (Sanders, 2002b, paragraph 10).

<sup>17</sup> Anne Barton suggests that it is through role-playing in *The New Inn* that the characters come to truly know themselves and each other. Thus Pru's acting as a Lady reveals her 'inherent excellence' whilst Pinnacia's acting as a Lady demonstrates her 'unalterable vulgarity' (1984, 271).

proceedings are all, supposedly at least, in jest.<sup>18</sup> The inversion of the usual order in the servant-sovereign and mock court has elements of carnival, and all will be put in its correct order – including the reunion of Lord and Lady Frampul in their proper roles – at the end of the play.<sup>19</sup>

Set in the discourse of rights and prerogatives which pervades the play, the inversions of the ‘dayes sports’, along with the extensive role playing throughout, provide a framework in which to explore the roles which Parliament and monarch should play in relation to subjects’ rights and liberties. Indeed, the contemporary political relevance of the play is asserted when Goodstocke comments, again in dramatic terms, on how he sees activities at The Light Heart:

If I be honest, and that all the cheat  
 Be, of my selfe, in keeping this Light Heart,  
 Where, *I* imagine all the world’s a Play;  
 The state, and mens affaires, all passages  
 Of life, to spring new, *scenes* come in, goe out  
 And shift, and vanish, and if *I* have got  
 A seat, to sit at ease here, i’ mine *Inne*,  
 To see the *Comedy*; and laugh, and chuck  
 At the variety, and throng of humors,  
 And dispositions, that come justling in,  
 And out still, as they one drove hence another. (*New Inn*, sig. B5r)

This, as earlier, aligns *The New Inn* with Jonson’s humours plays, but is also an explicit iteration of the *theatrum mundi* topos (Hattaway, 1984, 19, 17). Not only are the audience reminded that the actors *are* actors in this play, but also that the Light Heart Inn, and by extension the theatre in which it is played, is representative of the world outside the theatre.

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<sup>18</sup> *OED*, ‘sport’ *n.* 1a, 1b, 2a.

<sup>19</sup> Cf. Sanders, 1996, 550. In the elements of carnival and the mock court, the ‘dayes sports’ are reminiscent of some of the revels held by the Inns of Court. For a discussion of these revels, see Wigfall Green, 1931, *passim*, and Finkelppearl, 1969, Chapters III and IV, for detailed descriptions of some of these revels, and their performance for the Court.

As sovereign of the day's sports, Pru presides over a court which hears both a petition and a bill of complaint. Lovel's complaint that he has received 'a disrespect' (*New Inn*, sig. D3r) from Lady Frampul results in two sessions of a Court of Love in which he speaks first of love and then of valour.<sup>20</sup> His discourse on valour which 'springs out of reason', 'the scope' of which is 'alwayes honour, and the publique good' (*New Inn*, sig. F4r) appeals for a revival of the gentlemanly sensibilities which led him earlier to make the (subsequently denied) request that the Host give his son to him as a page. His discourse of love follows the arguments of neo-Platonism which were increasingly popular at court, and take the form of the arguments of Platonic symposia.<sup>21</sup> Although Julie Sanders argues that the 'neo-Platonic strains in the text have been concentrated upon to the detriment of more politicized and potentially parliamentary strains' (1996, 559), she does not pursue this point in terms of the political implications of Pru's court. When it first convenes, Queen Pru is approached by Colonel Tipto:

Hos[t]:                               Ask what you can Sr.  
  So't be i'the house.

Tip[to]: I ask my rights and priviledges,  
  And though for forme I please to cal't a suit,  
  I have not beene accustomed to repulse.

Pru:    No sweet Sir *Glorious*, you may still command –

Hos:    And go without.

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<sup>20</sup> For a discussion of the tradition of the court of love, see Hattaway (1984, 30-31).

<sup>21</sup> See Hattaway (1984, 32) and Sanders (1996, 559) for a discussion of the traditions on which Lovel's speeches rely. Whilst Hattaway notes it is unlikely that Platonism was as fashionable as it would be in the mid-1630s (1984, 32), Sanders argues that the neo-Platonism exhibited in *The New Inn*, with Frances Frampul at its centre, follows that of the *salonistes*, which would have been easily recognisable in London in the late 1620s, and that Lady Frampul can be seen as a partial and satiric portrait of the Countess of Carlisle with whom this movement was associated (2000a, 458, 456). Karen Britland, however, argues that a clear cut distinction between Henrietta Maria's brand of Platonism and that of the Countess of Carlisle is problematic (2006, 9-11).

Pru:                               But yet Sir being the first,  
 And call'd a suit, you'll looke it shall be such  
 As we may grant.

Lad[y Frampul]: *It else denies it selfe.*

Pru:    You heare the opinion of the Court.

Tip:   I mind  
  
 No Court opinions.

Pru:   'Tis my Ladies, though.

Tip:    My Lady is a Spinster, at the Law,  
 And my petition is of right.

Pru:   What is it?

Tip:    *It is for this poore learned bird. (New Inn, sig. D1v)*

This interchange between the mock sovereign and petitioner draws attention explicitly to the Petition of Right, and Tipto's comment on Lady Frampul's lack of legal rights as a spinster emphasises his assertion of what he perceives as his own rights. What he asks for, however, is not a redress of grievances, but the (unmerited) advancement of his man, Fly, at Pru's court. As such, his reference to the Petition is actually an abuse of the discourse of rights prevalent in the 1628 parliament, serving to highlight the impropriety of undeserving court favourites and by inference, the propriety of the real Petition of Right. The political significance of the comment on undeserving court favourites in a play written after the assassination of Buckingham and just before the meeting of the new 1629 parliament should not be underestimated.

For their abuse of the rhetoric of rights and privileges Tipto and Fly are, and deserve to be, ejected from Pru's sensible court. Nevertheless, although this passage presents the Petition of Right in a favourable light, it does also set limits to



appropriate petitioning. Whilst Pru indicates that Tipto may ‘command’ of her, Goodstocke’s comment that in doing so he will ‘go without’ suggests that making demands of the monarch will result in a poor reception; Tipto’s ‘sute’ must truly be a suit.<sup>22</sup> Moreover, it must be a suit which is ‘i’the house’ to answer, and ‘such / As [Pru] may grant’. Any such petition, the play suggests, must be reasonable, through proper channels, and something that the monarch is able to grant, or it ‘denies it selfe’ even before it is asked. Pru’s deference to the members of her court here suggests something of the importance of advisers giving – and monarchs receiving – advice, and her reference to the ‘opinion of the court’ invites a comparison between Pru’s and the Caroline court, suggesting that there too, any unreasonable demands will be denied / deny themselves.

Tipto’s refusal to accept the court’s opinion leads Pru to invoke her mistress as an authority seemingly higher than that of the court, insisting ‘’Tis my Ladies [opinion], though’. This places Lady Frampul in an ambiguous position regarding the court and laws of the day’s sports; she becomes both a spinster *under* the law, and *of* the law in making the rules of the game. But it is not Lady Frampul who is supposed to be queen of this court, but Pru, and her subsequent assertion of her authority over Lady Frampul leads to a discussion of the extent of what Pru can legitimately command:

Pru:	Goe and kisse him, I doe command it.
Lad[y Frampul]:	Th’art not wilde, wench!

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<sup>22</sup> Charles I later commented on the inappropriateness of couching demands in the form of a petition: discussing the 19 Propositions sent to the king he argued that ‘Certainly, to exclude all power of denial, seemes an arrogancy, least of all becoming those who pretend to make their address in an humble and loyall way of petitioning’ (Charles I, 1648, sig. F7r).

Pru: Tame, and exceeding tame, but still your Sov'raigne.

Lad: Hath too much bravery made thee mad?

Pru: Nor proud.  
 Doe, what *I* doe enjoyne you. No disputing  
 Of my prerogative, with a front, or frowne;  
 Doe not detrect: you know th'authority  
 Is mine, and *I* will exercise it swiftly,  
 If you provoke me. (*New Inn*, sig. D2v)

Whilst Lady Frampul is concerned that Pru has taken her authority too far – after all, her power and her ‘bravery’ are only loaned to her for ‘the dayes sports’ (*New Inn*, sig. B8r) – Pru is absolutely assured of her sovereign power and authority in this matter, and there is no question for the audience that Pru is far from mad (‘wilde’). Nor is this an abuse of her ‘prerogative’; the on and off stage audiences sympathise with Lovel and with Pru’s rules, not with her Lady’s objections. Lady Frampul’s choice of words here is, however, significant; in later Caroline plays madness becomes associated with tyranny and arbitrary, absolute monarchy.<sup>23</sup> That this play anticipates, if not participates in, this discourse is clear in the terms Lady Frampul uses in continuing to question Pru’s command:

Pru: The royall assent is past, and cannot alter.

Lad: You’l turne a Tyran.

Pru: Be not you a Rebell,  
 It is a name alike odious. (*New Inn*, sig. D3r)

In equating tyranny and rebellion, this interchange seeks to present a harmonious, middle way, advocating co-operation between monarch and subjects and, perhaps, appealing to the Caroline audience for a peaceful session of the upcoming parliament. It cannot be insignificant in the play’s parliamentary context that this

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<sup>23</sup> See Chapter 3, *passim*.

rejection of both tyranny and rebellion comes so close to the play's delineation of appropriate petitioning and royal response.

Despite Lady Frampul's protestations of tyranny, Pru's refusal to hear her complaint is not presented as the tyrannous act of an arbitrary monarch, but rather couched once again in the terms of contemporary legal argument:

Would you make lawes, and be the first that break 'hem?  
The example is pernicious in a subject,  
And of your quality, most. (*New Inn*, sig. D3r)

Lady Frampul has assumed that, because under other circumstances she holds authority over Pru, she is able to circumvent the 'laws' of the game she has set up. It is clear that this is not so, and Pru's argument echoes Caroline concerns, evident in several plays, that in his manipulations of the law, Charles I broke his own (in being the laws of his kingdom) laws.<sup>24</sup> The resulting confusion over what should be held as the highest authority, the king's will or the law, is perhaps echoed in the difficulty of deciphering who has authority at this point in the play: Lady Frampul's concern that she has 'woven a net / To snare [her] selfe in!' (*New Inn*, sig. D2v), suggests that as the instigator of the 'dayes sports', she holds ultimate authority, but Pru's position as sovereign of these sports gives her the power to enforce her own commands. Latimer's and the Host's interjections of 'Just Queene!', 'Brave Souveraigne!', 'A She-Trajan!' (*New Inn*, sig. D3r) emphasise not only Pru's position

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<sup>24</sup> For other examples, see James Shirley's *The Doubtful Heir*, in which Ferdinand deliberately sets Queen Olivia up to break one of her own laws regarding marital fidelity. One of her courtiers asks her 'where shall we expect / The life of that good act, when you begin / A breach of chastitie by so black example' (*Doubtful Heir*, sig. E3r). Soon after, Ferdinand himself faces charges for plotting to use the law maliciously against the Queen - a law which he himself has broken in his marriage to Olivia, being already married to Rosania. This layering of deliberate misuse and breaking of law by rulers (Ferdinand is the rightful king, Olivia is the current queen) illustrates the confusion created when the monarch chooses to disregard established law. See my discussion of Brome's *The Queen and Concubine* in Chapter 3 (pp. 183-187) and Ford's *The Ladies Triall* in Chapter 5 (pp.259-60) for a more detailed exploration of this idea.

of authority, but also the justice of her comments, highlighting the need for obedience to laws from all levels of society.<sup>25</sup> Although Lady Frampul attempts to attribute the popularity of Pru's decision to the fact that 'Prince *Power* will never want her *Parasites*', the play does not endorse this judgement of the mock-sovereign's supporters. Indeed, Pru's statement that justice is the primary concern of her reign ('We that doe love our justice, above all / Our other Attributes' (*New Inn*, sig. D3r)) is no mere posturing; she does attempt to uphold the justice attributed to her.

Although it is clear that it is with Pru that the moral authority lies, the confusion over who holds ultimate legal authority is continued throughout the play. Lady Frampul's concern that Pru will overstep her carnival authority is, after Lovel's two hours and two kisses in the Court of Love, reversed in a complaint that Pru does not use her authority to make him stay:

Lad[y Frampul]: Why would you let him goe thus?

Pru: In whose power  
Was it to stay him, prop'rer then my Ladies!

Lad: Why in her Ladies? Are not you the Sovereaigne?

...

Lad: But had not you the authority, absolute? (*New Inn*, sig. F8r)

Lady Frampul again wishes to change the terms of the 'dayes sports' to suit her own wishes. However, whilst she insists it was Pru's prerogative through her absolute sovereignty (which she had earlier denied her) to make Lovel stay, Pru acknowledges the limits to this authority: particularly in matters of love, sovereigns

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<sup>25</sup> Trajan was known as the best of emperors and renowned for his justice and care for the well-being of his subjects (Benario, 2003).

have no authority.<sup>26</sup> She can, as sovereign for the day, command a kiss for Lovel from her Lady, but it would have been an overstepping of her temporary authority to go beyond this.

In her peevishness, Lady Frampul soon highlights to Pru how temporary her powers are, calling her an ‘idiot Chambermaid!’ (*New Inn*, sig. F8v). In defence of her actions, Pru reminds Lady Frampul of her previous ‘frowardnesse’ regarding Lovel:

Pru: And were not you i’ rebellion, Lady *Frampal*,  
From the beginning?

Lad: I was somewhat froward,  
I must confesse, but frowardnesse sometime  
Becomes a beauty, being but a visor  
Put on. You’l let a Lady weare her masque, *Pru*.

Pru: But how do I know, when her Ladiship is pleas’d  
To leave it off, except she tell me so? (*New Inn*, sig. F8r)

That Lovel, like Pru, also leaves the mock court not understanding Lady Frampul’s true feelings, which is to her disadvantage as well as his, suggests the importance of clarity in relationships between sovereigns and their ‘servants’ (*New Inn*, sig. B7r). The ‘frowardnesse’ Lady Frampul admits indicates a deliberate perverseness in her actions towards Lovel, and perhaps also towards Pru’s authority, indicating a wilfulness that is here associated with beautiful women.<sup>27</sup> Lady Frampul responds

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<sup>26</sup> Love is often used in drama of the period as a means to show the limits to royal or patriarchal authority. In Lodowick Carlell’s *The Deserving Favourite* (printed 1629) the Duke reminds the King that while he can control the behaviour of the object of the Duke’s affections, he can have no control over her heart (sig. B3r). Duchess Rosaura in Shirley’s *The Cardinal* makes it clear that ‘the King... hath no power nor art / To steer a Lovers Soul’ (sig. B3r) despite his control over whom she marries, and the king himself admits that he ‘did exceed the office of a King / To exercise dominion over hearts’ (D1v). It is Ithocles’s attempts to control his sister’s heart in marrying her to Bassanes rather than to Orgilus to whom she is already promised and whom she loves that leads to the devastation of John Ford’s *The Broken Heart*.

<sup>27</sup> This association of woman and wilfulness is raised on several occasions throughout the thesis. See, for example, Chapter 2, p.121; Chapter 3, pp.163-65. Sanders argues that the ‘association of the

that Pru would have understood had she been attentive or observant. But the problem Pru has with understanding when and where her authority applies feeds into a wider problem in *The New Inn* regarding what is meant by what is said, and what could not or should not be misunderstood, which James Loxley describes as a ‘problem of seriousness’. He suggests that Lady Frampul’s response asserts:

that this is a distinction that an utterance makes for the attentive reader, despite the circumstances which have called forth such an assertion. Language, they claim, ultimately reveals the intentions it embodies – only contingent factors such as ignorance, weakness or deliberate fault can in the last analysis impede such communication. (Loxley, 2002, 96)

In a play concerned with the Petition of Right and the powers of the monarch, this problem of transparency is not insignificant; this same emphasis on clarity could be marshalled to support either the king’s or parliament’s arguments over the law in the Petition of Right. Whilst Charles refused an explanation, maintaining that the law and his prerogative needed no further clarification, parliamentary calls for explanation and clarification of Charles’s understanding of the law in the Petition of Right (to avoid such contingent factors as Loxley mentions with regard to authority in the play) could just as well be represented by Pru’s question ‘but how do I know...?’ (*New Inn*, sig. F8r).<sup>28</sup>

These questions of interpretations and authority are punctuated throughout the play by the activities of the inn’s staff and lower class inhabitants. Sir Glorious Tipto’s pro-Spanish attitude leads Butler to argue that he is ‘some sort of reflection on the world according to Buckingham...a flashy, hispanophile courtier’, who, with Pinnacia Stuff and her pretences at gentility, present antitypes which prove the

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aristocratic female protagonist with masquing and performance may also have served to make a Countess of Carlisle analogy obvious to contemporary Caroline audiences’ (2000a, 458).

<sup>28</sup> Loxley understands Pru’s question in a broader sense too, saying that it ‘prefigures much of the critical puzzlement and exasperation that the play as a whole has occasioned’ (Loxley, 2002, 96).

validity of Lovel's ethical treatises during the Court of Love on love and valour (1992b, 175). However, along with Fly, Tipto also serves to draw attention to military matters. Although Tipto's military connections are obvious from his title of Colonel, Fly too is associated with military activity:

Lat[imer]: What calling has' he?

Hos[t]: Only to call in, still.  
 Enflame the reckoning, bold to charge a bill,  
 Bring up the shot i'the reare, as his owne word is,

Bea[ufort]: And do's it in the discipline of the house?  
 As Corporall o' the field, *Maestro del Campo*,

Hos: And visiter generall, of all the roome,  
 He has' form'd a fine *militia* for the Inne too.

Bea: And meanes to publish it?

Hos: With all his titles.  
 Some call him Deacon *Fly*, some Doctor *Fly*.  
 Some Captaine, some Leiutenant, But my folks  
 Doe call him Quarter-master, Fly, which he is. (*New Inn*, sig. C6r)

As well as being a presentation of the dishonest inn-worker who inflates the customers' bills, Fly's position as corporal, lieutenant and Quartermaster (in military terms, usually a lieutenant responsible for finding quarters for the soldiers) raises the issue of billeting in this play already concerned with rights, prerogatives and petitioning. Named as the person responsible for billeting, his home at an Inn presents proper billeting practices: according to Coke and Phelips, 'no one could be compelled to take soldiers but inns, and they were to be paid for them' (Russell, 1979, 336).

Fly's militia is highlighted as a specifically Caroline enterprise when Tipto describes it as 'an exact *Militia*'. His comment that it is 'a fine *Militia*, and well order'd' (*New Inn*, sigs. D6r, D5v), reflect Charles's concerns early in his reign to

improve England's military preparation and build an exact militia, which he later could barely afford to maintain. Indeed, the inn is also an appropriate place for the establishment of a militia as much recruiting for Charles's new militia was done at drinking establishments (Sanders, 1996, 555). The Host's description of Fly's activities at the inn is a series of military puns and the reference to his militia and his enforcement of discipline recalls the imposition of martial law to keep unruly (and unpaid) troops in order.<sup>29</sup> The concern over martial law also presented in the Petition of Right was closely related to billeting, so it is unsurprising that quarter-master Fly is also used to explore military law. Indeed, Fly and his militia are called upon to carry out the punishments decided on for Pinnacia and Nick Stuff: 'Let him be blanketed. Call up the Quarter-master / Deliver him ore, to Flie'.<sup>30</sup> That the sensible, just and 'Mercifull queene Pru' to whom Stuff appeals tells him 'I cannot help you' (*New Inn*, F2v-F3r) suggests that requests to established judicial authorities outside martial law are or have been ineffective. It is, in this respect, relevant that the punishments decided on for Pinnacia and Stuff are put forward, not by Pru, but by the Host and Lady Frampul (whose desire to exercise her authority, as we have seen, is only for her own ends).

Nick and Pinnacia Stuff are, ostensibly, punished for delaying the delivery of Pru's gown whilst they enact Stuff's sexual fantasies (Pinnacia dresses as a

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<sup>29</sup> For an explanation of the military puns, see Hattaway's gloss to II.v.25-8 (1984, 102-3). There was some debate over whether the army were subject to civil jurisdiction. Lindsay Boynton notes that officers frequently claimed an exemption from this for the army in disputes with country magistrates, and that 'By doing so they afforded yet another cogent argument to those who maintained that martial, or military law was essential to govern an army, and against those who venerated the common law as a panacea' (1964, 258).

<sup>30</sup> Blanketing involved being repeatedly thrown in the air and caught in a blanket. Although this was a rough punishment, in comparison with the punishments Lady Frampul and Pru were inventing for Stuff before Pru's court was in session at the beginning of Act II – 'crop'd /With his owne Scizzers' or 'stretch'd on his owne yard / He shold be alittle, ha' the *strappado*' (*New Inn*, sigs. C2v-C3r) – it is relatively mild.



countess and Stuff as her footman). However, it is clear that they are punished for more serious matters than this delay:

Lat[imer]: This gown was then bespoke, for the Sovereigne?

Bea[ufort]: *I marry was it.*

Lad[y Frampul]:                   And a maine offence,  
   Committed 'gainst the *soveraignty*: being not brought  
   Home i'the time. Beside, the prophanation,  
   Which may call on the censure of the Court. (*New Inn*, sig. F2v)

Pru has already forgiven Stuff for the missing gown since she put on her mistress's dress (*New Inn*, sig. C3r); more important is the 'prophanation' their fantasy brings with it. Unlike Pru, Pinnacia has no authority to dress above her station, and her punishment is that of a common prostitute – 'send her home, / Divested to her flanel, in a cart' (*New Inn*, sig. F3r) – reflecting both her low status and the Stuffs' intended use of the gown. Latimer adds to this, 'And let her Footman beat the bason afore her' which continues the reference to the punishment of prostitutes, but may also be a reference also to the charivari, an unofficial, community-imposed punishment for unpopular marriages or married couples who do not fulfil their appropriate roles. Nick and Pinnacia Stuff are punished at all levels of authority and society for acting outside their proper sphere.

That the main concern over the behaviour of the tailor and his wife is their unfounded and unlicensed claim to authority and high position is made clear in the direct comparison made between Pru and Pinnacia Stuff:

Lad:                                   Well! go thy wayes,  
   Were not the Tailors wife, to be demolish'd,  
   Ruin'd uncas'd, thou shouldst be she, *I* vow.

...  
 Pru: *I* will not buy this play-boyes bravery,

At such a price, to be upbraided for it,  
Thus, every minute. (*New Inn*, sig. F8v)

This is once again self-consciously theatrical (the actor playing Pru playing the sovereign is indeed a ‘play-boy’ in the Caroline theatre), and it recalls Pru and Lady Frampul’s earlier conversation about giving the dress Pru has borrowed from Lady Frampul to an acting company. At that point, Lady Frampul was unconcerned about who might later be wearing her dress, thus emphasising that Pinnacia’s crime was to act the Lady, assume a certain authority, without permission. In this respect, it is significant that this interchange arises from Lady Frampul’s anger that Pru had not used her sovereign authority as she wanted her to use it.

The assumption of unusual levels of authority is acceptable under particular circumstances, *The New Inn* argues, but not all. The rewards granted to Pru at the end of the play (her marriage to Latimer and a substantial dowry from Lord Frampul) are for her good sense, and acting appropriately with the power she was given. When all characters stop ‘acting’ at the end of the day’s sports and all return to their appropriate social roles, Pru is no longer a servant but Latimer’s equal. And whilst Lovel’s speeches, the ridiculousness of Colonel Tipto and the cautionary punishments of Stuff and his wife do, as Butler argues, suggest an attempt to ‘reconstruct an aristocratic ideology after the removal of Buckingham’ from Charles’s court (1992b, 175), the play’s concerns are politically broader than the construction of the Caroline court. I would argue that through the discourse of rights, prerogatives and parliaments established from the beginning of the play, *The New Inn* suggests that parliaments too may assert their authority for the good of the ‘body politique’ (*New Inn*, sig. C2v), questioning higher authorities with parliamentary authority when monarchs break their own laws. Whilst upholding the

authority of the true monarch, the play also suggests the need for parliamentary advice:

Pru: Your Ladyship will pardon me, my fault,  
If I have over-shot, I'll shoote no more.

Lad: Yes shoot againe, good *Pru*, Ile ha' thee shoot,  
And aime, and hit: I know 'tis love in thee,  
And so I doe interpret it. (*New Inn*, sig. C3v)

If presented appropriately, with the right intentions (not for personal advancement like Tipto and Fly) and proper acknowledgement of position, parliamentary advice should be given and heeded.

### **Petitioning the King: *The Love-sick Court*.**

While Jonson's play uses the Petition of Right to examine the relationship between subjects and sovereigns, and the appropriate assumption, use and abuse of position and authority, Brome's play *The Love-sick Court, or The Ambitious Politique* uses the Petition as an example of good government to advocate co-operation between parliament and monarch, and emphasise the common good over individual concerns for power and privilege. Readings of *The Love-sick Court* have tended to focus on the courtly activities of the play, discussing the possible husbands for Princess Eudyna, whose marriage is thought to be, for most of the play, the only way to secure the succession and therefore the stability of the State. *The Love-sick Court's* emphasis on love and friendship led Harbage to argue that it was a poor imitation of contemporary courtly plays of neo-Platonic love (Harbage cited in Steggle, 2004, 138), but R. J. Kaufmann argues that rather than an imitation

of the plays popular at court in the 1630s, *The Love-sick Court* is a parody or burlesque of this dramatic genre (1981, 126-7).<sup>31</sup> Butler, following Kaufmann, then interprets the play as a comment upon the seriousness with which Caroline courtiers approached political issues. If courtly drama is representative of courtly thought on politics, then:

Court life, as seen through the drama the court prefers, is a ludicrous farrago of extravagant, conflicting intrigues, remote sensibilities and impossible fastidiousness. In this court, making love has become more important than matters of state. (Butler, 1984, 267)

Courtly, neo-Platonic love, this suggests, has indeed made the court (dramatic and Caroline) politically ‘sick’. I will argue that between its representation of the two (unsatisfactory) alternatives of its title – ‘the love-sick court’, and ‘the ambitious politique’ – the play posits a third, parliamentary, way of governing in its references to the Petition of Right and representation of the country swains, whose importance to an understanding of the political engagement of the play has been much underestimated.

*The Love-sick Court* opens with a comment on the king’s health, which is indicative not only of the state of the court but of the state of the commonwealth: when the head of the body politic is sick, so is its body. Indeed, Disanius’s suspicions as to the cause of the king’s sickness suggest disorder in the country:

I that have not seen him  
Since he was sick, can guess, then at the cause  
Of his distemper. He is sick o’ th’ subject;  
Th’unquiet Commons fill his head and breast  
With their impertinent discontents and strife.  
The peace that his good care has kept’hem in

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<sup>31</sup> Kaufmann discusses in great detail the ways in which Brome’s treatment of love and friendship, courtly language, the sub-plot and the idealising of women to the point of idolatry positions this play as a parody rather than a poor imitation (1981, 109-130).

For many years, still feeding them with plenty,  
 Hath, like ore pampered steeds that throw their Masters,  
 Set them at war with him. (*Love-sick Court*, sig. F8r)

At the beginning of the play, Disanius sets up a conflict between the king and his people, and his sickness ‘o’th’subject’ can be read as weariness with a *particular subject* (the marriage of his daughter) or as caused by his *subjects*. More than this, however, the reference to the Commons raises the issue of parliament, suggesting that it is the House of Commons which is ‘unquiet’.<sup>32</sup> To Disanius, the Commons’ discontents are ‘impertinent’, suggesting both that he believes they overstep their authority in what they ask and that their opinions are irrelevant to him, if not to the king. Although his criticism is directed primarily towards the Commons in their complaints despite living in years of peace and plenty that the king has provided, Disanius’s horse-riding analogy is not uncritical of the king, both in that he believes that he has ‘oer pampered’ his subjects, and in the suggestion that the king is no longer in control.<sup>33</sup> It was a particularly appropriate image for a Caroline audience.<sup>34</sup>

Whilst Disanius emphasises conflict, and suggests the way to restore the king to health is to execute the ‘leading heads’ of the Commons (*Love-sick Court*,

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<sup>32</sup> Whilst it is possible that here Commons means ‘the common people, the commonality; the lower order, as distinguished from those of noble or knightly or gentle rank’ (*OED* ‘commons’ 1a), that the ‘swain heads of Thessaly’ (*Love-sick Court*, sig. K3r) are representatives of the commoners suggests that Commons should also be taken to mean the House of Commons (*OED*. ‘commons’, 2c). Of course, in the 1630s, the House of Commons would have been very quiet.

<sup>33</sup> An analogy was made between accomplished horse riding and keeping control of both a man’s own passions and those over whom he governed: ‘Taming a great beast was a taming of nature’s wildness and so, like the Caroline masques and paintings in which disordered nature is calmed, represented an act of government’ (Sharpe, 2000, 100).

<sup>34</sup> In the 1630s two paintings by Van Dyck and a statue by Hubert Le Sueur presented Charles I on horseback. For a discussion of the paintings in relation to Caroline court and political activities, see Strong, 1972.

sig. F8v), the king himself is much more aware of the need to listen to their concerns and appease them:

To determine  
 Of you *Eudyna*, is by heaven committed  
 In present unto me. On you depends  
 The future glory and prosperity,  
 Both of my house and Kingdom. Tis besides,  
 Exacted of me by my near Allies,  
 And by my Subjects (whom I must secure)  
 To constitute a Successor: And no longer  
 Will I expect your answer, then five dayes.  
 By then you must declare who is your husband;  
 Or else expect one from my self; the man  
 Whose name I am as loth to mention  
 As you to hear, even *Stratocles*. (*Love-sick Court*, sig. H5v)

The centrality of Eudyna's marriage for the future stability and prosperity to the state is clear, and it is the king's prerogative, here a divinely given right, both as monarch and father to determine her future. However, he does allow her a choice, providing that this choice is made sufficiently quickly to calm the fears of his allies and his people. The unpopular action he threatens, using his power to impose a husband upon her who might be distasteful to them both, is defended in terms of political necessity; he 'must' secure his allies and his subjects.<sup>35</sup> That he is willing to put his subjects' wishes and his allies' concerns before his own desires in pressing for a marriage to Stratocles which he and she find personally distasteful emphasises the king's concern for his people and his country.

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<sup>35</sup> This might be related to the arguments of 'necessity' Charles advanced for the exercise of his prerogative powers. Although this particular instance is an admirable use of necessity, many thought that Charles's use of such arguments allowed him too much freedom to act outwith the law. There were those in the Parliament of 1628 who believed that Charles resorted to the Forced Loan out of necessity to fund the war and that voting sufficient parliamentary supply would relieve the necessity and therefore Charles would return to parliamentary taxation for funding. Lord Keeper Coventry noted in his speech to open the 1628 Parliament, that 'just and good kings finding the love of their people and the readiness of their supplies may the better forbear the use of their prerogatives and moderate the rigour of their laws towards their subjects' (quoted in Russell, 1979, 339).

The king's availability to his people and his willingness to hear their grievances is emphasised in his reception of the Commons:

Dis[anius]: O here they come. These be the principals  
 The heads, the heads, forsooth they call themselves.  
 Head-carpenter, head-smith, head-plowman, & head-shepherd.

Kin[g]: Nay, pray approach; & seem no more abash'd  
 Here then amongst your giddy-headed rowts,  
 Where every man's a King, and wage your powers  
 Gainst mine in foul defiance. Freely speak  
 Your grievance, and your full demand.

1 Rus: Tis humbly all express in this petition. (*Love-sick Court*, sig. G2r)

Disanius's dismissal of them as self-titled 'heads' followed by a list of their occupations emphasises the lowliness of their status in his opinion, particularly in comparison with the king, who is the 'head' of the body politic. The king too criticises their actions away from court, suggesting that there, 'amongst [their] giddy headed rowts', they act as if they are kings, and pit their power against his as if they were equal. The reference to 'foul defiance' has political connotations regarding the Petition of Right, as Parliament refused to pass the requested subsidy bill until Charles assented to the Petition confirming subjects' rights and limiting the use of his prerogative in particular areas. Despite Brome's king's accusation of the 'heads' overstepping their authority amongst their peers, he is prepared to give them fair and free hearing when they present themselves to him in the proper manner as representatives of his subjects. The combination of demands and grievances the king expects from the country swains is particularly resonant of the Petition of Right; 'grievance' was a heavily loaded word in the context of the 1628 parliament. The Petition was a means to force the king to address the grievances of the people, and Coke had named the Duke of Buckingham as the 'grievance of grievances' (quoted in Foster, 1974a, 23). In recognising that these men have a grievance, the

king, like Charles in his second response to the Petition of Right, acknowledges they have legitimate grounds for complaint. Indeed, that they choose to present these grievances to the king in the form of a petition is made more striking in the Caroline political context, particularly as it follows soon after the king's offer to explain one of Thessaly's laws to the assembled courtiers:

My lords, altho' our Lawes of *Thessaly*  
To you, as well as to our self, are known,  
And all our customs, yet for orders sake  
I shall lay open one to you. (*Love-sick Court*, sig. G1v)

The Caroline Commons' requests that Charles explain what was meant by certain laws, rights, and prerogatives, and the perceived need for this kind of laying open the law, was in part what led to the Petition of Right. The king's comment that the laws are as well known to these 'heads' as to himself may reflect Charles's refusal to give an explanation, but Thessaly's king, in a demonstration of good kingship, and 'to keep order', agrees to an explanation.<sup>36</sup>

Disanius's proposal to execute the ringleaders is one of the first suggestions in this play that it is courtiers who prevent a peaceful accommodation between the king and the Commons, and reflects a similar attitude current in the Caroline period. During the 1620s, the courtier in question was the Duke of Buckingham.<sup>37</sup> In this play Stratocles, 'the ambitious politique' of the subtitle, is explicitly noted as the cause of trouble. His disruptive presence is emphasised by his first appearance:

Jus: You are too sharp *Disanius*. There's a means,  
As milde as other of the Kings clear Acts,

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<sup>36</sup> In relation to parliamentary activity regarding Charles's first reply to the Petition of Right, it is interesting to note that the Commons later re-petition the king through Placilla to adjust his initial response to their petition (*Love-sick Court*, sig. L2v).

<sup>37</sup> Kaufmann suggests that Stratocles might relate to the 'potent figure of Strafford' at the Caroline court of the 1630s (Kaufmann, 1981, 111, footnote 6).



In agitation now, shall reconcile  
All to a common peace, no doubt.

Dis: What's that *Justinus*?

Jus: Stay: here comes *Stratocles*. *Ent. Strat.*

Dis: I fear, in that  
Ambitious pate lies the combustable stuff  
Of all this late commotion (*Love-sick Court*, sig. F8v).

Stratocles is indeed 'combustible' in being prone to passions, as demonstrated in his later attempts to abduct and rape the Princess. Disanius's suspicions that he is to blame for the disorder in the country are confirmed by the fact that Stratocles's entrance quite literally interrupts the explanation of a way to restore peace between the King and Commons. Impeaching Buckingham was not the intention of the 1628 Parliament, but their attempts to do so previously had contributed to Charles dissolving the Parliament of 1626. At the 1628 session, the Commons chose not to antagonise the king in renewing their attempts to bring down Buckingham, but to focus on recent grievances and the maintenance of subjects' rights and liberties.<sup>38</sup> However, after Charles's first unsatisfactory answer to the Petition of Right in which the king willed that 'right be done according to the laws and customs of the realm' but did not acknowledge that wrongs had been done to his subjects or give an indication that he would not abuse his prerogative power in the future, the Commons once again considered impeaching Buckingham, only prevented by Buckingham's own engineering of a further request to the King to give an alternative answer to the Petition. In making Stratocles ambitious and the cause of trouble but also distasteful to the king and courtiers, Brome both allows and disallows the association of Buckingham and Stratocles and suggests a more

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<sup>38</sup> Russell notes how unusual it was for Parliament to concentrate so exclusively on one issue for so long: 'A House of Common which would, for three months, neglect religion, trade, and legislation in order to stick to one issue was showing a purposefulness which had not been seen for a long time' (Russell, 1979, 344).

appropriate royal scepticism towards overly ambitious courtiers than Charles had shown in the 1620s.

Stratocles's ambition is based in theories of kingship which ascribe divinity to kings:

Why is man  
 Prescrib'd on earth to imitate the Gods,  
 But to come nearest them in power and action?  
 That is to be a King! That onely thought  
 Fills this capricious breast. A King or nothing! (*Love-sick Court*, sig. F8v)

It is this claim for the god-like powers of kings which immediately follows Disanius's suggestion that Stratocles is the cause of the 'commotion'; a desire for personal power, apparently unbounded by law and subject to whim, causes the disruption to the commonwealth in Thessaly.<sup>39</sup> It is significant that the aspiration to capricious absolutism is stated by the courtier to whom the king would not want to marry his daughter; this is not, the play suggests, an appropriate way to think about governing. In this way, Stratocles makes a striking contrast with the current king, who seems to place his country's good above his own. Indeed, almost immediately before Stratocles declares that all of his power and position 'is as none' without 'majesty' which to him is 'The supream / Estate on earth, and next unto the Gods', the king expresses his disappointment that the Oracle has not helped him to give 'My countrey satisfaction, and my self' (*Love-sick Court*, sig. I1v, I1r). That he expects the same solution to satisfy the people and himself simultaneously, suggests that the second wish is closely bound to, if not accomplished by the first. In demonstrating his own understanding of his authority, the king only makes

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<sup>39</sup> *OED*, 'caprice', 2 and 3. Ideas of the divinity and divine right of kings and its treatment in Caroline drama will be developed in Chapter 2.

reference to his divinely given rights in relation to deciding Eudyna's future.

Although he is aware of his power – shown particularly in his conversation with the rustics discussed above and in an interchange with Thymele in which he refuses, albeit with her interests at heart, to explain himself ('My will has been above your question. Pray / Let me request you go' (*Love-sick Court*, sig. L2v)) – he uses this power for the good of his country, not to raise his own position to a god-like divinity.

The Commons too are aware of the king's power. The 'heads' who present their petition at court are representative of all of the king's subjects, as indicated in their comments when they approach the king:

2 Rus: By all means have a care that, to any question, we give the King good words to his face; He is another manner of man here then we took him for at home.

3 Rus: I sweat for't. I am sure I have scarce a dry thread in my leather lynings.

4 Rus: They made us heads i' the country: But if our head-ships now, with all our country care should be hang'd up at court for displeasing of this good King, for the next Kings good our necks will not be set right again in the next Kings reign I take it.

*(Love-sick Court*, sig. G2r)

The reference to the rustics being 'made heads i' the country' suggests election, or at least nomination, and tightens the connection between these rustics and parliament suggested by their petition of grievances. Nevertheless, although they had been made 'heads i' the country', here they are obviously subject to a higher authority, whose power they had much underestimated; he is 'another manner of man here'. Although described as 'good', he does have the power to hang men who displease him, but this power is couched in terms of political legacy, making them

an example so that the next king will not have to deal with similar disobedience. Kings, they themselves suggest, must be approached in the proper way, and this is through petitioning and with deference ('good words'). In this way, the play echoes the importance of appropriate petitioning and approaches to the monarch suggested in *The New Inn*. When considered in a parliamentary context, this also adds a further dimension to their concern to give the king 'good words' in that as a governmental body, they must be careful to give the king morally sound advice. The use of the word 'countrey' here too requires further exploration. The earlier (albeit disparaging) references to their occupations and their title as 'rustics' associate them with the countryside, and Martin Butler understands the rustic 'Swain heads of Thessaly' (*Love-sick Court*, sig. K3r) in relation to other plays of the period such as Brome's *The Queen and Concubine* and *The Queenes Exchange*, positioning them in a framework which contrasts court and country (county) ideologies, making the country morally superior to the court (Butler, 1984, 267-8).<sup>40</sup> In the more specific parliamentary context I have established for these men, however, not only are they from the country(side)/counties, but they are representatives of the whole country (England). Thus their 'countrey care' is not rustic innocence or limited to their county; their concern is for the country as a whole.<sup>41</sup> The idea that these 'rustics' could be hanged for their concern for their country is discomfiting in the context of the royal and parliamentary activities of Charles's reign.

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<sup>40</sup> See Chapter 3 for my discussion of *The Queen and Concubine* (pp. 177-191) and *The Queenes Exchange* (pp. 147-165).

<sup>41</sup> Richard Cust and Peter Lake argue that although it has 'become a commonplace of modern scholarship that when a seventeenth-century Englishman spoke of his "country" he was referring to his county', for Richard Grosvenor, (MP and local governor) country meant both county and the country as a whole (Cust and Lake, 1981, 48-9).

The ‘country care’ of the Thessalian rustics is contrasted throughout the play with an apparent lack of concern for the country by the courtiers. The opening scenes of political seriousness at court develop into a romantic drama revolving around the princess’s choice of husband between two princes, Philargus and Philocles, and Stratocles’s attempts to engineer his own marriage to Eudyna. The princes are sworn brothers, and each attempts to uphold the other’s claim to the princess to his own cost. The way they behave towards each other, and their courting of Eudyna as an ideal, divine woman (‘Can I look on her and ask a Reason? / O the divinity of woman’ (*Love-sick Court*, sig. H3r)) rather than an object of desire, is reminiscent of the cult of neo-Platonic love surrounding Henrietta Maria at Charles’s court in the 1630s.<sup>42</sup> The alternatives the play seems to present for Eudyna’s possible husband, then, are representatives of grasping capricious absolutism in Stratocles or of ineffective neo-Platonism in Philocles and Philargus. Neither are presented as particularly viable options.

The demands that love and friendship make on the brothers bring them to forget about the point of the marriage: to secure the succession and the stability of Thessaly. Only once, whilst trying to defer to his brother’s happiness does Philargus remember the State: ‘But how can you forgo that equal interest / You have with me in *Thessaly* and *Eudina*’ (*Love-sick Court*, sig. K7v). The collocation of Eudyna and Thessaly here implies a representation of the one in the other which occurs throughout the play. However, Philargus’s concern is still for the sacrifices Philocles is offering to make, not for the state or the princess themselves, emphasised in the fact that this conversation occurs whilst the brothers delay

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<sup>42</sup> See Kaufmann, 1981, 127-9, Lynch, 1967, chapters III and IV, and Britland, *passim*, especially 6-13 for a fuller explanation of neo-Platonic love at court. Lesel Dawson gives a brief over-view of the doctrine of Platonic love (2002, paragraphs 1-10).

answering the king's summons to court to determine the marriage and succession, instead arguing over which of them will abandon his claim in favour of the other. Disanius attempts to be the voice of reason, and encourages them to return to the court:

I could even swadle'em both for a brace of Babies.  
Your folly makes me mad: will you return  
Yet to the presence, both of you? (*Love-sick Court*, sig. K7r)

In commenting on the childishness and folly of this behaviour, Disanius also passes comment on the frivolity or silliness of any court's absorption in this kind of activity. He is aware of what is at stake, and tries to press this upon his nephews:

Nephew, come, be wise:  
It is a crown that Courts you; and the name  
Of friend, or Brother ought to stand aloof,  
And know a distance, where such dignity  
Is tendred. Take your opportunity. (*Love-sick Court*, sig. K7r)

Disanius undermines the posturing of their courtly friendship by bringing their inflated arguments down to a practical reality: what they 'ought to do'.<sup>43</sup> If, as in Butler's argument, the neo-Platonic plays of the court reflect a courtly over-concern with 'love' and lack of concern with politics, this sharp reminder of what ought to take precedence at the Thessalian court is also a rebuke to the Caroline court for its preoccupation with such ideas of neo-Platonism and courtly love. The potential play on 'Courts' as both 'courting' and 'becoming the centre of a royal court' reminds the audience, if not the princes, of the purpose of their dispute. Making the

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<sup>43</sup> Kaufmann argues that the subplot also serves to undermine this courtly behaviour. In this subplot there are also three potential husbands for Doris, the waiting woman, who are specifically paralleled with the princes and Stratocles. Placing the courtly behaviour amongst the servants illustrates how ridiculous it is. Doris agrees to marry whichever of them is servant to the prince who marries the princess, or to marry Geron if Stratocles is successful in gaining her hand. Disanius's interventions though, question this courtly posturing from within the main plot too (Kaufmann, 1961, 122). That their servants neglect their duty to the princes whilst they court Doris can be likened to the princes' failure to serve the king/ state whilst they court Eudyna.

princes the ones who are courted rather than courting feminises them and their indecision.

The princes' lack of manliness is also associated with a lack of reason. It is not that the twins do not love Eudyna, but that their approach to her is inappropriate, both in their inaction and the terms in which they describe it. Philocles places his love for her above reason and virtue:

Fond reason I disclaim thee,  
 Love is a strain beyond thee, and approaches  
 The Gods estate: Friendship's a moral vertue  
 Fitter fr [*sic.*] disputation, then observance.  
*Eudina. O Eudina!* In what price  
 Art thou with me, for whom I cast away  
 The Souls whole treasury Reason and Vertue? (*Love-sick Court*, sig. H2r)

Philocles's contrasting of moral virtue with how love should be treated implies that action should be taken where love is concerned, something belied by the brothers' failure to act on their professed love for Eudyna. More important, however, is that Philocles here claims he will voluntarily give up reason and virtue to pursue Eudyna. Philargus too couches his love in these terms:

But, where [love] rules and is predominant,  
 It tiranizeth; Reason is imprison'd;  
 The will confined; and the memory  
 (The treasury of notions) clean exhausted;  
 And all the sences slavishly chain'd up  
 To act th'injunctions of insulting love,  
 Pearch'd on the beauty of a woman. (*Lovesick Court*, sig. H2v)

Although Philocles and Philargus do not abandon reason for passion/desire as could be inferred from these speeches, they do in their foolish deference to each other.<sup>44</sup>

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<sup>44</sup> The abandonment of reason is not, however, consistent with neo-Platonic thought. In his discussion of court masques, Kevin Sharpe argues that:

Thus this court's attention to Platonic love is also shown as a movement away from reason, and the political parody implies the same for the Caroline court, despite its self-representation as the haven of reason and beauty in masques such as *Tempe Restord*.<sup>45</sup> The 'tyranny' Philargus ascribes to love associates irrational desire with arbitrary authority, a trope which is returned to repeatedly in Caroline drama.

Whilst the princes' idolising of Eudyna is criticised as politically ineffective, Stratocles's attempt to abduct and rape the princess provides a concrete connection between sexual desire and political ambition in the play (Steggle, 2004, 141). This connection between uncontrolled / uncontrollable desire for a woman and desire for power is explored in several plays of the period, particularly regarding absolute, arbitrary rule, and in these terms it is important to remember that Stratocles's visions of majesty involve absolute divine power.<sup>46</sup> In contrast with Stratocles, whilst Philocles and Philargus profess to love Eudyna, they do not seem to desire her. Steggle suggests that they do not love her in 'any meaningful sense' because 'neither brother seems properly aware of the power of heterosexual desire or of the will to power' (Steggle, 2004, 140, 141).<sup>47</sup> However, too much of this is dangerous; if it were not, then Stratocles's actions would not be so strongly condemned in the play, in other courtiers' condemnation of him, in the distaste for his potential

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The love we read of in the masques is Platonic love. In the masques, as in Neo-Platonic theory, beauty, that quality which expresses the virtues, perforce attracts them to itself, and so draws those attracted to the love of the good which raises them above the plane of sense and appetite (the antimasque) to the sphere of reason, the soul (Sharpe, 1987, 203).

Whilst Philocles and Philargus have clearly raised themselves above the physical, they have not moved towards, but rather away from reason.

<sup>45</sup> This criticism of Caroline government in terms of rationality also feeds into a discourse of reason and law, passion and absolutism current throughout the period, which I will discuss in detail in Chapter 3.

<sup>46</sup> The connection between desire and absolutism will be explored in more detail in Chapters 2 and 3.

<sup>47</sup> This apparent lack of desire is consistent with the play's neo-Platonism. In conventional platonic terms, 'such love transcends physical attractions, it is the noble attitudes of what is best' (Parry, 1981, 185).



marriage to Eudyna, and in his ultimate repentance. Indeed, his uncontrolled desire costs him the support of the Thessalian rustics:

Those are enough  
 To hang the man [Matho], and turn his Lord out of  
 Our Countrey favour: If we find he has  
 That plot upon the body of the Princess  
 Of Rape and Murder. He can be no King  
 For us: for, sirrah, we have wives and daughters. (*Love-sick Court*, sig. K3r)

Again, their ‘countrey favour’ suggests local and national concerns; an ambition for too much power would put courtiers (and kings) out of favour with the country.

While Steggle suggests that the swains’ concern over Stratocles from this point on is not so much in relation to his ruthlessness *per se*, but his sexual untrustworthiness (Steggle, 2004, 141), the connection between sexual desire and political power in this play makes it difficult to suggest that their political concerns are not equally prevalent. Greedy courtiers (or kings with aspirations to god-like absolutism) cannot be allowed to take what rightfully belongs to others, be this their wives, daughters or material property. In preventing a power-hungry courtier from seizing what is not rightfully his, the Swains’ actions may also be related to their earlier association with the Petition of Right, which prevented the improper seizure of persons and property at the King’s will.

The Princes’ irrationality and consequent failure to respond to the king’s summons through their courtly attempts to defer to each other’s happiness almost allows Stratocles into power:

King: No answer, no return? Must I intreat,  
 Yet have my undeserved favours slighted?  
 [...]

King: ... So, call in Stratocles. (*Love-sick Court*, sig. L1v)

The play suggests that it is the courtiers' playing at neo-Platonic love which potentially allows arbitrary, grasping absolutism to thrive at court. It is only Stratocles' refusal to marry the princess that delays the King's decision long enough for the truth to be revealed that Philocles is actually Eudyna's brother, so the succession falls to him; Philargus then is free to marry the Princess without abandoning the principles of friendship expounded throughout the play. '[A]s *Juno* to her *Jupiter*, / Sister and wife' (*Love-sick Court*, sig. L6v), Placilla can marry Philocles, whom she has loved apparently incestuously throughout the play, and Stratocles, now repentant for his former ambition, fades from the action after refusing the princess in marriage.<sup>48</sup> The removal from the action of those who assert absolute authority in the happy resolution of the drama is indicative of the need to temper absolutism in order to restore order and harmony in the country.<sup>49</sup>

This idealised conclusion, in which the court is returned to order, almost obscures the potential for disaster caused by the Princes' neglect of duty explored in earlier scenes. Their concern for each other's future makes them completely unaware of Stratocles's scheming to undermine both of them and take power and Eudyna for himself. He arranges that the brothers meet each other in the North Vale Of Tempe to duel. The note his servant Matho composes for each of them is significant in criticising the brothers' courtly behaviour: '*Brother Philocles, we are*

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<sup>48</sup> Steggle argues that Placilla's incestuous feelings for her 'brother' suggests self-parody on Brome's part in relation to Offa's lust for his sister Mildred in *The Queenes Exchange* (Steggle, 2004, 139). However, the extent of the surrender to the unnatural desires of incest are also indicative of the state of the commonwealth with regard to law: despite the brothers' lack of concern for the State and Stratocles attempts, the laws of Thessaly are not broken: Placilla never acts on her incestuous desires and is rewarded with lawful marriage to her beloved at the end of the play. In contrast, Offa's pursuit of his sister illustrates the potential chaos which could ensue if the law is disregarded (see Chapter 3, pp.159-61), and the consequences of Giovanni and Annabella's incest in John Ford's '*Tis Pity Shee's a Whore* demonstrates the fatal results of a complete surrender to will over the rule of any kind of law.

<sup>49</sup> See my discussion of *The Queen and Concubine* in Chapter 3 (pp.177-191, especially pp. 188-9).

*the laughing stock of the Nation; and injurious both to the King, our Countrey, the divine Eudina, and our selves, by our childish love* (*Love-sick Court*, sig. I5v).

Kaufmann argues that the note reminds the audience of the comic appearance and childishness of their conduct (Kaufmann, 1981, 119), something emphasised by the comedy of their duel: ‘They espie one another draw, and pass at each other, instantly both spread their arms to receive the wound’. When this ploy fails, ‘[Philocles] offers to kill himself, *Philargus* closes with him. They struggle, and both fall down, still striving to hold each others sword. &c.’ (*Love-sick Court*, sigs. K1r, K1v). More important in the challenge to a duel, however, is the threatened injury to the king, country and princess which their courtly inaction causes. Their folly will cause damage to the king (of Thessaly and, by analogy, of England) in terms of reputation and in answering the petition of the Commons, and their disregard for the country will, of course, damage the state. Whilst the brothers fight over which one will kill himself so the other can marry Eudyna, Stratocles abducts the princess, planning to rape her, so their delay is indeed potentially injurious to the court and the Princess. ‘The main critique’, as Matthew Steggle argues, ‘that the play makes of the cult of courtly romance is that it makes effective civic government impossible’ (Steggle, 2004, 139).

Kaufmann argues that there is no more significant action after the delivery of the duel challenges until the beginning of the final act (Kaufmann, 1981, 120). However, this neglects the way in which the crisis of Eudyna’s rape is averted:

We are the heads of *Tempe*; and the chief  
Swain heads of *Thessaly* (the King has known us)  
And here we came to lay our heads together  
For good of common wealth. Here at the verge  
Of this adjoining Thicket is our Bower

Of consultation; and from thence (regardful  
 Ever with eye and ear for common good)  
 We saw a beard pull'd off; and heard that mouth,  
 (Which is now dumb) open a plot, unlike  
 The pittiful complaint he made to us. (*Love-sick Court*, sig. K3r)

In the context of the 'swain heads' as parliamentary figures, this gathering at Tempe can be understood as a parliamentary session. Although it has not been called by the King, the need for it is clearly evident, as the swains then have the necessary information to help the princes rescue the princess. That this practical rescue is closely related to helping the country as a whole is emphasised in the repetition of the idea that they meet 'for good of common wealth' with their eyes open for the 'common good'. The reference to Tempe here may be an allusion to Aurelian Townshend's masque *Tempe Restord*, performed at court in 1632, in which the valley of Tempe which has been under the control of Circe (uncontrolled desire) is returned to reason by Charles and his Queen in the forms of Heroic Virtue and Divine Beauty. In this way, the play not only parodies neo-Platonic courtly drama, but questions the ideologies presented in the court masque. In turning the masque's reason of Tempe over to parliament, (where these courtiers only visit occasionally either to indulge in foolish duels or commit acts of sexual violence), Brome appropriates royal discourses of reasoned behaviour for parliament, and associates neo-Platonic love (with its cult of divine beauty) with ineffective government and lack of concern for the state. It is not enough to present a theatrical discourse of reasonable behaviour; the court must also behave reasonably, and to do so, the king must call a parliament.

Although it meets without royal permission, the self-constituted parliament is wholly loyal to the king and the princess. Having captured Matho and Stratocles

in their attempts to kill the princes and rape the princess, they debate what to do with them:

Now it remains, that we advise our selves,  
Brethren of *Tempe*, that since these delinquents  
Are fallen into our hands, that we discharge  
Our Countrey loyalty with discretion,  
And not release him from our power, but by  
The power above us. (that's the kings) wee'l wait  
On you to court. (*Love-sick Court*, sig. K4r)

They clearly acknowledge the king's authority to be higher than theirs, although it should be noted that they are aware that they too have power, from which Stratocles will not be released until theirs is superseded at court. Whereas previously their 'country care' required that they petition the king, it seems here that discharging their 'country loyalty' involves not only apprehending the criminals, but taking them to the appropriate place and person for judgement.<sup>50</sup> This parliamentary gathering, although they have previously questioned the king, can still be loyal in carrying out their duties under him. The Caroline parliament, by extension, can remain loyal to the king despite their Petition in 1628, and could be both loyal and useful if called in the 1630s.

When caught by the country swains, Stratocles realises that he is out numbered – 'You have ods o' me' (*Love-sick Court*, sig. K3v) – and this too is Matho's excuse for revealing their plot:

Str. Coward, slave,  
Thy faintness hath betray'd me.

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<sup>50</sup> The difficulty of ascertaining the appropriate authority in the crisis of legal authority brought about by the conflict between the personal rule and rule by common law will be expanded upon throughout the thesis. See Chapter 3 for a discussion of the confusion which arises in law through the competing authority of prerogative and common law and Chapter 5 for a discussion of the absence of proper authority.

Math: No, 'twas ods,  
 Such as men meet that fight against the Gods.  
 (*Love-sick Court*, sig.K3v)

While his reference to the gods may be related to the Delphian oracle which stated that Philocles and Philargus would both win the prize of crown and princess, there is an interesting transference of the god-like power from those with a claim to absolute rule (here represented by Stratocles) to the parliamentary swains. The greater number of them, as with Stratocles' arrest, is significant; only with a parliament can the court take care of the State, embodied here in Eudyna. The usefulness of the Swain-parliament both in their earlier petition and in their immediate action for the Princess is highlighted when the king draws attention to the uselessness of the courtiers regarding Eudyna's disappearance:

Bereft of all my joyes and hopes at once!  
 Is there no comfort, nor no counsel left me?  
 Why stand you gazing thus with sealed lips?  
 Where is your counsell now, which you were wont  
 In trifling matters to pour out in plenty?  
 Now, in the peril of my life and state  
 I cannot get a word. (*Love-sick Court*, sig. K4r)

In the context of the 1630s, when neo-Platonism held sway at court and Charles ruled without a parliament, the play's emphasis on the usefulness of parliaments 'for good of common wealth' and for the protection of the king, his subjects, and the State must be seen as a pointed political statement. Steggle, Butler and Kaufmann, concentrating on the potential for political commentary in the parody of courtly drama, do not take the political implications of petitioning or parliaments raised by the country swains sufficiently into account. Steggle's commentary describes the Swain heads as 'good-hearted though stupid' and 'unsophisticated but sincere' rustics, but does acknowledge that the play suggests the future of good government in Thessaly remains in their hands and with Disanius (2004, 141);

Butler, however, notes only the contrast of good country counsel and courtly royal favourites (Butler, 1984, 267-8). To do this is to miss the centrality of the swains' parliamentary discourse, action and concern for the commonwealth to the movement and political impact of the play.

*The Love-sick Court's* emphasis on parliamentary effectiveness notwithstanding, it should be noted that the play's king himself is not often criticised. He deals fairly with the country swains despite their 'foul defiance'; he tries to act on their petition, and uphold his vow to secure the succession; and he agrees, mercifully, to Eudyna's request to pardon Stratocles for his offences. It is clear that it is his court and courtiers, not the king, who are presented as hindering the good of the commonwealth in *The Love-sick Court*. Brome's king is an example of good monarchical rule, but this rule is not effective without the cooperation of, and his collaboration with, the country swains. Performed in the 1630s, the play comments on the need to call a parliament, which has already demonstrated its care for the country, and which can do so again with loyalty to the crown. The alternatives – the absolute rule of ambitious, rapacious men or the ineffectiveness of neo-Platonic courtiers – do not provide a satisfactory or secure method of government. The king's rule in consultation with the country swains provides a reasonable middle way between absolutism and inaction.

## **Conclusion**

In 1628, the Petition of Right brought the relationship between the royal prerogative, the common law and the rights of Charles's subjects into sharp focus,

and highlighted Parliament's role in defending the rights and liberties of English people. Whilst Jonson's *The New Inn* picks up on this immediate political context, debating its potential adjustment of powers, privileges and appropriate roles, including a close engagement with the terms and grievances presented in the Petition, Brome's *The Love-sick Court* takes a broader perspective, using a dramatic presentation of the Petition to illustrate good kingship and to advocate, through the 'countray care' of the Swains and the ineffective neo-Platonic actions of the courtiers, parliamentary participation in government for the good of the commonwealth. Both plays emphasise the need for co-operation between the king and parliament, *The New Inn* warning subjects not to assume more authority than they should but praising their appropriate use of authority and influence, and *The Love-sick Court* presenting the dangers to the king, the state and the people when there is no parliament, and illustrating parliamentary effectiveness, particularly in safeguarding liberty and property. Almost at the border between Charles's parliamentary rule of the 1620s and personal rule of the 1630s, the Petition of Right, and these plays which depend on it for their political impact, provide a valuable summary of the political and legal concerns of the Caroline period; the issues raised in this chapter regarding the divine right of monarchy, the relative positions of prerogative and law, and the appropriate use of authority will be expanded upon in the chapters which follow.



## Chapter 2

## **Shaking the foundations of royal authority: From divine right to the king's will**

‘The King is above the Law, as both the author, and giver of strength thereto’, argues James VI and I in *The True Lawe of Free Monarchies* (1603, D1v). For Henry of Bracton, writing much earlier in c1235, but often cited as a legal authority in the early Stuart period:<sup>1</sup>

The King must not be under man but under God and under the law, because the law makes the king [Let him therefore bestow upon the law what the law bestows upon him, namely, rule and power] for there is no *rex* where will rules rather than *lex*. (Bracton, 1968-77, 33)

Theories of the foundations of royal authority such as rule by divine right, patriarchalism, contract and designation led to different arguments over the relative positions of the king, the people and the law. Having first laid out the claims these theories make for the basis and extent of the authority of the king, this chapter will explore the changes in the representation of the foundations of monarchical authority on the Caroline stage in Massinger’s *The Roman Actor* (1626), *The Emperour of the East* (1631) and *The Guardian* (1633), and the effect these changes have on an understanding of the relationship presented between the king and the

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<sup>1</sup> For example, Edward Coke quotes this passage of Bracton in *Reports 4* (1635c, sig. B5r).

law. It will argue that from presenting a stage-monarch whose word is law, and who justifies all his actions by his quasi-divine status in *The Roman Actor's* Domitian, Massinger's rulers gradually come to be seen as powerful, wilful and, significantly, merely mortal men, whose authority and motives for their actions can be questioned.

### **The Foundations of Authority**

Arguments regarding royal sovereignty, how it is gained and whether it can be revoked, play a fundamental part in the understanding of legitimate legal authority, and the relationship between the king and the law. There were several theories which asserted or contested the absolute, unquestionable, irrevocable authority of the monarch. This section will lay out the understood foundations of royal authority in theories of divine right, including patriarchalism and designation, which held that the king was accountable only to God, and was thus above the law. Then, it will briefly sketch out some of the ways in which this assertion was contested, before examining the main points of argument concerning the relative positions of the king and the law.

The doctrine of divine right rule argued that the king received his authority directly from God, and was answerable only to God.<sup>2</sup>

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<sup>2</sup> Authority through divine right was not limited only to monarchy. The doctrine stated that once and however it was established, any government was upheld and authorised by God. This applies to any form of government, monarchy, aristocracy, democracy or a mixed constitution, and the manner of institution of this government (hereditary monarchy, election, conquest) is irrelevant to the unquestionable and irreversible nature of this power.

There are two speciall grounds, or foundations of true Sovereignty in our gracious Lord the King. The one that receiving his Authority only from God, hee hath no superiour to punish or chastice him but God alone. The other, that the bond of his subjects in obedience unto his sacred Majesty is inviolable, and cannot bee dissolved. (Mocket, 1615, sig. C8r)

According to this argument, the king cannot be subject to earthly law, as this would place an authority which was below God above the monarch. Such arguments for the foundation of royal authority meant that even if a king acted tyrannously, there was no redress for his subjects. James VI and I, in his commentary on I Samuel 8:1-22 in which the Israelites ask for a king to rule them, points out that the people were warned that a monarch might rule tyrannically:

18 And yee shall cry out at that day, because of your King, whom yee have chosen you: and the Lord God will not heare you at that day.  
19 But the people would not heare the voice of Samuel, but did say: Nay, but there shalbe a King over us. (James VI and I, 1603, sig. B6r)

Having been thus warned, the people have no grounds for complaint if their king is tyrannous, nor can they depose or remove him themselves, because sovereignty is given and maintained by God:

For as yee could not have obtained [a king] without the permission and ordinance of God: so may yee no more, fro he be once set over you, shake him off without the same warrant. And therefore in time arme your selves with patience and humility, since he, that hath the only power to make him, hath the only power to unmake him; and yee only to obey, bearing with these straits that I now fore-shewe you, as with the finger of God, which lyeth not in you to take off. (James VI and I, 1603, sigs. B7v-B8r)

Only if a king acts against the laws of God can people disobey him, but even in this, they may only fly from his fury, ‘without resistance, but by sobes and teares to GOD’ (James VI and I, 1603, sig. C5v).

The most commonly asserted Biblical evidence for the divine status, absolute power and irresistibility of kings, however, was St Paul's command in Romans 13:

Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be, are ordained of God. Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation. (Romans 13:1-2)

The importance of this text to John Maxwell's argument for the authority of kings in his *Sacro-sancta Regum Majestas* is indicated in the decision to reproduce it on the title page.<sup>3</sup> More specifically, however, Maxwell relates this passage to the idea of monarchy founded in paternal sovereignty as, he argues, God created it in Adam (1644, sigs. M2v-M3r):

we may be led on to consider how *Monarchia fundatior in paterno jure*. How Monarchie is founded in paternall Sovereignty; and the best way to finde out *jura Majestatis*, the Sovereign's prerogative, is to consider well what in Scripture, what in nature, we finde to be the true and naturall right of a father; onely probably, because of mans corruption and untowardnesse by reason of sinne, it is like that God hath allowed more to Sovereigne power to enable and secure it. (Maxwell, 1644, 85)

Biblical precedent authorised fatherly power, and the Fifth Commandment was made to serve political purposes:

Somewhat I heard this evening Praier from our Pastor in his Catechisticall Expositions upon the fifth Commaundement, *Honour thy Father and thy Mother*: who taught, that under these pious and reverend appellations of *Father* and *Mother*, are comprised not onely our naturall Parents, but likewise all higher powers; and especially such as have Sovereigne authoritie, as the Kings and Princes of the earth[...] And the evidence of reason teacheth, that there is a stronger and higher bond of duetie betweene children and the Father of their Countrie, then the Fathers of private families. These procure the good only of a few, and not without the assistance and protection of the other, who are the common foster-fathers of

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<sup>3</sup> William Dickinson also argues from this text in his sermon to assize judges of Reading, 'that we may therefore at length learne to range our selves every one in his due place and calling, without derogation from God himselfe, and that power which he has set over us' (1619, sigs. B1r-B2v).

thousands of families, of whole Nations and Kingdomes, that they may live under them an honest and peaceable life. (Mocket, 1615, sigs. B1v-B2r)

Thus the respect due to fathers was extended and increased to the king, the ‘father’ of the country. This kind of catechistical argument was widespread and taught from an early age, although Mocket’s reasoning from the Commandment gives a more logical expression to the analogy than other tracts.<sup>4</sup>

Sir Robert Filmer rationalised and codified this analogy between fathers and kings in his *Patriarcha* (1628-1642).<sup>5</sup> Filmer argued a ‘genetic’ history of patriarchal politics, in which the political authority of the King developed from the social authority of fathers in times when the father literally was the ruler of his (extended) family.<sup>6</sup> This paternal power, Filmer argued throughout *Patriarcha*, was inherited from Adam, to whom it was given by God, was re-affirmed in Noah and descended down to Filmer’s time of writing.<sup>7</sup> Therefore kingly power was given by God and, because of this, unlimited except by God’s laws (Filmer, 1680, sig. F7v).

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<sup>4</sup> See, for example, *The A B C with the catechism that is to saie, the instruction...to be learned of everie childe* (1601, sigs. A6r-A6v) which details all those figures of authority who should be considered under this Commandment. Mocket’s text was authorised by King James as a textbook for the instruction of the young in their political duties (Sommerville, 1999, 13; see also *A Proclamation for the confirmation of all authorised orders*, 1615).

<sup>5</sup> There is some debate over the date of composition of *Patriarcha* because it first appeared in manuscript and was meant only for circulation amongst a group of Filmer’s friends and acquaintances. It is believed that the Chicago manuscript was written before 1631, and the Cambridge manuscript between 1635 and 1642. What is noteworthy, however, is that all of the possible dates for composition fall within Charles I’s rule. *Patriarcha* was printed posthumously in 1680.

<sup>6</sup> I have taken the term ‘genetic history’ from Gordon Schochet (1975, *passim*). According to genetic history, the essence of a state is explained by the manner of its origin; there can be no change or development (Daly, 1979, 57). Thus, the authority of the king is thought to descend directly from the authority of the original fathers of families beginning with Adam which, through joining together, evolved into a society governed by the father of the now ‘extended’ family. Although society may have lost track of the genetic lineage between the king and the original fathers, that does not, according to *Patriarcha*, mean there is no connection (Filmer, 1680, C2v-C3r). Compare Maxwell, 1644, 80-88).

<sup>7</sup> Samuel Rutherford denies this genetic argument in *Lex Rex*, although he does not deny a rule by fathers before rule by Kings: ‘It is a lie, that people were necessitated, at the beginning, to commit themselves to a King: for we read of no King, while *Nimrod* arose: Fathers of families (who were not Kings) and others, did governe till then’ (Rutherford, 1644, 221). Bodin also argues there were no kings before *Nimrod* (1606, 200).

Patriarchalism did, however, imply a responsibility on the king's part to govern in the best interests of his subjects:

By the lawe of Nature the King becomes a naturall Father to all his Leiges at his Coronation. And as the Father of his fatherly dutie is bound to care for the nourishing, education, and vertuous government of his children: even so is the King bound to care for all his subjects.

(James VI and I, 1603, sig. B4v)

He is not, however, bound by anything other than his conscience to do so. Samuel Rutherford disputes such claims, arguing that the king must be responsible to his people as well as to God, because he cannot fail in his obligation to God to care for his people, unless he fails in his obligation to his people to care for them (Rutherford, 1644, 107).

There were, however, other objections to patriarchalist arguments; although they were strong in appealing to contemporary social assumptions, they were not irrefutable.<sup>8</sup> Filmer himself acknowledged the objection that 'It may seem absurd to maintain that Kings now are the Fathers of their People, since Experience shews the contrary'. Whilst he attempts to overcome this objection by arguing that kings 'all either are, or are to be reputed the next Heirs to those first Progenitors, who were at first the Natural Parents of the whole people' (1680, sig. C2r), Maxwell offers an alternative. He argues that when nations are disordered and without a patriarchal ruler, 'they condescend that one shall have Sovereigne power over all, and so by consent shall be surrogated in the place of the common father' (1644, sig. M3v). This argument, however, leaves open the possibility that authority is given to

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<sup>8</sup> Sommerville argues that the strength of patriarchalism lay in its appeal to contemporary social assumptions and structures of the patriarchal early modern society (1999, 29).

the king by a sovereign people, and thus can be revoked. Maxwell denies this possibility, arguing that in choosing a ruler:

all their part is onely *to designe or declare the man*, which is onely *potestas designativa, potestas deputativa*, but the power is onely from Almighty God, the *potestas collativa*, the Authority, the Sovereignty, is of God, from God, Gods. (Maxwell, 1644, 86)

This is the argument of designation theory. Although the people may designate the man who is to be their ruler, the authority with which he rules comes not from them, but from God, in another form of the divine right doctrine. Maxwell's emphatic repetition of 'God' leaves his reader in no doubt of the origin of the king's power; it is not only given by God, but it is God's own power. There can be no return of sovereignty to the people because they were never sovereign.

However, there were those who claimed that the people collectively were sovereign and had decided to confer this power onto a single ruler. In what is a kind of 'designation theory in reverse' Samuel Rutherford argues, with Biblical precedents to match those of the absolutists, that rather than the people choosing a king and God granting him the authority to rule, God instead designates a man in guiding the people in their choice, and then it is the people who confer authority upon him:

no man can be formally a lawfull *King*, without the suffrages of the people: for *Saul*, after *Samuel* from the *Lord* anointed him, remained a private man, and no *King*, till the people made him King and elected him. And *David*, anointed by that same divine authoritie, remained formally a Subject, and not a King, till all *Israel* made him *King at Hebron*. And *Saloman*, though by God designed and ordained to be *King*, yet was never *King*, till the people made him *King*; [...] *ergo*, there floweth something from the power of the people, by which he who is no *King*, now becommeth a *King*, formally, and by *Gods* lawfull call; whereas before the man was no *King*, but as touching all royall power a mere private man. (Rutherford, 1644, sig. C4r)

Unlike Maxwell's uncompromising assertion that the authority is 'of God, from God, Gods', here the authority is conferred entirely by the people with the guidance of God. In this way, Rutherford maintains a careful balance between the 'just prerogative of the king and people' of the extended title of his *Lex Rex*.

When conferring authority upon the king, contract theorists argued, the people were able to set the conditions of its tenure. In his *De Jure Regni Apud Scotos Dialogus* (1579), George Buchanan argues that if a king breaks the terms of the contract by which he rules, the people can revoke his power (Buchanan, 2004, 125).<sup>9</sup> His argument, based on an assumption of innate reason in a people, states, 'it is incredible that, in return for bestowing such a great privilege on their kings, the people should allow themselves to have less favourable rights than they had before' (Buchanan, 2004, 101). Rutherford takes his argument further, stating that not only is it incredible that the people would do this, but they do not have the power to do so:

It is false that the people doth, or can by the Law of nature resigne their whole liberty in the hand of a King, 1. they cannot resigne to others that which they have not in themselves, *Nemo potest dare quod non habet*, but the people hath not an absolute power in themselves to destroy themselves. [...] for neither God, nor Natures Law hath given any such power. (Rutherford, 1644, 147)

His reference to Natural Law raises the idea of a natural instinct for self preservation, which political theorists argued first led people to form communities and governments.<sup>10</sup> Such a law of self preservation would not allow a naturally sovereign people to subject themselves irreversibly to rule by a tyrannous man.<sup>11</sup>

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<sup>9</sup> Buchanan's text is a discussion on the difference between monarchy and tyranny, and attempts to justify the enforced abdication of Mary Queen of Scots in 1567.

<sup>10</sup> This is based on arguments concerning the original institution of governments through a natural law or instinct which led individual people to gather together in societies for protection, safety and



Like Buchanan, Rutherford, too, argues that it is against reason that a sovereign people would allow a tyrant the absolute right to rule:

The people either maketh the man their Prince *conditionally*, that he rule according to Law; or *absolutely*, so that he rule according to will or lust: [...] He is not *Deut.* 17.15, 16. made *absolutely* a King to rule according to his will and lust; for, [*Reigne thou over us*] should have this meaning; *Come thou and play the Tyrant over us, and let thy lust and will be a law to us*: which is against naturall sense. (Rutherford, 1644, 105-6)

In suggesting that to allow a monarch the opportunity to tyrannise over a people, they invite him to make his will law, Rutherford implicitly denies that the king's will should be law. More than this, if a king does not act in accordance with established law, he breaks one of the conditions of his kingship, and can then be challenged or removed. The terms of his argument are particularly interesting in relation to the exploration of absolute authority on the Caroline stage; the uncontrolled desire or lust of the king is often a marker of a stage king's submission to will alone and a descent into tyranny.<sup>12</sup> That law is set up in opposition to this lust in Rutherford's argument suggests the moderating power of law over a potentially wilful man, an idea also developed in Caroline drama.

### **Law, Kingship and Tyranny**

The relationship between the king and the law as to which held the highest authority was closely connected to these arguments over the foundation of royal

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better government. To Aristotle, political society was natural. For a detailed explanation, see Sommerville (1999, 14, 18-23).

<sup>11</sup> Rutherford's *Lex, Rex* was written in answer to John Maxwell's *Sacro-sancta Regum Majestas: The Sacred and Royal Prerogative of Christian Kings*, to assert the prerogative of a sovereign people in comparison with that of the King. John D. Ford (1994, *passim*) provides a detailed discussion of the ways in which Rutherford's text responds to Maxwell's.

<sup>12</sup> See my discussion of Massinger's plays below, and Chapter 3.

authority. For James VI and I, the King is this point of origin for the law: ‘Kings were the authors and makers of the lawes, and not the lawes of the Kings’ (1603, sig. C7r).<sup>13</sup> Even when acting in accordance with law, the king remains absolute:

For although a just Prince will not take the life of any of his subjects without a cleare law: Yet the same lawes, whereby he taketh them, are made by himselfe, or his predecessors. And so the power flowes allwayes from himselfe. (James VI and I, 1603, sig. D1r)

If this is the case, a King cannot act against the law, as he is the point of its authority. However, for Rutherford who places the origin of the King’s sovereignty in the people, the origin of law is also in the people:

*Obj. The King is the fountaine of the law, and Subjects cannot make Lawes to themselves, more than they can punish themselves. He is only the Supreme.*

Answ: The people being the fountaine of the King, must rather be the fountaine of the Lawes....

The civil Law is cleare, that the laws of the Emperor have force only from this fountaine, because the People have transferred their power to the King. (Rutherford, 1644, 208)

The point of administration of the law (that is, the King) remains the same in this argument, as the King exercises legal justice through the law-making powers vested in him by the people; for Rutherford, however, it is the people who maintain the ultimate legal authority.

Whilst he argues that the king is the origin of law, James VI and I does concede that he should rule, wherever possible in conjunction with the law:

[T]he King is above the Law, as both the author, and giver of strength thereto: yet a good King will, not onely delight to rule his subjectes by the Law; but even will conforme himselfe in his owne actions there unto,

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<sup>13</sup> Although he makes this argument specifically in relation to Scottish kings, *The True Law* also speaks about kings more generally, and in fact a reference to the absolute power of English kings through conquest appears almost immediately after this argument.

alwayes keeping that ground, that the health of the common-wealth be his chiefe law. And where he sees the law doubt-some or rigorous, he may interpret or mitigate the same. (James VI and I, 1603, sig. D1v)

James states that the good of the commonwealth should override any concern for maintaining established law, and the use of prerogative power to act outwith the law allows him then to rule equitably. Bodin too maintains that a good king should uphold established law in so far as it is equitable:

And yet neverthelesse the maxime of right still standeth in force, That the soveraigne prince may derogat unto the lawes that hee hath promised and sworne to keepe, if the equitie thereof ceased, and that of himself without consent of his subjects:[... ] But if there bee no probable cause of abrogating the law he hath promised to keepe, he shall do against the dutie of a good prince, if he shall go about to abrogat such a law: and yet for al that is he not bound vnto the covenants and oathes of his predecessours, further than standeth with his profit, except he be their heire. (Bodin, 1606, 93)<sup>14</sup>

Both of these arguments set forward the notion maintained by absolutists that the King's ability to abrogate laws which were no longer equitable was a necessary part of his role as the fountain of Justice. However, it is also made clear that a King is under no obligation to obey established law.<sup>15</sup>

Rutherford agrees that the King's prerogative should allow him to use discretion in interpreting the law for the sake of equity; this he calls a 'prerogative by way of dispensation of justice', and it is a legitimate exercise of royal power outwith the law.<sup>16</sup> He does, however, reject entirely the idea of an absolute

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<sup>14</sup> James I also maintains the independence of the King from the law: 'a good King will frame all his actions to be according to the law: yet he is not bound thereto but of his good wil, and for good example-giving to his Subjectes' (James VI and I, 1603, sig. D1v).

<sup>15</sup> Indeed, Bodin goes so far as to argue that a King who is obliged to maintain and obey the laws of his predecessors cannot be sovereign; all earthly laws, in fact, according to Bodin, depend upon nothing but [the sovereign's] 'meere and franke good will' and the right and ability to make law without his subjects' consent is the 'principall point of soveraigne majestie, and absolute power', and 'unto Maiestie, or Soveraigntie belongeth an absolute power, not subject to any law' (Bodin, 1606, 93, 92, 98, 88).

<sup>16</sup> There are two other dispensations: of power and of grace. The one of power is not, according to Rutherford, a legitimate use of royal power because it would excuse an action which would be 'sin'

prerogative for a King to act entirely outwith the law at his own will and pleasure. According to *Lex Rex*: ‘A Prerogative Royall must be a power of doing good to the people, and grounded upon some reason or law: but this is but a branch of an ordinarie limited power, and no prerogative above or beside law’ (Rutherford, 1644, 192-194, quotation at 193). Whilst this may seem similar to King James’ argument above, for James there is no doubt that the king is not compelled to obey the law by anything other than his own wishes; for Rutherford, the king has no dispensation to act outwith the law.

Indeed, the way in which a king acts in relation to the law is that which becomes a marker of the difference between tyrants and kings. This is suggested somewhat tentatively by King James:

The one acknowleth himself ordeined for his people, having received from God a burthen of governement whereof he must be countable: The other thinketh his people ordeyned for him, a praye to his appetites[...] A good King (thinking his highest honour to consist in the due discharge of his calling) employeth all his studie and paines, to procure and mainteine (by the making and execution of good lawes) the well-fare and peace of his people, and (as their naturall father and kindly maister) thinketh his greatest contentment standeth in their prosperitie[...] An usurping Tyrant[...] will then (by inverting all good lawes to serve onely for his unrulie private affectiones) frame the common-weale ever to advance his particular: buylding his suretie upon his peoples miserie.

(James VI and I, 1599, sigs, E2v-E3v)

The duties of a king suggested, however, are not enforceable; rebellion is ‘ever unlawful’ (James VI and I, 1599, sig. E4r) and performance or otherwise of these duties is to be left to the King’s conscience. It is noteworthy here that the ‘good

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without the royal will to deny this. The dispensation of grace is similar to the dispensation of justice; it allows the king to lift the ‘custome’ for a poor man who cannot afford to pay (Rutherford, 1644, 194).

king's' position in relation to earthly laws remains ambiguous.<sup>17</sup> Whilst he argues that a king should make and execute good laws, James does not state whether the laws to be upheld are statute laws, the common law, or those made by the King's prerogative decree, nor does he state how to decide which laws are good. It is emphasised only that a good king will rule in the interest of his people, and is accountable to God for his actions. Other writers, however, make the connection between rule without law and tyranny much more starkly. Rutherford notes that a tyrant is a man who 'habitually sinneth against the Catholike good of the Subjects and State, and subverteth the Law' (Rutherford, 1644, 217), and Bodin, too, marks the difference between kings and tyrants in this way: 'the one measureth his manners, according unto his lawes; the other measureth his lawes, according to his owne disposition and pleasure' (Bodin, 1606, 212).<sup>18</sup> But whereas for Rutherford, tyranny removes the authority of the king's office because a king acting outside the law acts outside his office and is therefore no longer King (Rutherford, 1644, 186, 243), for Bodin, a tyrant cannot be resisted as long as he is sovereign:

I cannot use a better example, than of the dutie of a sonne towards his father...Now if the father shall be a theefe, a murtherer, a traytor to his countrey, [...] or what you will else; I confesse that all the punishments that can be devised are not sufficient to punish him: yet I say, it is not for the sonne to put his hand thereunto[...] I say therefore that the subject is never to be suffered to attempt anything against his soveraign prince, how naughty & cruel soever he be: lawful it is, not to obey him in things contrarie to the laws of God and nature: to flie and hide our selves from him; but yet to suffer stripes, yea and death also rather than to attempt anything against his life or honour. (Bodin, 1606, 225)

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<sup>17</sup> As we have seen above, elsewhere James leaves no room for doubt, arguing that a king is not bound to act according to established laws, although he may do so 'of his good wil, and for good example-giving to his Subjectes' (James VI and I, 1603, sig. D1v).

<sup>18</sup> It should be noted that Bodin places a greater emphasis on the tyrant's habit of breaking God's laws and the law of nature rather than earthly laws (1606, 210-212), but nevertheless, earthly law is not overlooked.

### **Divine Status and Absolute Power: *The Roman Actor***

*The Roman Actor* is, perhaps, the best known of the plays to be discussed in this chapter. It is often read as a theatrical response to contemporary anti-theatrical tracts, and criticism of the play tends to focus on the plays-within-the-play and their interpretation.<sup>19</sup> In what follows, I will discuss a different aspect of Massinger's play which is often overlooked, arguing that *The Roman Actor* is deeply concerned with issues of the foundation and exercise of monarchical authority, engaging with the ideas of the divinity of kings, the relationship between the ruler and the law, and resistance to the king which I have set out above.

The Roman Emperor, Domitian, rules by divine right, claiming protection from the goddess Minerva (*Roman Actor*, sig. H4v). More than this, however, Domitian behaves and speaks as if he were a god:

In the *Vitellian* warre he rais'd a Temple,  
To *Jupiter*, and proudly plac'd his figure  
In the bosome of the God. And in his edicts  
He does not blush, or start to stile himselfe  
(As if the name of Emperour were base)  
Great Lord, and God *Domitian*. (*Roman Actor*, sig. B2v)

Already in Act I, Domitian is shown to be over ambitious, being discontent with his high position as emperor, and preferring to be a god. In describing himself as God in his edicts, Domitian also gives these (the direct commands of the emperor, not

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<sup>19</sup> For example, David Reinheimer (1998) and Andrew Hartley (2001) read the play in relation to censorship; Jonathan Goldberg discusses the way that the senate courtroom becomes a theatre, the plays within the play, and finally Domitian's 'theatre of conscience' (1989, 203-209). Butler is a notable exception to this trend in reading the play politically, and in relation to other plays with a classical setting (1985, *passim*; 150-162 focus on *The Roman Actor*). I will discuss *The Roman Actor*'s trial scene and relationship with anti-theatrical tracts in Chapter 5.

the established laws of Rome) the unquestionable authority of divine law. The attribution of a divine status to a monarch is not unusual; James VI and I made similar claims for kingship.<sup>20</sup> What is unusual is the extent to which the emperor insists on, and Massinger emphasises, Domitian's divinity throughout the play. Not content with being a 'little God' (James IV, 1599, sig. B2v, my emphasis), Domitian sees himself as equal to, and in the heart of, the king of the gods, placing himself in the centre of Jupiter's statue. He also claims Jupiter's prerogative of thunder as his own, offering some of his subjects the opportunity to 'receive the honour / To kisse the hand, which rear'd up thus, holds thunder / To you 'tis an assurance of calme' (*Roman Actor*, sig. C4r).<sup>21</sup>

That Domitian's emphasis on his divinity was a significant aspect of the play to contemporary audiences is evident from Thomas Jay's commendatory poem:<sup>22</sup>

Each line thou hast taught CEASAR is, as high  
 As Hee could speake, when grovelling Flatterie,  
 And His owne pride (forgetting Heavens rod)  
 By His Edicts stil'd himselfe great Lord and God.  
 By thee againe the Lawrell crownes His Head;  
 And thus reviv'd, who can affirm him dead?  
 Such power lyes in this loftie straine as can  
 Give Swords, and legions to DOMITIAN. (*Roman Actor*, sig. A3r)

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<sup>20</sup> '[L]earne to know and love that God, whomto ye have a double obligation; first, for that he made you a man; and next, for that he made you a little God to sit on his Throne, & rule over other men' (James VI and I, 1599, B2v).

<sup>21</sup> 'Prerogative' is the term used by Edwards and Gibson here (*Plays and Poems*, V.185). In claiming this they apply particularly appropriate contemporary political terminology. In being a prerogative, it is a right reserved only to the ruler, and this suggests that Domitian is over-stepping his authority in claiming a power reserved for Jupiter.

<sup>22</sup> Thomas Jay was one of the play's dedicatees. He was one of Massinger's close associates and attended Lincoln's Inn. He was knighted in 1625. He also:

sat in Parliament, was a Middlesex magistrate, and went with Buckingham to the Isle de Rhé in 1627. As keeper of the King's armoury at Greenwich and the Tower, he was in trouble about the sale of unwanted arms and armour in 1628, and in 1641 he was put out of the Commission of the Peace after being accused of extortion as a Justice of the Peace. He had pretensions to verse, and contributed commendatory poems to *The Roman Actor*, *The Picture*, and *A New Way to Pay Old Debts*. (*Plays and Poems*, V.180; quotation at I. xxxvi)

Jay's poem commends the effectiveness of Massinger's choice in Domitian's language, through which he claims the playwright (and the actor) make Domitian live again. However, in praising the liveliness of Massinger's words, there is also a hint of the power of the word of the emperor in the ambiguity over whose 'loftie straine' Jay refers to. Massinger's poetry brings Caesar and his acts to life, but perhaps it is the power of Domitian's words that gives him 'Swords, and legions', his personal power and resort to physical force give him authority.

It is not only in direct references that Domitian becomes identified as a god. Domitia's response to Domitian's advances ironically echoes Mary's song of praise at the annunciation: 'And my spirit hath rejoiced in God my Saviour. For he hath regarded the low estate of his handmaiden' (Luke 1:48).<sup>23</sup>

I am transported,  
And hardly dare beleve what is assur'd here.  
The meanes, my good *Parthenius*, that wrought *Caesar*  
(Our God on earth) to cast an eye of favour  
Upon his humble handmaide! (*Roman Actor*, sig. B3r)

This adoption of Biblical register and phrasing is maintained throughout the scene, emphasising Domitian's position as 'God on earth'. There is, for example, a credic resonance to Parthenius' statement of Domitian's widespread political power, 'The world confesses one *Rome*, and one *Caesar*' (*Roman Actor*, sig. B3v). The disjunction between the religious echoes and the use Domitian makes of his power – here it is to enforce a divorce between Domitia and her husband Lamia so that she is free to become his wife – also serves to highlight Domitian's abuse of his position as ruler, and his usurpation of heavenly privileges. These religious allusions shift

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<sup>23</sup> Cf. *Plays and Poems*, V. 183, note to I.ii.19-21.



the frame of reference of the play from classical, pagan Rome to Christian construction of society, facilitating a comparison between the Roman emperor and the English king which is suggested in Paris' earlier emphatic reference to Domitian as '*Caesar*, in whose great name / All Kings are comprehended' (*Roman Actor*, sig. C1v). Both James VI and I and Charles I employed Roman imperial iconography at court, and whilst it would be pushing the political engagement of the play much too far to suggest that Massinger represents either of these monarchs in Domitian, the play does suggest an alternative, much less positive interpretation of ancient Rome than James had done or Charles was to do.<sup>24</sup> The step from glorious imperial Rome to tyrannous emperor is not a large one.

Parthenius' persuasions to seduce Domitia from her husband also make claims for Domitian's relationship with the law:

Domit[ia]: You know I have a husband, for my honour  
 I would not be his strumpet, and how lawe  
 Can bee dispenc'd with to become his wife.  
 To mee's a riddle.

Parth[enius]: I can soone resolve it.  
 When power puts in his Plea the lawes are silenc'd.  
 The world confesses one *Rome*, and one *Caesar*,  
 And as his rules is infinite, his pleasures  
 Are unconfin'd; this sillable his will,  
 Stands for a thousand reasons. (*Roman Actor*, sig. B3v)

The personification of power here ('*his Plea*') implies that infinite power and the emperor are indivisible, which is emphasised in claims for the extent of his power across the world. The language of the law courts in '*Plea*' suggests an official legal

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<sup>24</sup> In a similar vein, Butler argues that 'Massinger's mirror for tyranny stands in radical opposition to the contemporary court culture both aesthetically and politically' (1985, 152). For a discussion of James VI and I's employment of imperial iconography, see Kewes, 2002, *passim*. In 1633 Van Dyck painted Charles riding through a triumphal arch, and in 1632, Charles danced in the masque *Albion's Triumph*.

negotiation, and this maintains a pretence of acting within the law whilst denying its power. In fact, such is the authority that the emperor exercises, that merely a syllable from him holds more power than the law. What becomes clear is that Domitian rules only in accordance with his own will, and is not bound to give any explanation, morally or legally, for his actions.

Parthenius's assertions of the emperor's power in this respect are set alongside Lamia's objections to Domitian's seduction of Domitia:

This is rare.  
 Cannot a man be master of his wife  
 Because she's young, and faire, without a pattent.  
 I in mine owne house am an Emperour,  
 And will defend whats mine. (*Roman Actor*, sig. B4r)

In the same way that the analogies of patriarchalism argued that the king gains his power as the father of the kingdom, Lamia, as head of his household, is a king in the domestic sphere. His reference to needing a 'pattent' from the emperor to keep his wife reflects concerns over monopolies in James I's reign which would become increasingly contentious under Charles.<sup>25</sup> In maintaining his rights to hold his property absolutely, Lamia sets the subjects' rights in direct opposition to the rights the emperor claims, and in doing so prefigures the claims made later in Charles's reign over individuals' rights to hold property inviolate to prerogative demands.<sup>26</sup> When this appeal to his supposedly inalienable rights as a husband fails, he resorts to what should be the safeguard of these rights in the law, asking, 'Is this legall?'

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<sup>25</sup> Monopolies were made illegal in by Statute in 1624. However, the Statute did allow some exceptions, and monopolies held by corporations, and for limited periods, inventions were legal (Butler, 1987, 130). See Chapter 3, footnote 50. Butler argues that in *The Roman Actor*, 'the crucial principle at stake is that [Domitian's] conception of his power exhibits exactly that challenge to the fundamental freedoms of the subject which was feared from Stuart government', and notes that the Caroline concern with the forced loan, arbitrary imprisonment, and unimpeachable liberties of the subject are encapsulated in the Lamia episode (1985, 154).

<sup>26</sup> See Chapter 1, pp.34-5, p.65

Parthenius' response, 'Monarchs that dare not doe unlawfull things, / Yet bare them out are Constables, not Kings' (*Roman Actor*, sig. B4r) , asserts not only that Domitian does not have to act according to the law, but also that if he were to act only according to the law, he would not be a king. This is a sharp contrast with Rutherford's arguments that only in obeying the law can monarchs be true kings, not tyrants.<sup>27</sup>

Domitian himself makes a direct statement concerning his position in regard to the law:

Shall we be circumscrib'd? let such as cannot  
By force make good their actions, though wicked,  
Conceale, excuse or qualifie their crimes:  
What our desires grant leave, and priviledge to  
Though contradicting all divine decrees,  
Or lawes confirm'd by *Romulus*, and *Numa*,  
Shall be held sacred. (*Roman Actor*, sig. D3r)

For Domitian, his power allows him to do anything, without explanation or excuse.

Whilst there was debate in the period over the position of the king in relation to positive law, there was no debate over the primacy of God's laws. James VI and I maintained throughout his political tracts that Kings must remain answerable to God for their deeds, and must therefore uphold His laws.<sup>28</sup> Domitian's denial of their precedence, then, is an arresting comment, and following the Renaissance tragic tradition of the overreacher, Domitian has sealed his fate. The emperor's opinion of other earthly power too is unusual. Domitian's reference to Romulus and Numa cites the earliest precedent for Roman kingly authority, those in whom his position

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<sup>27</sup> See above p. 85.

<sup>28</sup> See for example, the first book of *Basilikon Doron*: 'Anent a King's Dutie towards God'. See also Bodin, 'as for the lawes of God and nature, all princes and people of the world are unto them subject' (Bodin, 1606, 92).

of authority originates, and then denies any lasting power to their laws.<sup>29</sup> Instead he claims that it is his desires which give him ‘leave, and priviledge’ and should be held ‘sacred’, presenting his will as the highest authority. This collocation of desire and privilege is implicitly critical of the royal prerogative, suggesting that the prerogative is not a royal right, but a more acceptable name for royal wilfulness, an idea which is developed in James Shirley’s *The Lady of Pleasure*.<sup>30</sup>

Whilst it is in his divorce of Lamia and Domitia that Domitian is seen to exercise his power above all laws, it is, ironically, in his relationship with Domitia that he is shown to be most weak. Having discovered her attempt to seduce Paris, he orders her torture and death, but quickly changes his mind:

O impudence! take her hence.  
 And let her make her entrance into hell.  
 By leaving life with all the tortures that  
 Flesh can be sensible of. Yet stay. What power  
 Her beautie still holds o’re my soule that wrongs  
 Of this unpardonable nature cannot teach me  
 To right myselfe and hate her? – Kill her. – Hold. (*Roman Actor*, sig. H3r)

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<sup>29</sup> This contrasts starkly with most political argument of the period which bases its truth and force on precedent. Nevertheless, Bodin argues that a sovereign is not bound to uphold laws made by his predecessors, or those he has made himself (Bodin, 1606, 92-3). The figure of Numa particularly is associated with justice and kingly legal power, and is one of two ancient figures to appear in the painted arch of James Shirley’s *Triumph of Peace* (sig. A4r), which negotiates between the royal prerogative and the established law.

<sup>30</sup> James Shirley emphasises this use of ‘privilege’ to hide wilfulness in Aretina in *The Lady of Pleasure*. Butler argues similarly (1984, 167-8). Early in the play Aretina upbraids her husband for trying to limit her behaviour by reminding him of her ancestry and the privileges they and she have held, and tells him ‘You ought not to oppose’ (*Lady of Pleasure*, sigs. B1v-B3r, quotation B3r). She bases her claims to be allowed whatever liberties she chooses upon ideas of ‘privilege’, previous examples of women who behave in the same way, and on her kinsmen at court, associating her closely through her language and position with royalty of the period. Her husband, however, describes her extravagant activities as ‘Not a Pastime but a tyrannie’ (*Lady of Pleasure*, sig. B2v), and as the play progresses it becomes increasingly clear that Aretina’s acts of privilege are unreasonable and extravagant acts of will, and she is finally brought to understand this and submits to her husband’s more reasonable rule. The play suggests then that ‘privilege’ should be subject to some limitations. It is also an example of the way in which royal wilfulness became associated with less than manly behaviour in making the advocate of privilege and prerogative a wilful woman. This association of wilfulness with unmanliness becomes increasingly evident in plays throughout the Caroline period (see Chapter 3 p.164).

This indecision is not characteristic of Domitian, and provides a stark contrast with his earlier command for the public torture of Rusticus and Sura; even in response to Parthenius's reasonable and deferential cautions, Domitian is resolute in his decision, confirming this in the decisive statement, 'Caesar hath said it' (*Roman Actor*, sig. F2r). His desire for Domitia has undermined his authority to the extent that Stephanos describes his doting on her as 'the *impotence* of his affection' (*Roman Actor*, sig. I2v, my emphasis). Domitia herself knows she has power over him, and in a scene which is reminiscent of Domitian's gloating to Lamia having taken his wife, she taunts him over his weakness:

Though thy flatterers  
 Perswade thee, that thy murders, lusts, and rapes  
 Are vertues in thee, and what pleases *Caesar*  
 Though never so unjust is right, and lawfull;  
 Or worke in thee a false beliefe that thou  
 Art more then mortall, yet I to they teeth  
 (When circl'd with thy Guards, thy rods, thy axes,  
 And all the ensignes of thy boasted power)  
 Will say *Domitian*, nay adde to it *Caesar*  
 Is a weake feeble man, a bondman to  
 His violent passions, and in that my slave.  
 Nay more my slave, then my affections made me  
 To my lov'd Paris. (*Roman Actor*, sig. I3r)

In submitting to his desire for her he has shown himself to be not only less than a god, but less than a free man. The comparison between his passion for her and hers for Paris emphasises this in suggesting that his desire makes him weaker than a woman. She undermines both his claims to divinity and his power to make his will into law by dismissing these ideas as those 'false beliefe[s]' with which sycophants flatter him, and stresses his vices by naming his actions as what they really are: murder, lust and rape. For her, to whom he is subject, he is unable to 'By force make good [his] actions, though wicked' (*Roman Actor*, sig. D3r).

At the end of the play, Domitian's 'murthers, lusts and rapes' return to haunt him, literally in the ghosts of Rusticus and Sura (*Roman Actor*, sig. K1r), and metaphorically in his assassination. Until this point, there has been an emphasis on the impossibility of active resistance to the emperor: in an extended version of Julia's comment 'What we cannot helpe, / We may deplore with silence' (*Roman Actor*, sig. F1v), Lamia states:

And since we cannot  
With safetie use the active, lets make use of  
The passive fortitude, with this assurance  
That the state sicke in him, the gods to friend,  
Though at the worst will now begin to mend. (*Roman Actor*, sig. B3r).

This simultaneously suggests and denies the possibility of resistance. He cannot actively resist the emperor in plotting or with physical strength for fear of his life, but instead can wait with patience ('passive fortitude') for Providence to rescue the State. Rusticus and Sura, to whom he makes this comment, exercise a different kind of passive resistance at their execution, during which they 'grinne', and assert that 'beyond our bodies / Thou hast no power' (*Roman Actor*, sig. F2v). In their transcendence of the physical, they defeat the tyrannous emperor who can only exercise his power over them in shows and actions of cruelty. Their reply to Domitian's question, 'Are they not dead?' emphasises their superiority to him:

Sur[a]: No, wee live

Rust[icus]: Live to deride thee, our calme patience treading  
Upon the necke of tyrannie. (*Roman Actor*, sig. F3r)

In actions they cannot defeat him, but in patience he is conquered. Indeed, their calm and orderly speech, even under torture, provides a stark contrast with Domitian's outbursts to the hangman:

Againe, againe. You trifle. Not a groane,  
 Is my rage lost? What cursed charmes defend 'em!  
 Search deeper villaines. Who lookes pale? Or thinkes  
 That I am cruel? (*Roman Actor*, sig. F2v)

The short sentences, repetitions, questions and exclamations all indicate that the emperor, unlike his victims, has lost control.

It is clear in *The Roman Actor* that kinds of resistance to the emperor are possible: Rusticus and Sura's acceptance of their punishment, their simultaneous (non-active) resistance to his power, and their threats to haunt Domitian cause him a moment's pause ('By my shaking, / I am the guiltie man, and not the Judge', (*Roman Actor*, sig. F3v)), and later the conspirators do succeed in killing the emperor. However, the legitimacy of these acts of resistance is yet to be determined. Lamia's advice to trust in Providence to alleviate the sickness of the state is seconded throughout the play in the absolutist notion that a king, however evil, cannot be deposed by his people because of his divine status:<sup>31</sup>

The [im]mortall powers  
 Protect a Prince though sould to impious acts,  
 And seeme to slumber till his roaring crimes  
 Awake their justice: but then looking downe  
 And with impartiall eyes, on his contempt  
 Of all religion, and morrall goodnesse,  
 They in their secrets j[u]dgements doe determine  
 To leave him to his wickednesse, which sinckes him  
 When he is most secure. (*Roman Actor*, sig. E4v).<sup>32</sup>

<sup>31</sup> The people cannot act against a king because of their low position in relation to him: 'the person and power of the *King* is alwaies sacred and inviolable. It is not for those whom God hath appointed to obey, to examine titles & pedigrees' (Dickinson, 1619, C2r). Rutherford, however, argues that the people are greater than the king in that there are more of them in number, and therefore in importance (Rutherford, 1644, sig. T2r).

<sup>32</sup> In the 1629 edition, the first line of this quotation reads 'The mortall powers', but in context both of this quotation and the wider scene, Edwards and Gibson's change to 'immortall' based on the manuscript makes more sense (*Plays and Poems*, III, 52). If read as 'mortall powers', the statement is much more radical, claiming an almost divine power for the emperor's subjects.

The description of Domitian's crimes as 'roaring' highlights their immensity, and suggests that his speech as well as his actions have been out of place. In claiming to be above the gods, and in acting tyrannously against the law of the gods, Domitian has committed crimes of action and of words. The reference here to the divine protection of princes is not, as Douglas Howard suggests, a mere exercise in political expedience on Massinger's part (1985, 126); rather, the emphasis throughout the play on Domitian's relationship with the gods makes this idea an integral part of the play. Some political theorists of the period who argued against resisting tyrannous monarchs maintained that kings were divinely protected:

if there bee any offence committed by him forasmuch as there is no breve to enforce, or constraime him, there may be supplication made that he would correct, and mend his fault: which if he shall not doe: it is abundantly sufficient punishment for him that he is to expect God a revenger: for no man may presume judicially to examine his doings, much lesse oppose them by force and violence. And this is no other kingly Sovereignty than God himselfe has given unto his Maiestie. (Mocket, 1615, sigs. D3r-D3v)<sup>33</sup>

However, there were those who argued that resisting tyrants was a legitimate, indeed praiseworthy activity. George Buchanan, for example, argues that those who are unwilling to live by laws which maintain the stability and prosperity of the community, that is, those who do not behave with reason, are no better than wild animals and it is praiseworthy to rid a community of this kind of danger (Buchanan, 2004 p. 89).<sup>34</sup>

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<sup>33</sup> See also the anonymous *The Divine right and Irresistibility of Kings, and supreme Magistrates*, 1649, *passim* and *True Lawe* (1603 especially sig. C3v-C4r) where James argues that using singular biblical precedents for the deposition of a king is the same as arguing that murder and robbery can also be excused in all cases because these also have scriptural precedent.

<sup>34</sup> In an otherwise comprehensive argument, Buchanan is notably reticent on the idea of the divine right of kings. He deals only with contract theories and the position of elected or hereditary monarchy, which give kings power from the people, not from God.



Rusticus and Sura's passive resistance is vindicated in their peaceful transcendence of the earthly, and in their troubling appearance in Domitian's dream. The assassination of the emperor, however, is more complicated. In his presentation of the conspirators' murder of Domitian, Massinger differs from his sources.<sup>35</sup> In Suetonius, Stephanos' part in the action is brought on by fears for his own life; he was 'in trouble for intercepting certaine monies' (Suetonius, 1606, sig. 2A3r). In Massinger's play, however, each of the conspirators is given a more noble reason for their actions:

Parth[enius]: This for my Fathers death.

Domit[ia]: This for my *Paris*,

Julia: This for thy Incest

Domitilla: This for thy abuse of *Domitilla*. (*Roman Actor*, sig. K4r)

In giving Domitian's crimes as reasons for the conspirators' actions, Howard argues, Massinger makes it clear that Domitian dies because of his crimes (1985, 125).<sup>36</sup> However, while the conspirators themselves draw attention to Domitian's tyranny as their reasons for participating in his assassination, the play emphasises that Domitian's fall is brought about not only by this, but by the offence he causes to the gods:

Let proud mortalitie but looke on *Caesar*  
 Compass'd of late with armies, in his eyes  
 Carrying both life, and death, and in his armes  
 Fadoming the earth; that would be stilde a God,  
 And is for that presumption cast beneath  
 The low condition of a common man,  
 Sincking with mine owne waight. (*Roman Actor*, sig. K2v)

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<sup>35</sup> Howard (1985, 125) argues similarly.

<sup>36</sup> It should be remembered that fear for their own lives is not entirely absent from the conspirators' motivation (*Roman Actor*, sigs. K2v-K3r), but significantly it is not emphasised at the time of the assassination.

Domitian recognises he has overstepped the bounds of his position, acknowledging his ‘presumption’.<sup>37</sup> Until the final act, he has considered himself secure while Minerva is his patroness (*Roman Actor*, sig. I4v), but her desertion of him leaves him unprotected. Her reasons for this desertion are particularly significant:

And me thought  
*Minerva* ravish’d hence whisper’d that she  
 Was for my blasphemies disarm’d by *Jove*  
 And could no more protect me. Yes twas so,  
 His thunder does confirme it, against which *thunder and*  
 Howe’re it spare the lawrell, this proud wreath *lightning.*  
 Is no assurance. (*Roman Actor*, sig. K1v)

Domitian here realises that he is only the ‘weake feeble man’ Domitia describes him to be (*Roman Actor*, sig. I3r), and his position as Caesar does not protect him from the anger of the gods. In light of this acceptance of his mortality, the Tribune’s comment which follows Domitian’s speech in which he claims that he would not ‘lift an arme’ against Domitian’s ‘*sacred* head’ (sig. K1v, my emphasis) is ironic. The disarming of Minerva and the emphasis, both in Domitian’s speech and through the stage directions, on thunder bring to mind Domitian’s usurpation of Jove’s weapon of thunder; his previous claim to be ‘Guarded with our own thunder’ against fate (*Roman Actor*, sig. G4r) is, here, shown to have been the empty bluster of a powerful but mortal man. The intertextual reference to revenge tragedy in the thunder to indicate God’s anger and impending justice suggests that Domitian’s downfall is imminent.<sup>38</sup>

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<sup>37</sup> Rutherford gives Domitian as an example of a ‘monstrous Tyrant’ who was pursued by God ‘in wrath’ (1644, 217).

<sup>38</sup> For example, Castabella in Cyril Tournier’s *The Atheists Tragedie* exclaims, ‘O patient Heav’n! Why doest thou not expresse thy wrath in thunderbolts; to teare the frame of man in pieces?’ (sig. I1v) and thunder resonates throughout the play. Vindice in *The Revengers Tragaedie* also anticipates the thunder of God’s wrath:

O thou almighty patience, tis my wonder,  
 That such a fellow, impudent and wicked,  
 Should not be cloven as he stood:



How ever wicked'.<sup>40</sup> It is interesting that this inalienable princely authority which Domitian retains whatever his actions does not apply to his wife, who loses her title of Augusta for her wickedness, confirming that the murder of an emperor is a crime above all others. Although the Tribune states that the hearing will be left to the senate, it is clear that it is not the senate but Domitian's successor as emperor who will exact punishment. The inability of the Senate to act without the emperor has already been illustrated at the beginning of the play in the abandoned trial of Paris, and here the Tribune's first comment that 'whosoe're succeeds [Domitian] will revenge' his murder emphasises the primary position of the emperor.<sup>41</sup> Thus the emperor, however wicked, remains independently sovereign, set apart from and above the Senate.

*The Roman Actor* does not deny the divine right of kings, nor does it condone active resistance; instead it presents a ruler who oversteps the bounds of his prerogative, attempting to position himself as equal to, if not above, the gods. The emperor's extra-legal prerogative, in fact, is not denied in this play; although, for example, his divorce of Lamia and Domitia is objectionable, his power to do so is not in question, and it is, conspicuously, not presented as a reason for his death. It is important to note that at the end of the play, it is not Domitian's illegal actions which are brought to the fore, but his cruelties:

Take up his body. He in death hath payd  
 For all his cruelties. Heere's the difference  
 Good Kings are mourn'd for after life, but ill  
 And such as govern'd onely by their will  
 And not their reason. Unlamented fall  
 No Goodmans teare shed at their Funerall. (*Roman Actor*, sig. K4v)

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<sup>40</sup> 'The wickednes therefore of the King can never make them, that are ordayned to be judged by him, to become his Judges' (James VI and I, 1603, sig. D5v).

<sup>41</sup> See Chapter 5 pp. 248-254 for a discussion of Paris's trial.

In placing an emphasis on reason here, Massinger also suggests a need for moderation in absolute power and this will be explored further in my discussion of *The Emperour of the East* below. Here, however, it is interesting to note in the Tribune's words an echo of a passage in James VI and I's *Basilikon Doron* in which he states the difference between a good king and a tyrant:

For a good Kinge (after a happie and famous reigne) dyeth in peace, lamented by his subjectes, and admyred by his Neighbours... Where by the contrarie, a Tyrantes miserable and in-famous life, armeth in his owne subjectes to become his burreaux: And although that rebellion bee ever unlawful on their parte, yet is the worlde so wearied of him, that his fall is little meaned by the reste of his subjectes, and but smyled at by his neighbours. (James VI and I, 1599, sigs. E3v-E4r)

Whilst it is possible that this could be a commonplace saying, it is not unreasonable to suggest a link between these passages.<sup>42</sup> An echo of the former king's (absolutist) advice to his son for government in a play which deals with divine right and the dangers of resistance if a monarch is tyrannous, and is performed at the beginning of a new reign, allows the commercial theatre to speak to and of the new king, whilst paying tribute to the former ruler.

### **Decline from Divinity: *The Emperour of the East***

Whilst *The Roman Actor* presents the assassination of the emperor, the play maintains the irresistibility of the monarch, demonstrating that it is his displeasing of the gods which really condemns Domitian. However, the desertion by Minerva

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<sup>42</sup> Bodin, for example, makes a similar statement regarding the difference between kings and tyrants: 'the one is praised and honoured of all men whilst he liveth, and much missed after his death; whereas the other is defamed yet living, and most shamefully reviled both by word and writing when he is dead' (1606, 213).

and Domitian's submission to his passion in his desire for Domitia illustrate that Domitian is a mortal man, however powerful and divinely appointed. As the Caroline period progresses, this decline from divinity becomes increasingly apparent in stage monarchs. This section will discuss the ways in which the monarch comes to be seen more clearly as a fallible, mortal man rather than a divine figure of authority in *The Emperour of the East*. In this play, Massinger presents two monarchs: Theodosius (the emperor) and his sister Pulcheria, who has ruled Constantinople during his minority. The juxtaposition of their methods of government dramatises a discussion on stage of the proper use of authority whilst maintaining the absolute power of the monarch; the reasons for Theodosius's fall from moderate absolutism to arbitrary rule suggest both his own fallibility and the importance of sensible counsel.

Theodosius has been educated in the arts of rule by his sister Pulcheria, who was appointed his protector with 'the disposure / Of his so many Kingdomes' (*The Emperour of the East*, sig. B1v) until he reached maturity.<sup>43</sup> It is clear that she has performed both duties very well, and is admired by her subjects at home and by foreign princes:

Paulinus:                    Her soule is so immense,  
                                   And her strong faculties so apprehensive,  
                                   To search into the depth of deepe designes,  
                                   And of all natures, that the burthen which  
                                   To many men were insupportable,  
                                   To her is but a gentle exercise,  
                                   Made by the frequent use familiar to her.

Cleon: With your good favour let me interrupt you.  
           Being as she is in every part so perfect,  
           Me thinkes that all kings of our Easterne world

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<sup>43</sup> In subsequent references, *The Emperour of the East* will be abbreviated to *Emperour*.

Should become rivalls for her.

Paulinus: So they have,  
 But to no purpose. She that knows her strength  
 To rule, and governe monarchs, scornes to weare  
 On her free necke the servile yoke of marriage.  
 [...]  
 Shee's so impartiall when she sits upon  
 The high tribunall, neither swayd with piety,  
 Nor awd by feare beyond her equall scale,  
 That 'tis not superstition to beleewe  
 Astrea once more lives upon the earth,  
 Pulcheriaes brest her temple. (*Emperour*, sig. B1v-B2r)

These references to the justice of Astraea, Pulcheria's refusal to marry, and references to her as a Phoenix and 'the moon' (*Emperour*, sigs. B1r, D2r) make clear allusion to Elizabeth I and situate the play in the growing trend of nostalgia for the chaste, just reign of Elizabeth in drama after her death.<sup>44</sup> The reference to a 'servile yoke' of marriage also serves to emphasise the sovereign independence of Elizabeth from the influence of foreign rulers. This nostalgia, which became manifest early in James' reign, took a variety of forms, from an image of chastity, to a politic prince maintaining an 'even keel in domestic and foreign affairs' to a 'Protestant Valkyrie' (Woolf, 1985, 172). There is, in Pulcheria, a combination of these images. In his description of her, Paulinus establishes her skill in domestic rule, and her private lodgings are described as 'a chaste Nunnery' (*Emperour*, sig. B1v). Whilst she is not quite the warlike Protestant Queen defending her people from the Catholic threat, she is careful to maintain a distinction between religions, encouraging Athenais' conversion to her country's religion, and insisting on her baptism before Theodosius marries her (*Emperour*, sig. E4r). It is possible that contemporaries would have recognised in this a critical comment on Charles' marriage to Henrietta-Maria, a Catholic

<sup>44</sup> Anne Barton argues similarly, 1981, 717-719. Diana, goddess of the moon and of chastity, and the phoenix formed parts of Elizabeth's iconography and contributed to the distancing of the Queen from any human fallibility. See Barton, 1981, *passim*.

princess; the marriage raised fears of Catholic influence in Charles' court, and with it developing ideas of absolutist prerogative rule which were associated with Catholicism. Athenais' growing insistence on the privileges of her position as empress, and Theodosius' increased arbitrariness after marriage support this reading.<sup>45</sup> Pulcheria's capabilities as governor are made clear in the ease with which she carries her responsibilities, emphasised in the comparison which suggests that many men would find the burden unsupportable which she, as a woman, bears with ease. It is important to note, however, that Pulcheria's good government, fairness and justice do not preclude her from being an absolute monarch. It is clear that she alone manages her court and governs the empire.<sup>46</sup>

Despite the Elizabethan note, the problems at Pulcheria's court are noticeably Stuart. Those courtiers she condemns – the informer, the projector, the suburbs mignon and the master of the habit – embody some of the more controversial figures of both the Jacobean and Caroline Courts. However, her most scathing condemnation is reserved for the Projector:

Projector, I treat first  
 Of you and your disciples; you roare out,  
 All is the Kings, his will above his lawes:  
 And that fit tributes are too gentle yokes  
 For his poore subiects; whispering in his eare,  
 If he would have them feare, no man should dare  
 To bring a sallad from his country garden,  
 Without paying gubell; kill a hen,  
 Without excise: and that if he desire  
 To have his children, or his servants weare  
 Their heads upon their shoulders, you affirme,

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<sup>45</sup> Doris Adler argues similarly: 'With the hindsight of history, Theodosius and Athenais [...] seem dramatized types of Charles and Henrietta Maria, and the warnings to the young emperor and empress within the play seem very much the warnings that much of the nation would have their own king and queen heed' (1987, 89).

<sup>46</sup> This is not inconsistent with the reading of Pulcheria as an Elizabeth figure, as James VI and I respected James for upholding the royal prerogative (Woolf, 1985, 172).



In policy, tis fit the owner should  
 Pay for 'em by the pole; or if the Prince want  
 A present summe, he may command a city  
 Impossibilities, and for non-performance  
 Compell it to submit to any fine  
 His Officers shall impose: is this the way  
 To make our *Emper* happy? Can the groanes  
 Of his subjects yeeld him musick? Must his thresholds  
 Be wash'd with widdowes and wrong'd orphans teares,  
 Or his power grow contemptible? (*Emperour*, sig. C3v)

Projectors were particularly contentious figures in Caroline politics. That the projector should be associated with the advocacy of the king's will as superior to the law is suggestive of the legal controversy over monopolies, which many common lawyers argued were an illegal way for Charles I to gain extra-parliamentary revenue.<sup>47</sup> Pulcheria's condemnation of this attitude suggests she rules in accordance with established law, as does her reference to the law when sentencing the wrong-doers to banishment from court (*Emperour*, sig. C4r). However, it is clear that this is a criticism of more than monopolies, and it is, in fact, a condemnation of arbitrary absolutism, extra-parliamentary finance and favouritism. The reference to the Prince commanding a sum of money from cities ties this criticism closely to Charles' financial activities, referring to forced loans and the penalties imposed for those who did not or could not pay.<sup>48</sup> Describing such sums as 'impossibilities' here implies an unreasonableness in Charles' demand. The references to different ways of wresting taxes from the people ('gubell' and 'excise') too provide a comment upon Caroline fiscal activities.<sup>49</sup> Indeed, in using

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<sup>47</sup>See Chapter 3, p.171, footnote 49 for more information on projects and monopolies, and their appearance in drama of the period.

<sup>48</sup>See Richard Cust's *The Forced Loan and English Politics 1626-1628*.

<sup>49</sup>Here, excise may refer to a general tax, not the more specific excise duty, which was not adopted in England until 1643. These were, however, exacted in Holland at Massinger's time of writing. (*OED*, 'excise' 1, 2a). Although I have not been able to find an exact definition of 'gubell', there was a salt tax imposed in France before the revolution called a 'gabelle'. Sharpe notes that there was a project proposing to make salt from seawater, and the salt works at Newcastle on Tyne were supposed to bring £30, 000 per year (1992, 121). As this reference is made in the complaint against the projector, it may also be a comment on the monopoly for making saltpetre granted by James VI

words such as ‘poore’, ‘feare’, ‘groanes’ and ‘teares’ Pulcheria casts these financial activities in a particularly negative light, and her question of whether this can make the emperor happy encourages her audience (both on and off stage) to consider their effects. However, her final question, ‘Must [...] his power grow contemptible’, addresses a monarch’s sense of self-preservation, and provides a warning of the potential results of this behaviour.<sup>50</sup> Anne Barton wonders how such a tirade against Charles’ activities passed the censorship of the Master of the Revels (1981, 719), but as no comment from this process remains alongside the record of its licensing, it would seem that the play was not read, at least by the Master of the Revels, as constituting any severe criticism of the king.

Pulcheria’s rejection of the activities which would oppress her people is representative of her benevolence which is emphasised throughout the play. She is respected for her justice both at home and abroad: Athenais is drawn to her court for help because of this, and she is always willing to hear the petitions of her subjects, instructing her servants to take ‘especiall care too / That free accesse be granted unto all / Petitioners’ (*Emperour*, sig. B2v). That Pulcheria’s criticism is of those who maintain that ‘All is the Kings, his will above his lawes’ for their own benefit hints towards the idea of bad counsel which the play explores through the influence of Theodosius’s courtiers.

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and I, and the proclamation confirming this issued by Charles I in 1627. Saltpetre was a controversial issue in the 1630s (Sanders, 1997, 461-2).

<sup>50</sup> Although when it was published, *The Emperour of the East* included a Prologue at Court, there is no evidence that this play was ever acted at court and no record of what Charles thought about the politics of the play. (*JCS*, IV. 778-9) The Court Prologue, however, suggests that the play was not received particularly well in the theatre and appeals to the ‘justice’ of the King as ‘supreme judge’ to set the play above the envy of those who condemn it (*Emperour*, sig. A4v).

Philanax, Timantus, Chrysapius and Gratianus lament that Theodius has not yet taken over government from his sister. Chrysapius's reasons for this demonstrate his ambition:

Wee that by  
The neerenesse of our service to his person,  
Should raise this man, or pull downe that, without  
Her licence hardly dare prefer a suit,  
Or if wee doe, 'tis cross'd. (*Emperour*, sig. D1v)

The powers he believes they should have are those which should be the province of the king, not his courtiers, suggesting an overstepping of appropriate bounds in Chrysapius's desires, and that this power and influence is denied to them at Pulcheria's just court suggests their impropriety. Philanax, pointing out the selfish concerns of Chrysapius's statement, claims that his interest is in raising the emperor to his rightful position, not in elevating his own:

You are troubled for  
Your proper ends, my aimes are high and honest.  
The wrong that's done to Majesty I repine at:  
I love the *Emperor*, and 'tis my ambition  
To have him know himselfe, and to that purpose  
Ile run the hazard of a check. (*Emperour*, sig. D1v)

This seems a little hollow following from Chrysapius's statement, and his mention of his 'ambition', whatever that may be, ties his desires to Chrysapius's. Philanax, of course, hopes that in knowing himself, Theodosius will also come to know what Philanax sees as the correct gifts and powers for his courtiers.

In their attempts to bring him to know 'himselfe' the courtiers argue that his current actions are not fit for a monarch:

Timant[us]: You have not yet  
Bene Master of one houre of your whole life,

Chrys[apius]: Your will and faculties kept in more awe,  
Then shee can doe her owne

Philanax: And as a bondman  
O let my zeale finde grace, and pardon from you,  
That I descende so low, you are designed  
To this or that imployment, suiting well  
A private man I grant, but not a Prince,  
To bee a perfit horseman, or to know  
The words of the chace, or a faire man of armes,  
Or to bee able to pierce to the depth,  
Or write a comment on th' obscurest Poets,  
I grant are ornaments, but your maine scope  
Should bee to governe men to garde your owne,  
If not enlarge your empire. (*Emperour*, sig. D2v)

The activities for which they criticise him, and in which Pulcheria has made sure he has been educated, are those which were the marks of cultivated, reasonable manliness: mastery of horses and hunting were markers of mastery of the passions, and only when a man can be master of his own passions is he able to be ruler of others.<sup>51</sup> Their suggestion that Pulcheria is more in control of Theodosius's will than she is of her own is not borne out by her actions in the play, and the lie suggests something of their pique at their lack of advancement. In their own ambitions and in pressing Theodosius to abandon these activities and do more to show his power – Timantus laments that the emperor has staged 'No pompe, / Or glorious showes of royaltie, rendring it / Both lov'd and terrible' (*Emperour*, sig. D3r) – the play illustrates the bad influence that such ambitious courtiers can wield, and suggests that not only do they have a false idea of what is becoming of their

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<sup>51</sup> For example:

As Hee can not bee thought worthie to rule & command others, that cannot rule and dantone his owne proper affections & unreasonable appetites; so can he not be thought worthy to governe a Christian people, knowing & fearing God, that in his own person and hart feareth not, and loveth not the Divine Majestie. (James VI and I, 1599, sig. B2r)

See Sharpe (2000, 99-100) for a discussion of the analogy between mastering one's will and horsemanship.

own position (indicated in Chrysapius's wish to press suits), but also what is becoming of the emperor's.

Theodosius' response, however, suggests the influence of Pulcheria's temperate government:

will you not know  
 The Lyon is a Lyon, though he show not  
 His rending pawes? Or fill th'affrighted ayre  
 With the thunder of this rorings? you bless'd Saints,  
 How am I trenched on? Is that temperance  
 So famous in your cited *Alexander*,  
 Or Roman *Scipio* a crime in mee?  
 Cannot I bee an Emperour, unlesse  
 Your wives, and daughters bow to my proud lusts?  
 And cause I ravish not their fairest buildings  
 And fruitfull vineyards, or what is dearest,  
 From such as are my vassals, must you conclude  
 I doe not know the awfull power, and strength  
 Of my prerogative? (*Emperour*, sigs. D3v-D4r)

Absolute authority, Theodosius states, does not necessarily involve distressing his subjects merely to prove his power; rather, he places an emphasis on temperance, claiming heritage in earlier temperate and successful rulers.<sup>52</sup> There is, however, despite this condemnation of cruel and arbitrary acts, a much more worrying underlying absolutist claim here: should Theodosius wish to act in the way that he describes, it is within his prerogative as absolute monarch to do so.

In advocating benevolent rule, Theodosius stresses the good of the commonwealth over that of individual courtiers:

am I close handed  
 Because I scatter not among you that

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<sup>52</sup> Scipio and Alexander (in his earlier years) were recognised for their temperance (*Plays and Poems*, V. 220, note to II.i.136-7).

I must not call mine owne. Know you court leeches,  
 A Prince is never so magnificent,  
 As when hee's sparing to inrich a few  
 With th'iniuries of many; could your hopes  
 So grossely flatter you, as to beleewe  
 I was born and trained up as an Emperour, only  
 In my indulgence to give sanctuarie,  
 In their unjust proceedings to the rapine  
 And avarice of my groomes? (*Emperour*, sig. D4r)

Thus whilst it is clear that Theodosius is aware of his power and prerogative to take property from his subjects, he is also prepared to acknowledge the limits of what he can call his own property. This emphasis on the property rights of his subjects, like Pulcheria's criticism of extra taxes, strikes a contemporary chord with the arguments made against Charles' use of the prerogative taxation.<sup>53</sup> Emphasising in Theodosius' rebuke to the courtiers and through Pulcheria's actions that a ruler can be secure in the mere *knowledge* of an absolute prerogative, the play suggests that the royal prerogative need not be exercised unreasonably to be maintained. Pulcheria is no less absolute for her reasoned rule, and a 'Lyon is a Lyon, though he show not / His rending pawes' (*Emperour*, sig. D3v).

Despite his rejections of the courtiers' arguments, however, it is clear their comments have some impact, as Theodosius takes control over his empire almost immediately, saying to Pulcheria:

Will you have mee  
 Your pupill ever? The downe on my chinne  
 Confirmes I am a man, a man of men,  
 The Emperour, that knowes his strength (*Emperour*, sig. E1r)

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<sup>53</sup> The rights of the king to levy extra parliamentary taxes were under debate throughout the personal rule. That tyranny was associated with the illegal command of subjects' property is evident in Bodin's argument that there are three types of monarchy: lordly, kingly and tyrannical, where: 'The tyrannicall Monarchie, is where the prince contemning the lawes of nature and nations, imperiously abuseth the persons of his free borne subjects, and their goods as his owne' (Bodin, 1606, 200).

Whilst his repetition of man / men is an assertion of his maturity, and thus an indication that he no longer needs his sister to rule on his behalf, it also emphasises that he is indeed a *man*, not a god, despite Philanax's Biblical reference to the inscrutability of kings (*Emperour*, sig. D3v). This mortal fallibility soon becomes evident in his actions as Emperour, granting petitions arbitrarily so that he can 'send petitioners [away from him] with pleas'd looks'. Indeed, when he attempts to excuse this folly he once again claims that he is a man, but this time, it is as an acknowledgement of his weaknesses, not a statement of his strength: 'I am a man, like other Monarchs, / I have defects and frayleties' (*Emperour*, sig. G4v). All monarchs, not only theatrical ones, are merely powerful men.

As in many plays of the Caroline period, the monarch's turn to arbitrary government and a rule of passion rather than reason, is closely related to his relationship with a woman, in this play, Athenais / Eudoxia.<sup>54</sup> Early in Theodosius's reign, it is not that Athenais exerts a deliberately corrupting influence over the emperor, as the courtiers attempted; rather, she does not try to influence his behaviour at all, claiming she has 'no will, but what is deriv'd from [his]' (*Emperour*, sig. F2). Pulcheria tries to convince Athenais to use her potential influence for good, to moderate Theodosius' behaviour:

Pulcheria: You know, nor do *I* envy it, you have  
 Acquir'd that power, which, not long since was mine,  
 In governing the Emperor, and must use  
 The strength you hold in the heart of his affections,  
 For his private, as the publique preservation,  
 To which there is no greater enemy,  
 Then his exorbitant prodigality,

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<sup>54</sup> See, for example, the influence of Honoria on Ladislaus in Massinger's *The Picture* (1629) and Alinda on Gonzago in Richard Brome's *The Queen and Concubine* (1635-6). This is a development from the association between passion and will in *The Roman Actor*, as Domitian asserted the power of his will over the laws before beginning his relationship with Domitia.

How ere his sycophants, and flatterers call it  
 Royal magnificence.  
 [...]

Therefore, Madam,  
 Since 'tis your duty, as you are his wife,  
 To give him saving counsell, and in being  
 Almost his idoll, may command him to  
 Take any shape you please, with a powerfull hand,  
 To stop him in his precipice to ruine.

[...]

Athenais: Do you think  
 Such arrogance, or usurpation, rather,  
 Of what is proper, and peculiar  
 To every private husband, and much more  
 To him an Emperour, can ranck with th'obedience  
 And duty of a wife? are we appointed  
 In our creation (let me reason with you)  
 To rule, or to obey? Or 'cause he loves me  
 With a kinde impotence, must I tyrannize  
 Over his weaknesse? (*Emperour*, sigs. F3r-F3v)

In Theodosius's 'kinde impotence' there is an echo of Domitian's impotence concerning Domitia; submission to passion weakens an otherwise powerful ruler. Athenais' refusal to use her influence to help Theodosius govern reasonably is set alongside the frivolous and sycophantic courtiers' encouragement of his irrational actions, suggesting that unquestioning obedience is as harmful for the ruler and his country as giving bad advice.<sup>55</sup> Indeed, Pulcheria argues that it is the duty of those capable of giving sound advice to do so. Although Athenais and the corrupt courtiers view Pulcheria's comments here as a means to regain control over the empire and emperor through his wife, there is very little reason in any of Pulcheria's words or actions up to this point to doubt her stated motives. Later, however, she does view Athenais as a rival for her greatness (*Emperour*, sig. K2v). The political comment made here is complicated in this play by the mixing of domestic and

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<sup>55</sup> Horatio in Richard Brome's *The Queen and Concubine*, who is 'the onely man / That does the King that service, just to love / Or hate as the King does' (sig. B5v), illustrates both the ridiculousness and the dangers of complete unquestioning obedience to the monarch's will.



political spheres. Wifely obedience is proper, and Athenais extends this in the well-known analogy between the domestic and political spheres to include unquestioning obedience to the Emperor. Ira Clark argues that the danger to the empire and emperor caused by Athenais' submissiveness suggests that Massinger advocates strong women and their rights (1992, 40), but Massinger already presents a more than able female monarch in this play; rather, what is at stake here is the importance of appropriate political counsel. In petitioning for and receiving Athenais as a slave through Theodosius's careless and arbitrary granting of petitions, Pulcheria teaches Theodosius, Athenais and the theatre audience, that such political obedience is not always appropriate. There may also be, in this petition, a warning to courtiers regarding encouraging kings to act irrationally, as Theodosius' ambitious courtiers acknowledge the folly of encouraging his arbitrary gifts, worrying that Pulcheria's petition could have been to have them executed (*Emperour*, sig. G1r).

Although Theodosius accepts his sister's guidance after Athenais is restored to him, his passion for her continues to affect his reasonable judgement. He irrationally (and wrongly) assumes that when Paulinus sends to him an apple which he had earlier given to his wife, Paulinus sends it in scorn because he is weary of an affair with Athenais. In his anger, he orders Athenais's exile and sentences Paulinus to death. Although his subjects protest that Paulinus should be given the benefit of the due process of law, questioning the sentence whilst 'His cause [is] unheard', Theodosius sees this as a proper use of his absolute authority insisting, 'Is what I command, / To be disputed?' To the theatre audience, however, who know that Paulinus and Athenais are innocent of adultery, his action is, as the just and

wise Pulcheria warns, mere 'rashnesse' (*Emperour*, sig. K2v); it is the wilful action of a powerful man.

When he believes the sentences have been carried out, Theodosius begins to doubt his actions:

I play the foole, and am  
 Unequall to my selfe, delinquents are  
 To suffer, not the innocent. I have done  
 Nothing, which will not hold waight in the scale  
 Of my impartiall justice: neither feele  
 The worme of conscience, upbraiding mee  
 For one blacke deed of tyranny; whereof then  
 Should I torment my selfe?

The audience, however, know that his judgement was not impartial, and that Theodosius recognises this too is indicated, despite his denials, in his reference to his conscience and to tyranny. That his conscience does not allow him to be equal to '[him] selfe' suggests that he has now accepted as true the definition of his authority as entirely arbitrary that the ambitious courtiers propounded as 'knowing himself', and is unable to maintain this image. His assertions of his authority in the rest of this long speech (which is almost soliloquy, suggesting he wrangles with his own conscience and not with his subjects' judgements) serve to remind him of the power which was earlier claimed for him:

shall I to whose power the law's a servant,  
 That stand accomptable to none, for what  
 My will calls an offence, being compell'd,  
 And on such grounds to raise an Altar to  
 My anger, though *I* grant 'tis cemented  
 With a loose strumpets and adulterers gore,  
 Repent the justice of my furie? (*Emperour*, sig. L2r)

Now it is not only the ambitious courtiers and projectors, but the emperor who believes his will is above the law, and the possibility that it is this 'will' and not the

law that decrees what should be considered an offence raises the spectre of a completely unrestrained arbitrary monarchy. The extent to which Theodosius has lost any moderation in reason is indicated in the deification of his anger, and the conflation of ‘furie’ (which has connotations of impetuosity and madness) and ‘justice’ is a disturbing indication of the potential excesses and injustice of such arbitrary rule.<sup>56</sup>

This assertion of monarchical power is, however, juxtaposed with an assertion of monarchical responsibility:

Arc[adia]: As you are our Sovereigne, by the tyes of nature  
 You are bound to bee a Father in your care  
 To us poore Orphans. (*Emperour*, sig. L2r)

This is an echo of arguments of patriarchalism which asserted the responsibilities as well as the authorities for the king.<sup>57</sup> This, and their kneeling to him, seems to remind Theodosius that he has not ruled in the best interests of his subjects, and he reflects upon his arbitrary acts:

Wherefore pay you  
 This adoration to a sinfull creature?  
 I am flesh, and blood as you are, sensible  
 Of heat, and cold, as much a slave unto  
 The tyrannie of my passions, as the meanest  
 Of my poore subjects the proud attributes  
 (By oil’d tongu’d flatterie impos’d upon us)  
 As sacred, glorious high, invincible,  
 The deputies of heaven, and in that  
 Omnipotent, with all false titles els  
 Coind to abuse our frailetie, though compounded  
 And by the breath of Sycophants appli’d  
 Cure not the least fit of an ague in us.  
 Wee may give poore men riches; confer honors  
 On undeservers, raise, or ruine such

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<sup>56</sup> *OED*, ‘furie’, 1 and 2.

<sup>57</sup> See above, p. 78.

As are beneath us, and with this puff'd up,  
Ambition would perswade us to forget  
That wee are men. (*Emperour*, sig. L2v)

Most importantly here, Theodosius rejects the notion that an emperor is one of the 'deputies of heaven' along with other 'false titles', instead acknowledging his weaknesses as a mortal man. In describing himself as a 'sinfull creature', he recognises his own fallibility, and thus emphasises that he is a man, not a god.<sup>58</sup> Theodosius places emphasis on those things which may make a king feel more than mortal: power and, more significantly, the comments of those advisers who speak as if he *were* divine.<sup>59</sup> This decline of and from divinity is accompanied by a recognition of the role played by passion, not reason, in the emperor's arbitrary actions; indeed, passion is here directly associated with tyranny: in describing 'tyrannie of [his] passions', Theodosius implies both that his passions have control over him, and that they cause him to act tyrannously. Again, the uselessness of flattery is brought to the fore in this play: those who obey unquestioningly, or refuse to offer good counsel cannot cure a sickness, either of wilfulness in the king himself, or an illness in the body politic. At the end of the play, Theodius, having discovered the truth (that Paulinus is a eunuch and could not have had an affair with Athenais), is reunited with his wife and released from the guilt of Paulinus's death by the revelation that Philanax did not carry out the execution. Thus it is the disobedience to arbitrary acts without due process of law which brings about a happy resolution to the play.

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<sup>58</sup> One of Rutherford's arguments against the idea of a king's will being law in accordance with the notion that God's will is law, is that a king may will something unreasonable because he does not have the infinite wisdom and perfect will of God which mean that God can will only good (Rutherford, 1644, 192-3).

<sup>59</sup> 'There is nothing which power equal to the gods dare not believe about itself when it is praised' (Buchanan, 2004, 95).

In contrast with *The Roman Actor* which emphasises the divine right of Kings, even whilst questioning royal ambition, *The Emperour of the East* places increased emphasis on the impact of external influences on the monarch to moderate and guide his (or her) actions. In *Theodosius*, Massinger presents a movement away from a divine power and authority of a sovereign towards rule by a mortal and fallible man subject to passion. As *Theodosius* comes to recognise his weaknesses as a man, the need for good counsel and moderating reason is brought to the fore, and *The Emperour of the East* begins to hint at the possibility of established law being such a moderating influence over the monarch through the contrasting views Pulcheria and *Theodosius* give of the king's relation to the law.<sup>60</sup> This developing relationship between the monarch and the law, passion and reason in Caroline drama will be explored in more detail in Chapter 3; the final section of this chapter will examine the ways in which this shift in the foundation of monarchical authority from divinity to will is explored in *The Guardian*.

### **Subject to will: personal authority in *The Guardian***

The decline from divinity of the theatrical rulers calls into question one of the legitimising foundations of royal authority. Although kings should rule according to reason, as suggested in *The Emperour of the East*, this is not always the case, and the intertwining discourses of will and prerogative in drama of the period, reflecting contemporary political debates as Charles continued his personal rule, begin to represent personal power as a point of authority for the king's rule.

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<sup>60</sup> The idea that laws were established as a form of reasoned moderation because kings are men, and thus subject to passions, is one of the arguments Buchanan gives for limiting monarchical authority through law (Buchanan, 2004, 35). See also Rutherford, 1644, 184.

This section will examine the legitimacy of this position of authority as it is presented in *The Guardian*. In this play, as with the differing approaches to government of Pulcheria and Theodosius, Massinger uses a comparison of different rulers and governors to explore alternative methods of rule and foundations of authority.

The play opens with a discussion over the best way for the guardian of the title, Durazzo, to govern his ward. He has allowed Caldoro to be extravagant with his money, and the freedom to see whom and do what he pleases. His guardianship of Caldoro is benevolent, and as the play progresses it becomes clear that he does have his nephew's interests at heart, first offering him country pursuits to take his mind off his beloved, and then helping him to an engagement with Caliste. However, the Neapolitan gentlemen's warning that his 'too much indulgence' (*Guardian*, sig. G7v) will ruin his nephew, and Durazzo's own argument, indicate that this is a form of irrational arbitrary rule, despite his benevolence. His refusal to have his nephew master any means to support himself is clearly irresponsible, particularly as he encourages his thriftless spending: 'He wears rich clothes, I do so; he keeps horses, games, and wenches; / 'Tis not amiss, so it be done with decorum' (*Guardian*, sig. G8r). The reference to decorum does not necessarily imply that he expects his nephew to behave in an orderly or seemly way that pleases Neapolitan society – it is clear from the gentlemen's warnings that this is not the case – rather, he expects him to behave in accordance with his position and wealth.<sup>61</sup> What this entails, however, is not entirely clear, and a shadow of much less benevolent absolutism clouds Durazzo's joviality when he describes the pastimes he and

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<sup>61</sup> *OED*, 'Decorum', 1a, b, 2b, 3.

Caldoro will enjoy in the country. He describes days of hunting, followed by evenings when he will:

give [Caldoro] a Ticket,  
 In which my name, *Durazzo's* name subscrib'd,  
 My Tenants Nutbrown daughters, wholsom Girls,  
 At midnight shall contend to do thee service.  
 I have bred them up to't; should their Fathers murmure,  
 Their Leases are void; for that is the main point  
 In my Indentures: And when we make our progress  
 There is no entertainment perfect, if  
 This last dish be not offer'd. (*Guardian*, sig. H5r)

Whilst, for the most part, the full description of the country pursuits does present the idealised life of country gentry (Clark, 1993, 264), the liveliness and light-heartedness of the description and the emphasis on the positive aspects of the countryside (the girls are 'wholsom', for example) tend to obscure a more serious aspect of his plan: although some of the girls may go to his bed willingly, the threat of eviction if they refuse hangs over Durazzo's tenants. The possibility of a monarch taking other men's wives and daughters arbitrarily is once again raised in Caroline drama, the monarchical analogy being confirmed in Durazzo's reference to their visits as royal progresses.<sup>62</sup> Despite this, as Philip Edwards argues, the 'amorality of the licentious old guardian is never rejected' in the play (1963, 350).<sup>63</sup>

Durazzo's benevolent governance of his nephew is juxtaposed with Iolante's strict guardianship of her daughter Caliste. Hearing that Caliste's 'fame and favours' have been the reason for a public quarrel between 'noted Libertines' (*Guardian*, H5r), she threatens:

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<sup>62</sup> There is also a certain amount of hypocrisy in this analogy: Durazzo has previously commented on the expense royal progresses place on those who are visited (*Guardian*, sig. G8r).

<sup>63</sup> In their discussions of Durazzo's description of his country pursuits, neither Clark nor Edwards acknowledge the uncomfortable coercive aspect of Durazzo's otherwise idealised description.

Do not provoke me.  
 If from this minute, thou ere stir abroad,  
 Write Letter or receive one, or presume  
 To look upon a man, though from a Window,  
 I'll chain thee like a slave in some dark corner,  
 Proscribe thy daily labor: Which omitted,  
 Expect the usage of a Fury from me,  
 Not an indulgent Mothers. (*Guardian*, sig. H6v)

The use of 'indulgent' draws a deliberate comparison with Durazzo's liberal governance, highlighting Iolante's severity. The extent of her demands – Caliste is not so much as to *look* at a man – and the harshness of her threatened punishments lead Mirtilla to claim that this is 'Flat tyranny, insupportable tyranny' (*Guardian*, sig. H6v), and ultimately leads to her daughter's rebellion and elopement with Caldoro (whom she thinks is Adorio). Indeed, the relationship between Iolante and her daughter is used in this play to explore possibilities of resistance to tyrannous monarchs. To Caliste's questioning 'She is my Mother, & how I should decline it?', Mirtilla responds:

I will not perswade you  
 To disobedience: Yet my Confessor told me  
 (And he you know is held a learned Clerk)  
 When Parents do enjoyn unnatural things,  
 Wise Children may evade 'em. (*Guardian*, H7r)

This echoes the comment made in *The True Lawe*, that when kings act against God's laws, then subjects may disobey them, and raises the possibility of legitimate disobedience in running away from a monarch who issues such commands.<sup>64</sup> The legitimacy of the argument, which Mirtilla attempts to confirm by citing her confessor as its source, is somewhat undermined by the appropriation of a moral and religious justification for refusal to obey sinful commands in order to follow their own desires and disobey Iolante's unreasonable, but not immoral edict.

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<sup>64</sup> See above, p.75



That Iolante is representative of arbitrary absolutism in the play is confirmed through the now familiar theatrical equation of this kind of rule with complete surrender to desire:

I am full of perplexed thoughts: Imperious Blood,  
 Thou only art a tyrant; Judgement, Reason,  
 To whatsoever thy Edicts proclaim,  
 With vassal fear subscribe against themselves. (*Guardian*, sig. K6v)

The association of untempered passion with tyranny is made explicit here, as Iolante acknowledges that in her desire for Laval, her good judgement and reason have become subject to her passion. The unmanliness of such submission to passion and abandonment of reason which has been suggested in the analysis of *The Roman Actor* and *The Emperour of the East* above is emphasised here in the fact that a woman, the only female authority figure in this play, makes this statement.

Durazzo and Iolante's rights to absolute authority over their respective children is never questioned; their paternal / maternal position grants them a natural authority. It is, rather, their exercise of this authority which is brought under scrutiny. *The Guardian* does, however, also examine the foundation of legitimate kingly authority in its two figures of political authority, Alphonso and Severino. The play focuses particular attention on issues of law by presenting a forest kingdom of banditti with its own laws and sovereign in juxtaposition with the kingdom of Naples. This comparison allows a more detailed consideration of ideas of legitimate rule, personal power, law and prerogative, as Severino (king of the banditti), unlike Alphonso (King of Naples), has no theoretical right to rule. Whilst Butler and Adler have read Severino's forest kingdom as an ideal alternative to the

corrupt Neapolitan kingdom (Butler, 1984, 256-7; Adler, 1987, 103), I will argue that, in a greater demonstration of political engagement than their reading allows, Massinger's forest kingdom presents not an alternative to, but a critique of, absolute, arbitrary authority.

There is no direct assertion of the foundation of Alphonso's authority, but that he is 'anointed' as king suggests that he is given his authority by God; what is made explicit in the way that Alphonso describes his power, however, is that his position brings him certain responsibilities. When he apprehends Severino as king of the banditti at the end of the play, he states:

Thy carriage in this unlawful course appears so noble,  
Especially in this last tryal, which  
I put upon you, that I wish the mercy  
You kneel in vain for, might fall gently on you.  
But when the holy Oyl was pour'd upon  
My head, and I anointed King, I swore  
Never to pardon murther; I could wink at  
Your robberies, though our Laws call 'em death;  
But to dispense with *Monteclaro's* blood  
Would ill become a King; in him I lost  
A worthy subject, and must take from you  
A strict accompt of't. (*Guardian*, sig. N2r-v)

Alphonso recognises that in accepting the privileges of a King, he also must accept the duties to an authority higher than his own (to uphold heavenly law) which come with these prerogatives.<sup>65</sup> The king's accountability to God is emphasised in Alphonso's earlier comment on being asked to pardon Severino for the supposed murder of Monteclaro that he '*dare* not pardon murther' (*Guardian*, sig. H8v, my emphasis). Nevertheless, it is also clear that Alphonso is not bound to act within the

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<sup>65</sup> James Shirley's *The Cardinal* (1641) also draws attention to the responsibilities of divinely authorised rulers, but here the weight of responsibility is increased to include being an adequate representative of God on earth, with the threat that if a king is unjust, people will also doubt God's justice (*The Cardinal*, sigs. C8v and D3r).

strict bounds of earthly law, and that he uses his prerogative power for pardons and punishment (he says that he would pardon the robberies ‘though our Lawes call ’em death’).<sup>66</sup> On more than one occasion, Alphonso pardons an offence in the hope that the perpetrator will behave better thereafter and deserve his forgiveness. He is not, though, an unduly lenient king, threatening that if they do not mend their ways they will ‘deeply smart for’t’ (*Guardian*, sig. M1r). Importantly, whenever Alphonso acts outwith the established law, it is to mitigate its harshness, not to further his own ends.

Unlike Alphonso, whose anointment gives him legitimate authority, Severino has no external authority for his power, and imposes the rule of his will upon the forest band. Although he recognised his responsibility to make sure his followers are fed and clothed (*Guardian*, sig. M8r), there is no suggestion that this duty is imposed upon him by a higher authority, and this is to his credit. Since fleeing Naples and Alphonso’s sentence for the supposed murder of his brother-in-law Montecarlo, Severino has become king of the banditti and given them laws by which to live:

3. We lay our lives at your Highness feet.
4. And will confess no King,  
Nor Laws, but what come from your mouth; and those  
We gladly will subscribe to. (*Guardian*, sig. I6r)

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<sup>66</sup> This aligns him with the good King of James VI and I’s *Basilikon Doron*, who will use justice with moderation (1599, sig. O3v). This use of prerogative is also the ‘prerogative by way of dispensation of justice’ that Rutherford allows as legitimate for the king (1644, 194). Alphonso’s obedience to heavenly laws, of course, does not diminish his absolutism.

This statement clearly identifies Severino as the origin of law, and denies authority to any alternative source.<sup>67</sup> If the royal word is the site of legal authority, then the king's will is law. It is also clear that this rule of will is maintained through demonstrations of personal power: Claudio states that Severino can command his subjects 'with a look' (*Guardian*, sig. I6r) and later the bandit king threatens not to leave any of his rebellious subjects alive when they refuse to give up their money to a just cause at the end of the play (*Guardian*, sig. N2r).

Severino's complete authority is later confirmed when he invites Iolante to share his sovereignty in the forest, and the bandits present their loyalty to her:

From you our Swords take edge, our Hearts grow bold.  
 From you in Fee, their lives your Liegemen hold.  
 These Groves your Kingdom, and our Law your will;  
 Smile, and we spare; but if you frown, we kill. (*Guardian*, sig. N4v)<sup>68</sup>

This, as has been the case with Domitian and Theodosius before, clearly identifies the sovereign's will with the law, but the phrasing of the statement 'our Law your will' allows two interpretations: first, that whatever the sovereign wills is law, but second, that the sovereign wills that there is law, or that law is obeyed. The feudal register of this passage in the 'Entertainment of the Forests Queen' suggests an element of chivalric courtly love in pledging allegiance to a lady, and perhaps makes reference to the cult of chaste, courtly love developing around Queen Henrietta-Maria. The emphasis placed on chastity throughout the play supports this reading.

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<sup>67</sup> See Rutherford (Rutherford, 1644, 208, quoted above, p82) on the idea that the people hold the sovereign authority to make law. Buchanan argued that as law was created to restrain the king because he was a man subject to passion and therefore not always able to rule dispassionately, then a king must be subject to law (Buchanan, 2004, 129-131).

<sup>68</sup> The entertainment appears as 'II Song' at the end of the play in the 1655 edition. Edwards and Gibson insert it at the beginning of Act 5, scene 1.

More importantly, the feudal language connects the forest kingdom with the feudal structures of society imposed upon the Anglo-Saxons at the time of the Norman invasion, and this has significant implications for ideas of law. Common lawyers opposed to the extra-legal use of royal prerogative, such as Edward Coke, argued that there was a continuity in English common law from the Saxons (whose laws were made by consent of the people) through to the present, and for this reason, the king was not above the law, nor was he its origin.<sup>69</sup> However, others, including James VI and I, argued that after the Norman invasion William the Conqueror imposed his laws upon the (free) Saxons and thereafter his descendants ruled according to their own laws, not those made previously by the people:

And although divers changes have bene in on-ther countries of the bloud Royall, and kingly house, the kingdome being rest by conquest from one to an other, as in our neighbour country in *England*, (which was never in ours,) yet the same ground of the Kings right over all the lande, and subjects thereof, remaineth alike in all other free Monarchies, as well as in this. For when the Bastard of *Normandie* came into *England*, & made himselfe King, was it not by force, and with a mighty army? Where he gave the law, & tooke none, changed the lawes, inverted the order of governement[...] And for conclusion of this poynt that the king is over-lord over the whole landes, it is likewise daylie proved by the Lawe of our hoordes, [...] want of Haires, and of Bastardies. (James VI and I, 1603, sigs. C8r-C8v).<sup>70</sup>

Thus, whilst Norman associations give added emphasis to Severino's absolutism, if they are read from a common law perspective, they allow for criticism of this absolutism in the loss of Saxon liberties.

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<sup>69</sup> See Burgess, 1992, chapter 2 and Hill, 1958, chapter 3. The ancient and customary nature of common law is discussed below in Chapter 3, pp.134-146.

<sup>70</sup> 'Hoordes', 'haire' and 'bastardies' are all aspects of the royal prerogative. A more general argument for the absolute power of kings through conquest can be found in writing throughout the period. See Sommerville (1999, 65-68). Bodin argues that a monarch who takes power through conquest can legitimately treat his subjects' person and property as his own property (1606, 201). Rutherford specifically denies Maxwell's argument that conquest gives a ruler absolute power above the law (1644, 82-89).

Martin Butler and Doris Adler read Severino's kingdom as an ideal alternative to the corrupt Neapolitan kingdom (Butler, 1984, 256-7; Adler, 1987, 103), placing the play in the dramatic tradition in which the exiled courtier and the values of the country present an honest, honourable contrast with the corrupt court. The substance of Severino's laws contributes to this impression by enforcing a kind of social justice in preventing attacks upon the poor but allowing theft from the rich and greedy. Those who hoard grain or enclose commons, greedy usurers, 'builders of Iron Mills, that grub up Forests, With Timber Trees for shipping', dishonest shopkeepers and vintners are all fair targets for the outlaws (*Guardian*, sig. I6v); those who are not to be attacked include lawyers, scholars, soldiers, poor farmers, labourers and those who carry goods for others. However, Severino's laws place most emphasis on the protection of women:

But above all, let none presume to offer  
Violence to women, for our King hath sworn,  
Who that way's a Delinquent; without mercy  
Hangs for't by Marshal law. (*Guardian*, sig. I7r)

The reference to martial law, even in the middle of these commands to uphold social justice, suggests the potentially arbitrary nature of Severino's power, and is reminiscent of the fears of Charles I's subjects in the late 1620s.<sup>71</sup> The exclusion of lawyers from the list of those the banditti can rob because they 'may / To soon have a gripe at us' and are 'angry Hornets, / Not to be jested with' (*Guardian*, sig. I6v) suggests that it is only lawyers (with the common law) who provide a sustainable challenge to Severino's supremacy. However, the overtones of the Robin Hood legend evident in this strategy of robbing only the rich and greedy, emphasised by Alphonso's comments on the justice of Severino's distribution of his spoils and a

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<sup>71</sup> See Chapter 1, pp.33, 47- 48.

reference to the outlaws as ‘imitating / The courteous English Theeves’ (*Guardian*, sig. M6r), suggests injustice in Neapolitan society against which Severino’s band of men stands, and would support Butler and Adler’s readings. These allusions to Robin Hood would not have been lost on the Caroline audience, particularly as the popularity of Robin Hood ballads and plays had increased in the preceding decades (Hill, 1997, 71).

However, the presentation of Severino, his forest kingdom and his laws is more complicated than this court / country binary allows. I have already established that Alphonso is a just monarch, ruling according to heavenly laws, and exercising his prerogative only to ensure the equity of the law. Severino’s laws must, then, have a different purpose. In this respect the forest setting of Severino’s kingdom, along with the personal power that authorises his law, is significant; not only does the play comment on abstract notions of the right to rule and the foundation of legitimate authority, but through Severino’s kingdom Massinger also comments extensively upon specific contemporary political issues.

Charles I’s revival of the forest laws and extension of forest boundaries was very unpopular among his wealthier subjects as they saw this as an unscrupulous means of raising extra-parliamentary revenue through the royal prerogative. Forests became sites of noble resistance to monarchy, and Severino’s law, which is in competition with Alphonso’s, and his position as outlaw, suggest that the forests held an oppositional status. However, forests were also, George Keeton argues:

particularly subject to the will of the sovereign, and the laws which controlled them were regarded as a special body of law, distinct from the

Common Law of the King's ordinary courts, and beyond the control of the ordinary justices of *Curia Regis*. (Keeton, 1966, 180)

There is, then, only prerogative law in the forest, identifying Charles more closely with Severino than with Alphonso. The association of law and will in Severino's kingdom discussed above also suggests an allusion to Charles' prerogative rule. It should be remembered in this respect that Severino's laws are not customary laws as those protecting common land were in Caroline England, but written laws, imposed by the king, which are read, re-read and noted in table books by Severino's forest subjects. In presenting these 'forest laws' as a means to protect the poor by penalising the greedy, the play gives a positive light to Charles' prerogative activities. Indeed, Kevin Sharpe notes that in many areas the forest laws actually protected the peasant population from the threat of enclosure by private individuals (Sharpe, 1992, 245), 'the grand Incloser of the Commons' and the 'Builders of Iron Mills, that grub up Forests, / With Timber Trees for shipping' condemned by Severino's laws (*Guardian*, sig. I6v). This last reference also emphasises the need to maintain forests to build ships to strengthen the navy, an idea highlighted at the end of the play by Alphonso's story of his sons taken captive by Turkish pirates. This story would have a deep resonance for the play's Caroline audience because in 1631, not long before the play was licensed, there was an assault by pirates on Baltimore in Cork during which one hundred and fifty inhabitants were captured. Severino's donation of all of the banditti's wealth to the disguised King to ransom his sons and their companions from the pirates is a topical reference.<sup>72</sup>

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<sup>72</sup> The play was written too early for this to be understood in context of Charles' later contentious prerogative demands for ship money. Bodin argues that usually a king does not have the right to levy extraordinary taxes outside those granted by agreement with the people though parliament, but 'neverthlesse if the necessitie of the Commonweale be such as cannot stay for the calling of a parliament, in that case the prince ought not to expect the assemblie of the states, neither the consent of the people' (Bodin, 1606, 97).



There are, however, problems in reading Severino's Kingdom as a positive representation of personal rule, not in Severino's laws, but with his own actions. Severino breaks his own laws. On venturing back to Naples to visit his wife, Iolante, he finds her prepared to receive a lover. In rage he threatens to torture her until she reveals her lover's identity, ties her to a chair, and leaves her in the dark. Iolante's comments draw attention to the fact that in his swift judgement, without due process of law, Severino is not acting as a just ruler but rather as a passionate man:

Good sir, hold:  
 For, my defence unheard, you wrong your justice,  
 If you proceed to execution,  
 And will too late repent it. (*Guardian*, sig. K7r)

The association between passion and tyranny evident in the earlier plays is once again highlighted in the relationship between a man and the object of his (romantic) desire. Her warning echoes Philanax's concern in *The Emperour of the East* over the execution of Paulinus, 'his cause unheard' (*Emperour*, sig. K2v), but the emphasis here is placed on the effect such summary condemnation has on the image of the monarch's justice. Monarchs acting and judging rashly, the play warns, damage their own reputation for justice. Reluctantly, Severino hears her story but his sentence for her is unchanged. Iolante's maid, Calypso, returns and swaps places with her mistress so that Iolante can meet Laval (the gentleman she tried to seduce, but who is actually her brother Monteclaro in disguise), believing that Severino will never really harm his wife. This is a reasonable assumption in the context of Massinger's plays dealing with the combination of passion and tyranny; Domitian, for example, claims to be powerless to punish Domitia (*Roman Actor*, sig. H3r). However, when Severino returns, thinking Calypso is Iolante, he stabs

both her arms and slits her nose. This action breaks the most important of Severino's own laws: 'But above all, let none presume to offer / Violence to women' (*Guardian*, sig. I7r). Yet, Severino suffers no consequences for the action.<sup>73</sup> Having complained of her injuries to Laval (Monteclaro), whose concern turns to the safety of his sister Iolante and her daughter, Calypso leaves the stage and does not return. Iolanthe and Severino are reconciled, and when Laval reveals his true identity as Monteclaro, Severino is accepted back into Neapolitan society under Alphonso's rule. The implication of this is that a monarch can break their own laws with impunity (the same is, of course, true of Iolante, who breaking her own decrees of chastity escapes punishment through a trick and is forgiven). This is an assertion with complex political implications for Charles' personal rule, particularly in respect of the debate surrounding the legal position of the royal prerogative, and the dubious legal manoeuvrings Charles and his advisers carried out.

Severino's violence to women jars awkwardly in a play which otherwise emphasises the need to uphold law both in Alphonso's refusal to pardon murder, and the re-iteration of Severino's laws. Finally, Severino must ask the pardon of the more moderate King for his offences against Alphonso's laws, and submit himself to Alphonso's sovereignty. Whilst this can be read as a suggestion that Charles may need to curb his absolutism to a more moderate level, the unresolved

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<sup>73</sup> It is possible to read this law as a comment on sexual violence: the emphasis on chastity throughout the play would support this reading, and if this were the case, Severino commits no crime. However, there are no threats to female chastity in this play, except those posed by the women's passions themselves; rather the threats are of physical violence. Adorio threatens to torture Mirtilla (*Guardian*, L7r), and when Claudio's appearance prevents Adorio's second threatened attack on Mirtilla it is not a sexual attack, despite his exclamation 'Forbear, libidinous Monsters', but a threat to 'rip [her] entrail' to recover a jewel he believes she has swallowed (*Guardian*, sig. M5v). Severino's violence then, must be against his own law.

issue of Calypso's wounds leaves a worrying shadow over issues of sovereignty. It seems to emphasise that if a king does not choose to live by a rule of law – whoever's law this may be (God's, established law, his own edicts) – there is no redress for the injured subject.

## **Conclusion**

Massinger's plays never deny the ultimate sovereignty of the king. There is no suggestion that the people may revoke sovereignty or punish a tyrannous king, and the exercise of established law is entirely at the monarch's discretion; even Mirtilla's argument about disobedience advocates only running away, not revolution. What does change in the period covered by these plays, however, is the emphasised foundation for kingly authority. At the beginning of the Caroline period, the plays' grounds for royal absolutism are the theoretical claims of divine right kingship, but as the period progresses, authority comes increasingly to be seen as resting on the personal power of one wilful man. Because of this, emphasis is placed upon the need to moderate the behaviour of a powerful man subject to his passions, through the intervention of good counsel, reasoned argument and law. The intertwining of the abstract ideas of sovereignty and governance with specific aspects of Caroline political and legal policy, such as prerogative taxation, projectors and forest laws, suggests an increased public awareness of and debate over the employment of and foundation for royal authority. The decline from divinity provides an opportunity to question the ultimate legal authority of the monarch: a wilful man can be debated with, a demi-god cannot. The demonstrated

need for a moderating force on the royal will allows the possibility of a legal authority independent from the monarch, and the advocacy of the common law of England as such an authority, as presented on the Caroline stage, is the focus of the next chapter.

## Chapter 3

## Debating Legal Authorities: Common Law and Prerogative

This chapter will explore the ways in which Caroline debates over common law and prerogative were presented on the commercial stage. The movement away from a divinely authorised monarch to a king who acts only according to his own will is developed here in plays which contrast the untempered will of the monarch with the rationality of law. Setting arbitrary absolutism against custom and established law, Richard Brome's *The Queenes Exchange* (c.1631-34), *The Antipodes* (1638) and *The Queen and Concubine* (c.1635-39) participate in contemporary arguments over the position of common law and prerogative using the ideas and vocabulary of Caroline legal debate, and suggest that the common law came to be seen as an alternative, legitimate legal authority to that of the king.<sup>1</sup> The

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<sup>1</sup> There is no certain dating for *The Queenes Exchange*, but critics agree it cannot have been written later than 1634 because, according to the title page, it was acted by 'His Majesties servants at Blackfriars'. Brome was associated with this company in the early 1630s but was writing for the Red Bull's company in 1634, and had moved to the Salisbury Court theatre by 1635 (see Shaw, 1980, 25-6). Shaw suggests that this is one of Brome's early enterprises independent from Jonson, and dates it as 1631-2 (Shaw, 1980, 93, 25), Butler, however places the play towards the middle of the 1630s, alongside *The Queen and Concubine* (Butler, 1984, 268). A date of the early 1630s for the play would make its engagement with ancient rights and liberties particularly topical in the wake of the impact of the Petition of Right in 1628. There is greater consensus on the dating of *The Queen and Concubine* than *The Queenes Exchange*. Cook says it is evidently a King's Revels play, and must therefore be dated prior to 1637 (Cook, 1947, 286). Butler suggests a date of 1636 for this play, arguing that it closely matches the outlook of the queen's courtiers in 1635-6 (Butler, 1984, 35, 42)

first section of this chapter will provide the legal context in which these plays will be discussed, summarising the legal arguments for and against the superiority of common law and absolutism, and establishing the legal vocabulary which the plays employ to further this debate. *The Queenes Exchange*, I will argue, debates the contemporary arguments for the supremacy of the ancient constitution and the common law; *The Antipodes* contrasts the ‘reason’ of law with arbitrary action, and finally, *The Queen and Concubine* explores the destabilising consequences of favouring arbitrary action over established law.

### Discourses of Common Law

[A]lbeit the books and records (which are & *vetustatis & veritatis vestigia* [traces of antiquity and truth]) cited by me in the prefaces to the third and sixt parts of my Commentaries, are of that authority that they need not the aide of any Historian: yet will I with a light touch set downe out of the consent of Storie some proofes of the Antiquitie, and from the censure of those persons who in respect of their profession (for they were Monkes and Clergie men) may rather fall into a Jealousie of reservednes then flatterie, somewhat of the equitie and excellencie of our Lawes; And that it doth appeare most plaine in successive authoritie in storie what I have positively affirmed out of record, That the grounds of our common laws at this day were beyond the memorie or register of any beginning, & the same which the Norman conqueror then found within this realm of England. The laws that *Wil. Conqueror* sware to observe, were *bonae & approbatae antiquae regni leges*, that is, the lawes of this kingdome were in the beginning of the Conquerours raigne good, approved, and auncient. (Coke, 1611, 2π4r-2π4v)

The common law of England is, according to Coke, equitable, excellent and ancient. The existing system of common law had been in place since time

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and Shaw suggests 1635, because the play was, she suggests, one of two presented to the Kings Revels company the Salisbury Court theatre 1635-6 (Shaw, 1980, 29). There is no reason to dispute this approximate dating.

immemorial, emphatically before the Norman Conquest.<sup>2</sup> This ancient law formed the basis of the ancient constitution which maintained the liberties of the subject over the imposition of the will of a monarch.<sup>3</sup> As this form of law was ancient and without specific originator, the ancient constitution denied any possible claims that the law was imposed by a single monarchical figure, and therefore a contemporary king could not claim absolute prerogative and authority over the law as a descendant, literal or metaphorical, of the original lawgiver:

Neither could any one man ever vaunt, that, like *Minos*, *Solon*, or *Lycurgus*, he was the first *Lawgiver* to our Nation: for neither did the King make his owne *prerogative*, nor the Judges make the *Rules* or *Maximes* of the lawe, nor the common subject prescribe and limitt the *liberties* which he enioyeth by the lawe [...]. Long experience, & many trialles of what was best for the common good, did make the Common lawe. (Davies, 1615, sig. \*3r)<sup>4</sup>

Even those such as Francis Bacon who stated that there was a ‘principal Law-giver of our nation’ (1630, sig. A3r) claim that this was Edward I and so the institution of the law pre-dates the Norman Conquest, denying the possibility for a king to claim absolute monarchy through descent from the Conqueror.<sup>5</sup>

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<sup>2</sup> Conquest theories allowed absolute authority to the invading king, to institute new or deny any existing laws. See Chapter 2, p.125.

<sup>3</sup> The ‘ancient constitution’ is a term used by most political historians of the early Stuart period but very few of them attempt to describe what this is. J. G. A. Pocock gives the following summary of his arguments concerning the ancient constitution. It was:

an ‘immemorial’ constitution, and ... belief in it was built up in the following way. The relations of government and governed in England were assumed to be regulated by law; the law in force in England was assumed to be the common law; all common law was assumed to be custom, elaborated, summarized and enforced by statute; and all custom was assumed to be immemorial, in the sense that any declaration or even change if custom – uttered by a judge from his bench, recorded by a court in a precedent, or registered by king-in-parliament as a statute – presupposed a custom already ancient and not necessarily recorded at the time of writing. (Pocock, 1987, 261)

In this chapter I will be discussing some of the claims made here in relation to the legal and political writings, and the dramatic texts of the period.

<sup>4</sup> Davies’ ‘Preface Dedicatory’ was reprinted in 1628.

<sup>5</sup> Coke acknowledges the role of Edward I in codifying the common law, but argues that the law was already ancient before the time of the conqueror and before Edward’s codification (1635, *passim* and 1611, *passim*).

In order for the common law to be seen as an independent, potentially competing, authority alongside the king, however, its legitimacy as such first had to be established. The authority of the king, which had the legitimising sources of precedent both historically and biblically, could only be successfully matched by an alternative of significant historical authority.<sup>6</sup> This was in part the reasoning behind, and in part the conclusion taken from, the claims for common law's ancient and customary usage. The circularity of this argument reflects much of the contemporary thinking about the common law and the ancient constitution; custom feeds into law, and reason feeds into both custom and law and all three contribute to the nature of common law's legal authority, which is then compared in its fittingness as a form of government for England with the royal prerogative, an essentially personal, and potentially changeable and irrational 'law' as discussed in Chapter 2. This section will give an overview of the key terms of common law thought in the period, custom and reason, and their deployment in legal argument.

### *Custom*

The common law was distinguished clearly from statute, civil and canon law by being *lex non scripta*, unwritten law. It was, in fact, a law based on customs

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<sup>6</sup> Cf. Hill, 1958, 69. This may, in part, account for the dissolution of the Society of Antiquaries. The Society researched issues of historical, antiquarian interest. Kevin Sharpe notes that no satisfactory reason has been set forward for the sudden termination of the Society's activities in 1607, but argues that their meetings and papers had become increasingly concerned with political issues, suggesting that 'Perhaps [James VI and I] did not entirely approve of the antiquaries' involvement in the world of politics' (Sharpe, 1979, 28-32, quotation 32). In this respect, it is interesting to note that at least two of the lawyers and political thinkers to be discussed here, John Doddridge and John Davies were members of the Society. John Selden was also a friend of Robert Cotton, a founder member of the Society, and had frequent access to Cotton's library. In 1629, Charles I ordered the closure of Cotton's library on what Sharpe calls the 'pretext' of Cotton's circulation of a seditious paper (1979, 80), and Stuart Handley suggests the real reason for the closure was that Cotton had allowed his library to be used for 'the production of arguments and precedents deemed detrimental to royal interests' (Handley, 2004).



which are of benefit to all in the community. Not all customs, however, could be treated as law:

In respect of their forme, they are either generall throughout all the Realme, and so doe they constitute that part of the Common Law which is grounded upon the generall Custome of the Realme.

Or else they are particular Customes to certaine places.

(Doddridge, 1631, 101)

In order to be considered law, a custom had to be effective throughout the whole country; local customs were, to an extent, exceptions to the law in the area in which they applied.<sup>7</sup> Even countrywide application was not in itself sufficient to merit custom being understood as law, however; the custom also had to have been in constant usage since time immemorial:

And note that no custome is to bee allowed, but such custome as hath bin vsed by title of prescription, that is to say, from time out of minde. But divers opinions have beene of time out of mind, &c. and of title of prescription, which is all one in the Law. For some have said, that time of mind should bee said from time of limitation in a Writ of right, that is to say, from the time of King *Richard* the first after the Conquest, as is given by the statute of Westminster[...] But they have sayd that there is also another title of prescription that was at the Common law, before any estatute of limitation of writs, &c. And that it was where a custome or usage, or other thing hath beene used, for time whereof mind of man runneth not to the contrary. And they have said that this is proved by the pleading[...] that is as much to say, when such a matter is pleaded, that no man then alive hath heard any proofe of the contrary, nor hath no knowledge to the contrary. (Coke, 1629, 113a-114a)<sup>8</sup>

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<sup>7</sup> William Noy argues in a similar vein to Dodderidge, suggesting that customs in general use are maxims in the law:

CUSTOMES

*Consuetudo est altera lex.*

Customes are of two sorts; Generall Customes in use throughout the whole Realme, called Maximes, and particular Customes used in some certaine County, Citie, Towne, or Lordship, whereof some have beene specified before, and some follow here, and where occasion is offered. (William Noy, 1642, 19)

<sup>8</sup> Cf. Henry Finch: 'The Common law of England is a Law used time out of mind, or by prescription throughout the Realme' (Finch, 1627, 77).

Coke's argument encompasses two notions of 'time immemorial', but it is the latter – literally 'time out of mind' – which he most clearly emphasises to justify the treatment of custom as law.<sup>9</sup>

Long usage also contributes to the superiority of the common law as a form of government: 'such prescription, or any prescription used, if it be against reason, this ought not, nor will not bee allowed before Judges, *Quia malus vsus abolendus est*' [because evil will be destroyed by experience/usage/custom] (Coke, 1629, 141). This statement is key to understanding the arguments and vocabularies of common law: Coke's insistence on reason in customs will be examined in more detail shortly; the importance of the notion that 'evil will be destroyed by experience' emphasises the appropriateness of the common law for English government. A custom which is not beneficial will be discontinued, and because of this:

[T]his *Customary lawe* is the most perfect, & most excellent, and without comparison the best, to make & preserve a commonwealth, for the *written lawes* which are made either by the edicts of Princes, or by Counsellors of estate, are imposed uppon the subject before any Triall or Probation made, whether the same bee fitt & agreeable to the nature & disposition of the people, or whether they will breed any inconvenience or no. But a *Custom* doth never become a lawe to binde the people, untill it hath bin tried & approved time out of minde, during all which time there did thereby arise no *inconvenience*, for if it had beene found *inconvenient* at any time, it had beene used no longer, but had beene interrupted, & consequently it had lost the vertue & force of a lawe. (Davies, 1615, \*2r)

This reason for preferring the common law (that it has been approved by long usage) also holds true as a reason for not introducing new laws, or changing those already in place, unless, of course, they have been proved contrary to reason, in which case, the custom loses its force as law:

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<sup>9</sup> For more information on both forms of 'time immemorial' see Weston, 1991, 376 and Tubbs, 1998, 365-9, especially 367.

For any fundamentall point of the ancient Common lawes and customes of the Realme, it is a Maxime in policie, and a triall by experience, that the alteration of any of them is most daungerous; For that which hath been refined & perfected by all the wisest men in former succession of ages, and proved by continuall experience to be good and profitable for the common wealth, cannot without great hazzard and daunger be altered or changed. (Coke, 1635c, sig. B2v)

In his epistles to the reader of the books of *Reports* Coke often repeats that to change the common law is dangerous or will lead to inconvenience.<sup>10</sup> The idea is not specific to Coke, and can be found in Bodin's *Six Bookes of a Common-weale*: 'to make the matter short, there is nothing more difficult to handle, nor more doubtful in event, nor more dangerous to mannage, than to bring in new decrees or lawes' (1606, 470).<sup>11</sup> The idea itself can be traced back to Aristotle, but it becomes particularly significant in Coke's attempts to assert the legitimate authority of the common law over the royal prerogative: the imposition of a new royal law, or, royal abrogation of established law is, according to this argument, a dangerous practice.<sup>12</sup>

Coke bases his argument for the ancient nature of common law on the arguments of Sir John Fortescue, Chief Justice of England under Henry VI, particularly Chapter XVII of his *De Laudibus Legum Angliae* (written between 1468 and 1471, first printed 1545-6):

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<sup>10</sup> The idea appears in *Reports 3* (1635b, sig. D4r) and is emphasised and repeated at several points in *Reports 4* (1635c, 'To the reader' *passim*). See also John Davies:

when our Parliaments have altered or changed any fundamentall pointes of the Common lawe, those alterations have beene found by experience to bee so inconvenient for the commonwealth, as that the common lawe hath in effect beene restored againe, in the same points, by other Actes of Parliament, in succeeding ages. (Davies, 'Preface dedicatory', 1615, \*2r)

<sup>11</sup> J. P. Sommerville uses the appearance of such arguments in Bodin as evidence that the English respect for custom was not as separate from the thinking of continental theorists as Pocock and Burgess would like to claim (Sommerville, 1996, 47-8).

<sup>12</sup> Burgess argues that there was almost universal agreement on the danger of changing or introducing new laws from Aristotle, Aquinas, Machiavelli and Bodin to Coke (1992, 23-24).

*The customs of England are very ancient, and have been used and accepted by five nations successively*

‘The kingdom of England was first inhabited by Britons; then ruled by Romans, again by Britons, then possessed by Saxons, who changed its name from Britain to England. Then for a short time the kingdom was conquered by Danes, and again by Saxons, but finally by Normans, whose posterity hold the realm at the present time. And throughout the period of these nations and their kings, the realm has been continuously ruled by the same customs as it is now, customs which, if they had not been the best, some of those kings would have changed for the sake of justice or by the impulse of caprice, and totally abolished them, especially the Romans, who judged almost the whole of the rest of the world by their laws. Similarly, others of these aforesaid kings, who possessed the kingdom of England only by the sword, could, by that power, have destroyed its laws. Indeed, neither the civil laws of the Romans, so deeply rooted by the usage of so many ages, nor the laws of the Venetians, which are renowned above others for their antiquity – though their island was uninhabited, and Rome unbuilt at the time of the origin of the Britons – nor the laws of any Christian kingdom, are so rooted in antiquity. Hence there is no gainsaying nor legitimate doubt but that the customs of the English are not only good but the best’. (Fortescue, trans. S. B. Chrimes, 1942, 39-41)<sup>13</sup>

The long continuance of customary common law, then, confirmed its status as both legitimate legal authority and perfect for governing England. If the customary law was not the best method of government, various conquerors could and would have changed the law. This acknowledgement of the possibility of a conqueror imposing his will as law did allow the prospect of absolute government after the Norman Conquest. This would have disrupted the ancient constitution which upheld the rights and liberties of the subject independently of the King, and entitled Charles, as a descendant of William, to absolute authority through conquest.<sup>14</sup> Importantly for

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<sup>13</sup> Fortescue’s original Latin when describing the reasons an invading king might change the laws reads: ‘*aliqui regum illorum iusticia racione vel affectione concitati eas mutassent*’ [some of those kings would have changed them, moved by justice, *reason*, or caprice (my emphasis)]. Coke’s translation, more accurate than Chrimes’s, states that ‘some of these Kings, mooved either with Justice, or with reason, or affection, would have changed them’ (1636, sig. π3v). Coke acknowledges Fortescue as one of his authorities for maintaining the ancient establishment of the common law in the letter ‘To the reader’ of *Reports 6 (passim)*. In his address ‘to the learned reader’ in the second book of *Reports*, Coke argues similarly to Fortescue that, ‘If the ancient Lawes of this noble Island had not excelled all others, it could not be but some of the severall Conquerors, and Governors thereof [...] would (as every of them might) have altered or changed the same’ (Coke, 1635a, sig. π4v).

<sup>14</sup> See Hill, 1958, 63. Coke emphasises that the ancient laws continued throughout the reign of William the Conqueror and were restored by Henry I after William Rufus had attempted to impose

the specific legal debates over ship money and non-parliamentary taxes of the period, this would also have given Charles absolute control over all land and property, and therefore the unquestionable right to impose prerogative taxation.

The perfect nature of the common law for ruling England was also asserted by James VI and I in *The Kings Maiesties Speech to the Lords and Common of this present Parliament at Whitehall on Wednesday the xxj of March, Anno Dom. 1609*:

I am so farre from disallowing the Common Law, as I protest, that if it were in my hand to chuse a new Law for this kingdome, I would not onely preferre it before any other Nationall Law, but even before the very Judiciall Law of *Moyes*: and yet I speake no blasphemy in preferring it for conveniencie to this kingdome, and at this time, to the very Law of God: For God governed his selected people by these three Lawes, *Ceremoniall, Morall, and Judiciall*: The *Judiciall*, being onely fit for a certaine people, and a certaine time, which could not serve for the general of all other people and times. (James VI and I, 1609, sigs. C2r-v).

In this speech James was attempting to defend himself from accusations that he intended to dispense with the common law of England and rule by Civil law, which allowed absolute rule by the monarch.<sup>15</sup> Earlier in this speech James does assert his right to exercise the royal prerogative and claims that this is upheld, not limited, by

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his oppressive will on the people (1611, sigs. 2π4v-2π5r), thus neutralising the Conquest by absorbing it into the narrative of the ancient constitution. See also 'To the learned reader' of *Reports* 2. Davies affirms that:

the *Norman Conqueror* found the auncient lawes of England so honourable, & profitable, both for the Prince & people, as that he thought it not fitt to make any alteration in the fundamentall pointes or substance thereof: the change that was made was but in formulis iuris.' (Davies, 1615, sig. \*3r).

John Hare, however, in *St Edwards Ghost: or Anti-Normanisme*, laments the changes made to the law and government at the Conquest and demands a return to the ancient laws and liberties enjoyed by the Saxons (1647, *passim*). There is some debate over the extent to which it was argued that the conquest had made a significant difference to the systems of law and government in England. For a detailed discussion see Hill, (1958, *passim*), Skinner (1965, *passim*) and Sommerville (1986, *passim*). Hill and Skinner give broader historiographical discussions of the Norman Conquest and its interpretation, whereas Sommerville focuses more closely on the early Stuart period.

<sup>15</sup> Absolutism became associated with the civil law, through the doctrine *quod principi placuit*: (Kelley, 1974, 38): that which pleases the king (i.e. the king's will) is law. Francis Bacon and John Doddridge note some similarities between the civil law and the laws of England (Bacon, 1630, B2v-B3r; Doddridge, 1631, 158-9). The attitude of English common lawyers, antiquaries and scholars towards the civil law is debated in a series of articles in *Past and Present* by Donald Kelley, and Christopher Brooks and Kevin Sharpe. See Kelley, 1974; Brooks and Sharpe, 1976; and Kelley, 1976.

the law (1609, sig. C1r) and it is clear James would not place the authority of the common law above his own judgement.<sup>16</sup> Nevertheless the emphasis throughout is placed on the status of the Common Law as the most suitable means to govern the country.<sup>17</sup>

The idea that the common law and ancient constitution had remained completely unchanged, as advocated by Fortescue followed by Coke, however, was not entirely satisfactory to some of his contemporaries, such as John Selden and Henry Spelman, who argued that this is essentially non-historical, and does not allow for the developments in society. Selden questioned the argument for immutable customary law in his notes on Fortescue in the 1616 edition of *De Laudibus Legum Angliae*, instead arguing for an evolutionary development of common law, claiming contrary to Fortescue, ‘But questionlesse the *Saxons* made a mixture of the *British* customes with their own; the *Danes* with old *British*, the *Saxon* and their own; and the *Normans* the like’ (Selden, 1616, 7). The comments Selden makes on this particular chapter of Fortescue’s work are much longer than his commentary on any other chapter, suggesting the importance he places on this issue. His argument for the historical and evolutionary nature of law continues, responding to questions of the origin of common law:

‘Tis their triviall demand, *When and how began your common laws?*  
Questionlesse its fittest answerd by affirming, when and in like kind as the  
laws of all other States, that is, *When there was first a State in that land,*

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<sup>16</sup> Davies maintains both of these arguments – that the common law is the best law to rule this English nation, and that it upholds the king’s prerogative – in his praise of the common law. However, he makes the point more strongly, stating that the common law ‘is so framed and fitted to the nature & disposition of this people, as wee may properly say, it is *connatural* to the *Nation*, so as it cannot possibly bee ruled by any other lawe’ (1615, ‘Preface Dedicatory’, \*2v).

<sup>17</sup> Roger Lockyer suggest that it was James’s public professions of his commitment to customary ways and established legal methods which preserved the image of the King as a constitutional ruler despite his recourse to unpopular prerogative measures such as Impositions (1999, 240-1).

*which the common law now governs:* then were naturall laws limited for the conveniencie of civill societie here, and those limitations have been from thence, increased, altered, interpreted, and brought to what now they are; although perhaps (saving the merely immutable part of nature) now, in regard of their first being, they are not otherwise then the ship, that by often mending had no piece of the first materialls, or as the house that's so often repaired, *ut nihil ex pristina materia superfit* [so that nothing is made of the original material], which yet (by the Civill law) is to be accounted the same still. (Selden, 1616, 19)

Although this need not entirely contradict the idea of law as customary, nor deny that the origin of law is immemorial, it does discredit the notion that common law has remained unchanged.<sup>18</sup> Selden's argument that the common law of England began at the same time as the laws that govern other nations also strikes against Fortescue's assertions, above, that the English laws are of greater antiquity than other laws, and for this reason are the best. Instead, Selden argues, the common law is the best law by which to govern England because it has evolved with the people and communities it governs: 'Those which best fit the state wherein they are, cleerly deserve the name of the best law' (Selden, 1616, sig. C2v).

### *Reason*

The legitimacy and superiority of the common law of England was not only based on its long usage, however; it was also considered to be a law constituted of reason, which derived in part from its customary nature, and in part from its basis in natural law. Selden's commentary on Fortescue, aside from describing and emphasising the common law's fittingness to govern the nation, also draws attention

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<sup>18</sup> In 'Of the Ancient Government of England', first written in 1614, Henry Spelman also argues for a slow evolutionary process of legal development:

To tell the Government of *England* under the old *Saxon* Laws, seemeth an *Utopia* to us present; strange and uncouth: yet can there be no period assign'd, wherein either the frame of those Laws was abolished, or this of ours entertained; but as day and night creep insensibly one upon the other, so also hath this alteration grown upon us unsensibly, every age altering something, and no age seeing more than what themselves are actors in, nor thinking it to have been otherwise than as themselves discover it by the present. (Spelman, 1698, 49)

to the idea that all law (at least all customary law) is based upon natural law.<sup>19</sup> The law of nature was thought to be the natural reason with which men governed themselves and was often equated with God's moral law.<sup>20</sup> For Davies, common law's similarity to the natural law contributed to its authority and its perfection:

Therefore as the *lawe of nature*, which the schoolmen call *Ius commune*, & which is also *Ius non scriptum*, being written onely in the hart of man, is better then all the written lawes in the worlde to make men honest & happy in this life, if they would observe the rules thereof: So the *custumary lawe* of England, which wee doe likewise call *Ius commune*, as comming nearest to the lawe of *Nature*, which is the roote and touchstone of all good lawes, & which is also *Ius non scriptum*, & written onely in the memory of man (for every *custome* though it tooke beginning beyond the memory of any living man, yet it is continued & preserved in the memory of men living) doth farre excell our *written lawes*. (Davies, 1615, 2)

However, natural law was also a law of reason. Natural law was the natural reason which every man possessed, and by which he should govern his own actions: 'The law of Nature is that soveraigne reason fixed in mans nature, which ministreth common principles of good and evill' (Finch, 1627, 3-4). The use of the word 'soveraigne' is significant: if reason should be sovereign in ruling a man's actions, it should also be sovereign over will in determining law. 'All men must agree,' Finch states, 'that lawes in deed repugnant to the law of reason, are aswell[sic] void, as those that crosse the law of nature' (1627, 76).

Indeed, Finch asserts that the common law is 'nothing els but common reason'. However, it is not merely the common reason, 'which everie one doth

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<sup>19</sup> The idea that all law derives from natural law is not specific to Selden (see, for example, Doddridge, 1631, 153, 158-9) nor new to the period, having its origins in the thinking of Thomas Aquinas (Burgess, 1992, 33). Selden goes on to explain that the reason laws are different in different countries and States, despite having a common origin in Natural law, is that they have developed according to the needs of that particular community in the same way that makes English common law perfect for governing England (Selden, 1616, 17-18).

<sup>20</sup> Natural law, Aristotle believed, was also that which made men form political societies for government. For a detailed discussion of ideas of natural law, and its relationship with common law, see Sommerville, 1999, 13-18.



frame unto himselfe’, he argues, ‘but refined reason’ (Finch, 1627, 75). Coke’s *The first part of the Institutes of the Lawes of England* gives a more detailed explanation:<sup>21</sup>

And this is another strong argument in Law, *Nihil quod est contra rationem est licitum* [nothing which is against reason is lawful]. For the reason is the life of the Law, nay the common Law it selfe is nothing else but reason, which is to be understood of an artificiall perfection of reason, gotten by long study, observation, and experience, and not of every mans naturall reason, for, *Nemo nascitur artifex* [No one is born an expert]. This legall reason, *est summa ratio* [is the highest reason]. And therefore if all the reason that is dispersed into so many severall heads were united into one, yet could he not make such a law as the Law of England is, because many succession of ages it hath beene fi[n]ed and refined by an infinite number of grave and learned men, and by long experience growne to such a perfection, for the government of this Realme, as the old rule may be justly verified of it *Neminem oportet esse sapientiozem legibus*: No man (out of his owne private reason) ought to be wiser than the Law, which is the perfection of reason. (Coke, 1629, 97b)

Coke presents here dense and sophisticated arguments for the rationality of law. The common law is the highest form of reason because it is not the wisdom of one man in one time, but of many men through several ages, and their cumulative wisdom must be greater than that of one man. Not only does Coke argue for the rationality of common law here, but also for its superiority over a law imposed by any one person. Included in his argument is the assertion that a man’s personal, natural, reason is not enough to be able to understand the complexities of law; rather, it can only be understood through long study and experience, an ‘artificial reason’ which only experienced lawyers and the judiciary possessed. They and only they are capable of correctly interpreting and manipulating the law. If this is the case, the

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<sup>21</sup> Hereafter *Institutes I*.

king cannot hold authority over the law, either as law-giver or as primary interpreter.<sup>22</sup>

In a variety of ways, then, the common law was viewed as a legitimate legal authority, independent of the king. It has no single originating source (be that indigenous king or conqueror), making it subject to the will of no single ruler; instead it claims legitimate authority in its antiquity, its rationality or its perfect fittingness to govern England. The common law had in its favour two different assertions of its rationality: its derivation from the law of Nature, and its basis in custom.<sup>23</sup> Both of these arguments, by virtue of their emphasis on reason and testing, favour common law over any rule imposed by a single lawgiver, and provide an alternative, rational law in contrast with that imposed by the potentially capricious will of the monarch.

In the sections which follow, this chapter will examine the ways in which the understood history and vocabularies of common law are employed and translated on the Caroline stage. *The Queenes Exchange* engages with the ancient constitution and the customary nature of common law; *The Antipodes*, by illustrating the absurdity of irrational judgement, emphasises the need to temper desire and act according to law and *The Queen and Concubine* examines the rationality of law and the consequences of disregarding this in favour of arbitrary

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<sup>22</sup> This led to a direct confrontation between Coke and James VI, common law and the monarch. Although James had natural reason, Coke argued, he did not have the ‘artificial reason’ of the judiciary. James objected that this would mean that he was under the law, and Coke quoted Bracton’s argument that Kings were under God and the Law (Bracton, 1968-77, 33). See Barnes (2004, 12-13) and Usher (1903, *passim*).

<sup>23</sup> That the customary nature of law allows common law to be a law of reason through the trying and testing of rules before they become law is indicated in Coke’s argument, above, ‘if it be against reason, this ought not, nor will not be allowed before Judges: *Quia malus abolendus est*’ (Coke, 1629, 141). Burgess argues that custom was what allowed the common law to be both mutable and a law of reason and thus immutable (Burgess, 1992, 29).

absolutism. These plays, however, do not merely employ the vocabulary of common law to present the ideas of contemporary legal argument; they also present the potentially destabilising effect of competing legal authorities in the common law and royal prerogative. Although the motif of marriage is used both as a method of legal (re-)stabilisation and as an index of legal stability, it becomes clear that in order to maintain justice and stability in the kingdom, the common law must take priority over royal will.

### **The Ancient Constitution: *The Queenes Exchange***

*The Queenes Exchange* centres on the marriage options of Bertha, Queen of the Saxons. The Saxon setting is unusual, and no source for the play has been identified, suggesting a deliberate association of the play with the idealised Saxon past employed by advocates of the common law.<sup>24</sup> In the course of the play, Bertha marries Anthynus, the son of one of her courtiers, believing he is the man to whom she is betrothed, King Osriik of Northumberland (the men are almost identical); the Queen's 'exchange' of the title is her exchange of one husband for another. More significant, however, are the legal authorities these possible husbands represent: Osriik embodies arbitrary absolute rule and Anthynus, rule by the customary common law. Bertha, in changing her husband, also changes the kind of legal authority she espouses.

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<sup>24</sup> Butler (1984, 265) and Weston (1991, *passim*) note that the Saxons were the society to whom the Stuarts looked for customary rights and liberties, and it is indeed the Saxons to whom Coke (*Reports* 8, 'To the reader'), Hare (1647, *passim*, esp. 6) and Spelman (1698, *passim*), amongst others, refer their readers for the ancient nature of the law and the liberties of parliaments. Andrews states he has examined the chronicles of 'Hall, Holinshed, Fabyan etc' in vain for the source, but the names of the characters, however, can be found in Holinshed's chronicles referring to Saxons (Andrews, 1981, 79-80).

At the beginning of the play, consistent with the Saxon setting, Queen Bertha has called a meeting of her Lords to ask their opinion on her proposed marriage to Osriik.<sup>25</sup> Bertha's first speech sets out clearly her claims to authority:

Since it hath pleasd the highest Power to place me  
His substitute in Regal Sovereignty,  
Over this Kingdom, by the generall vote  
Of you my loyall Lords, and loving Subjects,  
Though grounded on my right of due Succession;  
Being immediate heir, and only child  
Of your late much deplored King my Father.  
I am in most reverend duty bound  
Unto that Power above me, and a wel-  
Befitting care towards you my faithfull people,  
To rule and govern so (at least so neere  
As by all possibility I may)  
That I may shun Heavens anger, and your grief.  
*(Queenes Exchange, sig. B1r)*

As the opening speech, Bertha's dwelling on the foundations of her authority sets the scene for the ideas of legitimate authority in law to be contested throughout the play. This speech encompasses a variety of political theories on the nature and origin of royal power: she is the representative of God on earth, thus ruling by divine right, but she has also been elected through the Lords' vote and as such has the support of the council too. Her right to rule as the legitimate heir to the previous monarch is emphasised by her description of her father as 'late' and 'much deplored' (his death has been much lamented).<sup>26</sup> Her claims to authority encompass divine right and contract theories of government, and the deliberate conflation of

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<sup>25</sup> Saxon kings ruled in association with a counsel of Lords which later became the basis for rule by Parliament. This provided a long, continuous (and pre-conquest) history for the notion of King-in-parliament, and added to claims that the King could not overrule parliament by virtue of their existing only after instigation by a previous king. See William Lambarde's *Archeion*, cited in Burgess, 1992, 62. This contrasts starkly with Robert Filmer's argument that 'all those liberties that are claimed in parliaments are the liberties of grace from the king, and not the liberties of nature to the people' (Filmer, 1680, 15v).

<sup>26</sup> *OED*, 'deplored', 1.

these theories in the potential origins of Bertha's authority means she is undoubtedly sovereign in her kingdom: there is no position from which her authority can be questioned.<sup>27</sup> What is at stake is the way in which she exercises her authority to govern. She is, at this point in the play, far from arbitrary absolutism; she acknowledges that her position comes with a duty, both to God and to her people to rule justly.<sup>28</sup>

Although most of the Lords express their approval of her marriage, Segebert does not. The reasons for his objection associate him closely with advocates of the common law:

I beseech you my Lords,  
 To weigh with your known wisdom the great danger  
 This match may bring unto the Crown and Country.  
 Tis true, the King *Osriik* as wel in person  
 As in his dignity, may be thought fit  
 To be endow'd with all you seem to yeild him.  
 But what becomes of all the wholesome Laws,  
 Customs, and all the nerves of Government  
 Your no less prudent than Majestick Father  
 With power & policy enricht this Land with;  
 And made the Saxons happy, and your self  
 A Queen of so great eminence. (*Queenes Exchange*, sigs. B1r-v)

Segebert's use of the discourse of custom of contemporary legal argument, and his reference to Saxons, connects the laws that he seeks to preserve with the ancient constitution. These laws are not only good for the wellbeing of the country – they are 'wholsome', suggesting health in the body politic – but they have also enriched it, and it is this legal wealth that gives Bertha her superiority over other monarchs.

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<sup>27</sup> See Chapter 2, pp.74-81 for a discussion of these theories.

<sup>28</sup> James VI and I's asserted that a King should behave 'as a loving Father, and carefull watchman, caring for [his subjects] more then for himselfe, knowing himselfe to be ordained for them, and they not for him; and therefore countable to that great God, who placed him as his lieutenant over them, upon the perill of his soule to procure that weale of both soules & bodies, as farre as in him lieth, of all them that are committed to his charge' (1603, sig. B4r).

As part of the debate over the position of common law and prerogative, it is significant that here the customary law maintains the Queen's position, the Queen does not give power to the law, thus conforming to contemporary arguments that the king's prerogative was part of, or indeed granted by, the established law rather than the law being subject to the king's will. The 'great danger' Segebert fears for the country is that these laws will be lost and Bertha's happy, prospering and orderly realm will 'Be now subjected to a strangers foot; / And trod into disorder' (*Queenes Exchange*, sig. B1v) by subjection to Osriik's rule.

Segebert does not want to deprive his queen of the authority she currently wields or the privileges already ascribed to her; he wishes only to maintain the *status quo*:

I know, and you, if you knew any thing,  
Might know the difference twixt the Northumbrian lawes  
And ours: And sooner will their King pervert  
Your Priviledges and your Government,  
Then reduce his to yours. (*Queenes Exchange*, sig. B2r)

The audacity of this argument ('if you knew anything') suggests the extent of Segebert's concern for the maintenance of the common law. The government of the Saxons and indeed Bertha's privilege are, he argues, currently on the right course (that of moderate monarchical rule by common law), but this will be perverted in marriage to Osriik.<sup>29</sup> The assertion that Osriik would not reduce his government to hers could suggest that he has greater power than Bertha which he will not diminish or bring under her control. However, 'reduce' had other meanings current in the

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<sup>29</sup> Burgess argues that one of the ways English ancient constitutionalism differed from other countries' was that it began as a means to defend the status quo, not, as in Spain and France, to advocate a return to a golden age (Burgess, 1992, 15-18). Ancient constitutionalism, Burgess suggests, is not merely a glorification of the past in late 16<sup>th</sup> and early 17<sup>th</sup> century England, but a glorification of the present (1992, 17).

seventeenth century including ‘to lead or bring back from error on action, conduct, or belief, especially in matters of morality or religion’ or ‘to bring (a thing, institution, etc.) back to a former state’.<sup>30</sup> Segebert’s concern is that Osriik will pervert the Saxon laws rather than turning his seemingly erroneous methods of government to those prudent and wholesome methods prevalent in Bertha’s Saxon kingdom.<sup>31</sup>

The late King charged Segebert with the duty of protecting the law in Bertha’s marriage. Concerned for his people, the King commanded:

That rather then by marriage you should bring  
Your Subjects to such thraldome, and that if  
No Prince whose lawes coher’d with yours did seek you  
(As some there are, and nearer then the Northumbrian)  
That he would have you from some noble Stock  
To take a Subject in your owne Dominion. (*Queenes Exchange*, sig. B2r)

The customary laws of the ancient constitution safeguarded the liberties of the subject; that Osriik’s government would bring the Saxons into ‘thraldome’ is the first clear indication of his absolutism. Segebert offers an alternative to this in suggesting marriage to one of her subjects, whose idea of law would necessarily coincide with her own.<sup>32</sup> Segebert never suggests that he is the man she should

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<sup>30</sup> *OED*, ‘reduce’, 8a and 9b. See also definition 2. The first of these also lends weight to the notion that the play might include some reference to the catholic influence of the Queen at court (see footnote 33).

<sup>31</sup> Matthew Steggle reads the play as a comment on the concerns of nationhood and Britishness related to the union of England and Scotland, arguing that the play ‘does not offer practicable solutions to anxieties about the nature of the union between England and Scotland’, but the play certainly articulates such anxieties’. As the union of Bertha’s court with Osriik’s does not actually happen, Steggle suggests that this is a separatist play (2004, 54-57, quotation at 56).

<sup>32</sup> The legal import of Segebert’s argument here is emphasised if his reasons for the Queen’s marriage to a subject are compared with those given by Cleonarda in Lodowick Carlell’s *The Deserving Favourite* (1629):

Who would not  
Marry with a Subject that is a King of Vertues,  
Rather then with a King that’s govern’d  
By his Vices? (*Deserving Favourite*, sig. N2v)

marry and, despite the other Lords' pointed question, 'whom in your great wisdom / Would you allot the *Queen*?', he is cleared of any ambitious motive by his obvious concern for the law and the state, and in his condemnation of the other courtiers for their sycophantic acquiescence to Bertha's wishes 'though all / The Kingdom perish for't' (*Queenes Exchange*, sig. B1v). His care for the country is confirmed when he states that he does not grieve at his banishment (imposed for speaking out against the Queen's wishes) so much for himself as for what will become of his country (*Queenes Exchange*, sig. B4v).

The fear for the liberties of the people and the safety of the law Segebert invokes is intensified by the imagery Bertha chooses, in the same scene, to give her assent to the marriage to Osriik:

A King sent forth a General to besiege  
 A never conquered City. The siege was long,  
 And no report came back unto the King;  
 How well or ill his Expedition thriv'd;  
 Until his doubtful thoughts had given lost,  
 His hope oth' City, and his Army both  
 When he being full of this despair, ariv'd  
 Oth' suddam his brave General with Victory;  
 Which made his thanks, as was his conquest double.  
(*Queenes Exchange*, sig. B2v)

There is nothing unusual about the analogy between a love won and a conquest but, in the context of Segebert's Saxon objections, the passage must have political resonance. If, as some absolutists claimed, the Norman Conquest introduced absolute kingship and disrupted the ancient constitution, Bertha's willing acquiescence to Osriik's conquest implies a submission to the will and whim of the

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Segebert and Cleonarda's argument make essentially the same point: it is better to marry a subject who has appropriate values than marry a king who does not. However, Cleonarda's concern with virtues rather than laws emphasises the concern for common law expressed in Brome's play, and potentially suggests a divergence of priorities between courtier and commercial playwrights which, although outside the scope of this thesis, merits further investigation.



conqueror and the abolition of the customary Saxon law. Her reference to a double conquest is a little ambiguous: whilst it is clear that in terms of the siege, ‘double’ refers to the greatness of the King’s joy and victory, in Bertha’s analogy the meaning is less clear, and to a politically alert audience could potentially link the conquest of Bertha’s heart with the subordination of her laws and realm. The political and legal implications of the Queen’s conquest analogy are confirmed in a sycophantic courtier’s comment:

I can but think what old Segebert said  
 Concerning Laws, Customes and Priviledges,  
 And how this match will change the Government.  
 I fear, how e’er the Laws may go, our Customes will  
 Be lost; for he [Northumbrian ambassador] me thinks out-flatters us already.  
 (*Queenes Exchange*, sig. B2v-B3r)

Although his second use of ‘custom’ quite clearly refers to court ‘customs’ of flattery, the emphasis is placed on the change in laws and customs and how this ‘will change the Government’.<sup>33</sup> Coming so soon after Bertha’s conquest analogy and in the same scene as Segebert’s objections to the marriage based on concern for law and liberty, this cannot but emphasise the play’s engagement with contemporary legal argument.

The emphasis Segebert places on custom and law contrasts sharply with the terms he uses to criticise Bertha’s marriage:

All your wealth  
 Your state, your laws, your subjects, and the hope  
 Of flourishing future fortunes, which your Father  
 By his continual care, and tedious study  
 Gave as a Legacy unto this Kingdom:  
 Must all be altered, or quite subverted,

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<sup>33</sup> In these concerns over the effects of Bertha’s marriage it is possible to see a fear of the influence the French, Catholic Queen Henrietta-Maria may have had at court, especially because Catholicism was associated with absolutism.

And all by a wilful gift unto a stranger. (*Queenes Exchange*, sig. B1v)

In describing Bertha's decision to marry Osriik as a 'wilful gift' Segebert undermines the Queen's prerogative, bringing it to the level of mere wilfulness, recalling contemporary anti-absolutist discourses of will which were established in Chapter 2. The royal prerogative has become mere will, not the reasoned government which, at least in Segebert's eyes can be found in the legacy of customary law Bertha inherited. This legacy implies not only the long continuance of the law, but also a responsibility to preserve it to pass it on again at the Queen's death. Significantly, hope for the future for subjects, state and wealth are connected to the law, not to Bertha's will; indeed, indulging Bertha's will would overthrow or ruin (subvert) these hopes.

This questioning of the royal will causes the Queen to reassert her authority:

Peace: stop his mouth. Unreaverend old man,  
 How darst thou thus oppose thy Soveraignes will,  
 So well approvd by all thy fellow Peers;  
 Of which the meanest equals thee in judgement?  
 (*Queenes Exchange*, sig. B1v)

Bertha tries to recover the authority of her 'Soveraignes will' from the imputations of whim both by reinforcing her authority in asking how he dares to oppose her, and by the approbation of the other Councillors. Segebert does not, however, accept the will of the Queen and the approval of his sycophantic peers as a sound method of judgement:

Do you approve their judgements, Madam, which  
 Are grounded on your will? I may not do't.  
 Only I pray, that you may understand,  
 (But not unto your loss) the difference  
 Betwixt smooth flattery, and honest judgements.  
 (*Queenes Exchange*, sig. B1v)

The repetition of the word ‘will’ in this interchange (‘wilful gift’, ‘Soveraignes will’, ‘your will’) emphasises that this action is on the whim of the Queen rather than a reasoned decision. The need for advisers’ true judgement rather than the flattery of sycophants that Segebert highlights is not specific to drama of the Caroline period, but here, however, the flattery of Bertha’s courtiers not only encourages absolute, even arbitrary, rule but it is also explicitly connected with undermining the stability of her state, laws and subjects, and the ‘hope / Of flourishing future fortunes’ left as her legacy by her father.

Already, even before his appearance on stage, Osriik has tempted Bertha towards arbitrary rule. This can be seen most clearly in her banishment of Segebert for his advice; indeed, Anthynus later describes her as the ‘Tyranresse’ who banished his father (*Queenes Exchange*, sig. D4v). Nevertheless, she does not yet rule with cruelty; she refuses to execute Segebert or confiscate his land because of his insolence, dismissing her courtiers’ suggestions with ‘ Away, you’l be too cruel’ (*Queenes Exchange*, sig. B2r). In Osriik himself, however, the traits of an arbitrary ruler can be found. He rules in conjunction with a court favourite, a controversial figure in early Stuart politics, particularly the Duke of Buckingham, and a stock figure of Jacobean and Caroline drama.<sup>34</sup> Osriik acts only according to his own will and his rule is clearly one of personal authority augmented with threats of severe punishment:

And if my power be not a spell sufficient  
To worke your secresie, I’l take your heads

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<sup>34</sup> For example, Ben Jonson’s eponymous *Sejanus*, Massinger’s Sanazarro in *The Great Duke of Florence*, and Brome’s Flavello in *The Queen and Concubine*.

To mine own custody. (*Queenes Exchange*, sig. E1v)

This is not reasoned absolutism; rather it is the arbitrary threat of a wilful man, emphasising his power and ability to punish. There is no reason to believe he will not carry out his threats.

Osriik's complete surrender to will is illustrated in his uncontrollable passion for Mildred, Segebert's daughter. When Osriik first submits to his passion for Mildred, he describes it as an illness: 'I am not well, what kind of Changeling am I?' (*Queenes Exchange*, sig. C2r). His reference to being a 'Changeling' may refer to his sudden change of heart from Bertha to Mildred, but it could also refer to the danger to his friendship with his favourite Theodrick if he pursues Mildred as she has already been wooed by him.<sup>35</sup> In a dramatic parallel with Bertha's actions, Osriik too banishes the courtier who obstructs his union with the desired partner, ordering Theodrick's house arrest. The king and his courtiers repeat throughout the following scenes at Osriik's court that the king is 'not well' or 'sick' (*Queenes Exchange*, sig. C2r, D2v), providing a stark contrast between the sickness caused by unrestrained will at Oriik's court and the 'wholsome Laws' (*Queenes Exchange*, sig. B1r) which Segebert claims for Bertha's kingdom. Indeed, Osriik's sickness does not only affect him, but those around him:

Although I cannot properly call it  
 A sickness: I am sure 'tis a disease  
 Both to himself and all that come about him.  
 I fear he's brain-crack'd, lunatick and Frantic, mad;  
 And all the Doctors almost as mad as he,  
 Because they cannot find the cause. (*Queenes Exchange*, sig. D2v).

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<sup>35</sup> That the desire that represents absolutism should also be concerned with taking what rightfully belongs to one of his subjects may also be a comment on the abuse of royal power and infraction of subjects' liberties in Charles's forced loans and prerogative taxation.

All is not well in the Northumbrian body politic. The possibility that Osriik's desire for Mildred has sent him mad also draws a comparison with Segebert's concern for the laws of Bertha's kingdom. Whilst he reprimands Bertha for acting wilfully, and her Lords for their sycophancy, they comment that he has lost his senses:

[Lord?]: Take hence the mad man.

Colr.: We are sorry for you.

Elk.: And wish the troublesome spirit were out of you  
That so distracts your reason. (*Queenes Exchange*, sig. B1v)<sup>36</sup>

It is clear, however, from his concern for his country and through comparison with Osriik's illness, that Segebert's reason is not distracted, although Osriik's, in his overwhelming desire, is. The claims for the reason of the common law are translated here into a madness of absolutism on the Caroline stage.<sup>37</sup> The courtiers explicitly associate this madness with his court favourites who, in having 'the rule here over [their] Ruler', have, they say, made the king mad (*Queenes Exchange*, sig. E4v). This is a subtle representation of the evil counsel argument, in which any unpopular or inappropriate actions taken by the king are the result of poor advice. However, it also associates the king's madness with the instruments of his absolute rule – his favourites. The connection between madness and absolutism is further confirmed in the audience's knowledge that Osriik's madness is really caused by his arbitrary will in his uncontrollable passion for Mildred. Although it seems, at least initially, that he wrestles with this passion, his arbitrary unconcern for his people is illustrated in his continued pursuit of Mildred despite acknowledging that his treatment of Theodrick is 'unjust' (*Queenes Exchange*, sig. D3v).

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<sup>36</sup> The 1657 edition of the text attributes the first of these lines to Segebert, but as he has just finished speaking, and the sentiment in it coincides with the other Lords rather than Segebert it seems to have been misattributed.

<sup>37</sup> This a particularly key idea to Brome, and appears again in *The Queen and Concubine* and *The Antipodes* which will be discussed below.

Despite Osriik's sickness, no harm comes to his country. However, in the linked sub-plot centred on Segebert's family, Brome illustrates the potential dangers for law and order in the total submission to will.<sup>38</sup> As Segebert prepares to go into exile he asks his children for an expression of their gratitude. The echoes of *King Lear* in this scene are obvious, and contribute to the tragic atmosphere of Segebert's exile, invoking a potential political instability. They also suggest something of Bertha and Segebert's folly in wanting to hear their own praise, as well as preparing the audience for Offa's treachery, which endorses Segebert's warnings to the Queen about heeding flattery.<sup>39</sup> Mildred answers as becomes an obedient daughter, that she cannot speak his goodness to her; Offa replies with great flattery, and Anthynus reserves his praise, saying he will give his father no more and no less than his due respect because:

I have observ'd, but specially at Court,  
Where flattery is too frequent, the great scorn  
You have ever cast upon it, and do fear  
To come within such danger of reproof.  
Knowing your reason may as well detest it  
In your own house, as in Kings Pallaces. (*Queenes Exchange*, sig. B4r).

Once again, Segebert is associated here with reason. This speech maintains the distance already established between Segebert's attitude and that of the other

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<sup>38</sup> 'The space of the family is used as a means for exploring the wider problems of the monarch-father's relationship with his children-subjects in the body politic of the wider commonwealth' (Sanders, 1999a, 68). The comparison between a father and a king occurs frequently in political tracts of the period. See for example, *Patriarcha* and James VI and I's *True Lawe of Free Monarchies* (*passim*).

<sup>39</sup> For a more detailed examination of the *King Lear* resonances, see Shaw, 1980, 94; Andrews, 1981, 100; and Butler, 1984, 266-7. Steggle notes that 'in recent years *King Lear* has increasingly come to be seen as an articulation of insecurities to do with national sovereignty and the division of the kingdoms', and argues that the echoes of Shakespeare's play here 'enters, in effect, into a form of intertextual dialogue with *King Lear*, addressing the same concerns about the borders of the nation but from a different perspective'. He also notes that the parade of Saxon kings who appear to Anthynus, reminiscent of *Macbeth*, are in this play actually 'guarantees of continuity with the past, not of changes in the future'. Whilst Steggle argues that this denotes a 'distinctly separatist agenda', it also suggests the continuity of the Saxon legacy of law and custom left by Bertha's father (2004, 56).

courtiers, but creates an unmistakable parallel between Segebert's home and the court.

In a sinister parallel of Osriik's pursuit of Mildred, Offa also indulges an uncontrolled and unnatural desire for his sister. In order to clear his path to her and to the inheritance of his father's estate, Offa employs outlaws to murder his father and his brother. Although these attempts are unsuccessful, this domestic disorder and disregard for law (moral, natural and positive) demonstrates the chaos which could potentially occur in the public political sphere if established law is supplanted by the rule of will only. Like Bertha's insistence on her will, and Osriik's pursuit of his, Offa's language and manner is threatening and arbitrary:

Thy cries shall be as fruitless as thy life  
 If thou offend'st me with 'em; hear but this  
 Impertinently peevish maid, and tremble  
 But to conceive a disobedient thought  
 Against my will. (*Queenes Exchange*, sig. F2r)

Interrupted in his assault on Mildred by the arrival of Osriik claiming to be a Northumbrian gentleman wishing to see her, he assumes Osriik is Anthynus in disguise and summarily orders his death for the murder of their father. His servant Arnold prevents this claiming the action is 'too rash'. Whilst Offa tries to assert his authority, Arnold emphasises law and process over arbitrary action:

Off[a]: Are you  
 Become my master, you old Ruffian?

Arn[old]: No  
 Your Servant Sir, but subject to the Law;  
 The Law that must determine this mans cause,  
 Nor you, nor we, what ever he deserves.  
 And till he shall be censur'd by that law  
 We'l find a Prison for him. (*Queenes Exchange*, sig. F2v)

The emphatic repetition of ‘law’ here suggests that Offa, like Arnold and despite being his master, must subordinate his will to the law. Importantly, the law under which Osriik is to be tried, and to which Offa’s will is subject, is identified as the law of Bertha’s Saxon kingdom (*Queenes Exchange*, sig. F4v).

Whilst Anthynus’ loyalty to his father is rewarded at the end of the play with marriage to Bertha, Offa is punished with madness, maintaining the association of madness with submission to passion and arbitrary judgement.<sup>40</sup> In this respect it is particularly interesting to note that Offa’s madness is closely associated with attempts to corrupt justice:

Offa: Whither do you hurry me?  
 If I must answer’t, give me yet some time,  
 To make provision of befitting Presents,  
 To supply the hard hands of my stern Judges,  
 Into a tender feeling of my causes.  
 I know what *Eacus* loves, what *Minos* likes,  
 And what will make *Radamanthus* run.

Anthynus: He is distracted. (*Queenes Exchange*, sig. G1r)

Minos, Rhadamanthys and Aecus were made judges of the souls of the dead in the classical underworld because, when alive, they were renowned for their wisdom and justice as lawgivers (March, 1998, 258). Offa, in his distraction, believes his judges will be these classical judges and asks time to prepare bribes for them; his madness leads to an attempt to corrupt even the most fair of justices.<sup>41</sup> Significantly, it is Anthynus, the subject whom the Queen will marry and therefore preserve the

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<sup>40</sup> Elizabeth Shaw (1980, 97) and Jackson Cope (1973, 138-9) also comment on the theme of madness in this play, but do not relate this to law or authority. Shaw associates madness here with a psychological morality, and Cope with the ‘return to reasoning as an individual means of control over one’s journey toward desired ends’ (Shaw, 1980, 99; Cope, 1973, 139).

<sup>41</sup> Rhadamanthys had such a reputation for justice that the people of the islands in the southern Aegean voluntarily put themselves under his control (March, 1998, 344).



Saxon's customary laws, who notes and comments on Offa's judicial distraction here. Untempered desire and madness are contrasted throughout this play with reason, justice and customary law.

Although no lasting damage is done to Osriik's kingdom through his pursuit of will, it does cost him his possible marriage to Bertha. Anthynus, who looks almost identical to Osriik, arrives in his kingdom and some of the courtiers take him to the palace thinking he is the king. Osriik takes this opportunity to leave the country unnoticed and pursue Mildred, leaving the kingdom in the hands of Ethelswick and Edelbert. However, the rest of his council dismiss these men, believing they are responsible for the King's madness, and they bring forward his wedding to Bertha, thinking this will cure him. Anthynus is then married to Bertha in Osriik's place in the literal exchange of the play's title. Martin Butler argues that in dismissing these men, the council take rule 'into their own hands in the name of the national good' and that Osriik later 'applauds his subjects for having opposed him for his own good' (1984, 266).<sup>42</sup> However, the council did not know they were opposing the king; they were acting against his advisers, believed Anthynus was Osriik, and that they were bringing forward a marriage the king desired. Even when Anthynus lashes out at them, Theodwald claims that 'if your Majesty / Will tread our due allegiance into dust, / We are prepared to suffer' (*Queenes Exchange*, sig. F1r). As evidence for his argument, Butler quotes the following passage:

Thy trespasse is thine honour...  
 And I must thank your care my Lords, as it deserves,  
 Your over-reaching care to give my Dignity  
 As much as in you lay unto another.

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<sup>42</sup> Ira Clark gives a similar reading, stating that Osriik, 'who has been awakened to responsible monarchy, praises the allegiance and care of his country's lords, who counteracted his commands' (1992, 162).

However, Butler's editing misrepresents the action of the play. When placed in its immediate context and quoted in full, this passage has a very different meaning:

Theodr[ick]: O let me wash your feet Sir with my tears.

Osriik: Thy trespasse is thine honour my *Theodrick*  
 And I must thank your care my Lords, as it deserves,  
 Your over-reaching care to give my Dignity  
 As much as in you lay unto another.  
 And for your Letters counterfeit in my name  
 By which the Queen is mock'd into a marriage.

Theod[wald]: That was your policy, your wit, my Lord.

Eauf[ride]: A shame on't. Would I were hanged, that I  
 Might hear no more on't. (*Queenes Exchange*, sig. G1r)

If the first line of Osriik's obvious praise is given where it is meant – to the erstwhile banished favourite – and the following lines directed towards Theodwald and Eaufride, it is clear that the King's tone is one of displeasure ('over-reaching' 'mock'd'), not applause, and his offer to thank their care 'as it deserves' becomes threatening. Theodwald's immediate attempt to shift responsibility to Eaufride is not the action of a courtier being praised. There is not, then, in Osriik, the promising change of heart in government which Butler allows him. Indeed, it is clear that little will change at Osriik's court: Theodrick will remain as Osriik's favourite (*Queenes Exchange*, sig., G1v), and despite his acknowledgement that he may be justly punished for pursuing his desires ('yet I must confesse, / In all that I am like to suffer, heaven is just' (*Queenes Exchange*, sig. F4r)) Osriik's will is upheld in that he is to marry Mildred. In the same way that the spectre of Severino's unpunished, arbitrary acts of violence haunt the end of *The Guardian*, nothing appears set to change in Osriik's kingdom.

For Bertha, however, the case is different. Through the literal exchange of future husbands, Bertha also exchanges one form of government for another. In happily accepting her marriage to Anthynus, and in her joyful pardon and acceptance of Segebert and Alberto (both had been banished for questioning their monarch's will, Alberto under Bertha's father) Bertha is seen to accept Segebert's values. She comments on her marriage:

I take it as the providence of Heaven;  
 And from the Son of that most injur'd Father,  
 Whom now in my joys strength I could shed tears for.  
 I yield you are my head, and I your handmaid.  
*(She sets him down, and kneels; he takes her up).*  
*(Queenes Exchange, sig. G1r).*

The image seen on stage is not merely one of monarchical acceptance of the law, but of her submission to it; it is a presentation of the contemporary lawyers' arguments that the monarch should be subject to law. Monarchical will is brought under the control of the 'reason' of law, as Anthynus is the son of the representative of reason at Bertha's court. Bertha makes this submission happily and this is the best decision for the good of her people, the play suggests, as the marriage is brought about by providence.

However, this reading of the scene is complicated by the ruler's gender. Because the monarch in question is female, the image is one of traditional wifely obedience, and this potentially undermines any radical implications of Bertha's kneeling to Anthynus, as the audience see female wilfulness submitting to male

reason.<sup>43</sup> The relationship between women and wilfulness was commonly understood in the period and is spelled out in Massinger's *The Very Woman* (1634):

Pedro: One reason for this would do well.

Almira:                     My will  
                               Shall now stand for a thousand; shall I lose  
                               The priviledge of my sex, which is my Will  
                               To yield a Reason like a man? (*The Very Woman*, sig. O1v)

In kneeling to Anthynus, Bertha submits her female wilfulness to the control of masculine reason. However, in this conservative image is a covert suggestion that any monarch behaving wilfully is behaving in a less than masculine fashion. This connection between irrational womanly wilfulness and arbitrary absolutism is emphasised in Massinger's play in the lines following those quoted above:

  Or [shall] you  
                               Deny your Sister that which all true women  
                               Claim as their first prerogative, which Nature  
                               Gave to them for a law? and should I break it  
                               I were no more a woman. (*A Very Woman*, sigs. O1v-O2r).

This privilege to act wilfully, Almira asserts, is the only law that a woman need follow. A man, the passage suggests, should not act in the same way; reason is the law a man should follow. Her claim to be allowed, by nature, to act wilfully because she is a woman is couched in the language of prerogative and privilege, connecting her with absolutist claims for the unlimited exercise of the royal prerogative.<sup>44</sup> In *The Queenes Exchange* such claims are set against a discourse of common law

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<sup>43</sup> In terms of her position as monarch her gender is irrelevant. This is emphasised in Jeffrey's bawdy joke when he is told that the King's future bride is 'the bravest Woman':

                              Take heed o'that, woman did you say? Take heed, I  
                               Give you warning. No man must know she is a woman

                              But the King himself. But a brave Queen she is they say. (*Queenes Exchange*, sig. C2v)

<sup>44</sup> *The Very Woman* was performed by the King's Men at the Blackfriars theatre. As *The Queenes Exchange* was also a King's Men play it is possible that both plays were performed at Blackfriars, and along with Brome's *The Queen and Concubine*, suggest a sustained engagement with ideas of reason, masculinity and wilful behaviour in the audiences for which the King's Men performed at that theatre.

which claims that the common law is ‘nothing else but reason’.<sup>45</sup> Bertha’s kneeling to Anthynus is much more than an enforcement of gender roles and stereotypes: it emphasises the rational nature of customary law and suggests that will and prerogative should be subject to this kind of reason.

It is, however, made clear in Anthynus’ physical raising of the Queen that rule by the established customs and law of the kingdom will not diminish her status, rather it will maintain her position, if not raise her higher. It is perhaps significant in this respect that Anthynus and Osriik look almost identical: there is, to the uninformed observer, no apparent difference in Bertha’s position in marrying one or the other man, adopting one or the other position regarding law; her status *looks* the same. The dramatic motif of mistaken identity allows the adoption of the common law as the best method of government without suggesting a decrease in the monarch’s powerful image. That Bertha and Osriik’s pardons are necessary for all those who acted against their will, or without their authority, in order to bring about a satisfactory resolution to the play, also emphasises that the Queen remains sovereign in her country, despite her acceptance of custom and law. There is not a radical change in the ways Bertha governs; the marriage of the Queen to her subject (and her country’s law) maintains the ancient constitution of the Saxon kingdom.

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<sup>45</sup> Coke, 1629, 97b; Finch, 1627, 75. See also Davies, 1615, 4; Doddridge, 1631, 194; and Noy, 1642, sig. B1r.

### **Inverting law and authority: *The Antipodes***

Whilst *The Queenes Exchange* pays sustained attention to contemporary arguments for the superiority of common law in the ancient constitution, and suggests the union, if not a complete submission, of the monarch to the law, Brome's *The Antipodes* deals more obliquely, but no less critically, with the notions of conquest, custom, reason and madness in relation to legal authority explored in that play. The play presents a young man, Peregrine, who has been taken to London by his family to see Doctor Hughball because his overwhelming desire to travel has made him mad. Hughball and Letoy stage a play in which the doctor pretends to take Peregrine to Anti-London, where all things are supposedly opposite to London in order to cure him. However, the 'fantasy of travel is in the end a means of reinterpreting one's own place and space' (Sanders, 1999b, 142), and Anti-London provides a means to explore issues connected with contemporary London, and it is primarily on this play-within-the-play that this section will focus. Through the theatrical device of the play-within-the-play the notions of custom, reason, and law already established are explored simultaneously in familial and political, domestic and foreign spheres, with the on stage audience being at once part of and commentators on this exploration.

Although Joyless attributes his son's madness to reading too many travel narratives and an intemperate desire to travel, it is not only this which has sent Peregrine mad; it is because his desire to travel has been frustrated by his father's seemingly arbitrary decision not to let him go:

When he grew up towards twenty,

His minde was all on fire to be abroad;  
 Nothing but travaile was all his aime;  
 [...] His mother and  
 My selfe oppos'd him still in all, and strongly  
 Against his will, still held him in; and wonne  
 Him into marriage; hoping that would call  
 In his extravagant thoughts, but all prevail'd not,  
 Nor stayd him (though at home) from travailing  
 So farre beyond himselfe, that now too late,  
 I wish he had gone abroad to meet his fate. (*Antipodes*, sig. B3r)

This attempt to cure Peregrine of his sickness through marriage recalls the Northumbrian adviser's attempts to cure Osriik in bringing forward his marriage to Bertha. In this case, though, the effect of the marriage is not to facilitate an unwitting but satisfactory end in marrying the monarch to the law, but to bring about madness in Peregrine's wife, Martha:

Joy[less]: He takes no joy in her; and she no comfort  
           In him: for though they have bin three yeeres wed,  
           They are yet ignorant of the marriage bed.

Doct[or]: I shall finde her the madder of the two of then.

Joy.: Indeed she's full of passion, which she utters  
           By the effects, as diversly, as severall  
           Objects reflect upon her wandering fancy. (*Antipodes*, sig.B3v)

The arbitrary will of the father encourages madness in the son, and in turn the madness of the husband provokes madness in the wife.<sup>46</sup> Analogically, as in Osriik's Northumbria, the sickness at the head of the body politic also affects the subjects.

The family are brought to the house of Letoy, a gentleman for whom 'Stage-playes, and Masques, are nightly [...] pastimes' (*Antipodes*, sig. C2r), to witness an elaborate play-within-the-play engineered by Letoy and the Doctor, performed by

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<sup>46</sup> Joyless himself suffers from the same horn-madness (fear of cuckoldry) that Blaze identifies in his neighbours, whom Hughball has also cured. Joyless's jealousy is later cured when he witnesses the attempted seduction (which is later revealed to have been staged too) of his young wife Diana.

Letoy's own troop of actors. Letoy's fondness for plays leads Hughball to assert, 'O y'are the Lord of fancy'. Whilst this may be an indication of his skill in inventing the play, ('Your fancy and my cure shall be cry'd up / Miraculous') (*Antipodes*, sig. D2r), 'fancy' also connects him with Martha's 'wandering fancy', and with arbitrariness and caprice, the latter confirmed at the end of the play when it is revealed that his unfounded mistrust of his wife led him to disown his daughter, Diana.<sup>47</sup> Letoy's response, 'I'm not ambitious of that title Sir, / No, the Letoy's are of Antiquity, / Ages before the fancyes were begot' (*Antipodes*, sig. D2r) can then be read as a denial of arbitrariness, claiming that his long lineage precludes any possibility of irrationality (one of the arguments for the rationality of common law) and as asserting his high social status through his genealogy, as tracing his family name back to the Norman Conquest would legitimize his privileged status as part of an ancient family in the contemporary socio-political order.<sup>48</sup> That he has actively sought out his claim to this status is clear from an earlier conversation with Blaze over Letoy's 'Armes and Pedegree':

Let.: But has he gone to the root, has he deriv'd me,  
*Ex origine, ab antiquo?* Has he fetched me  
 Farre enough *Blaze?*

Bla.: Full foure descents beyond  
 The conquest my good Lord, and findes that one  
 Of your French ancestry came in with the conqueror.

Let.: *Jefrey Letoy*, twas he, from whom the English  
 Letoy's have our descent; and here have tooke  
 Such footing, that we'll never out while France

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<sup>47</sup> *OED*, 'fancy', 4a, 5a, 6 and 7.

<sup>48</sup> When glossing these lines, Anthony Parr notes that in *The Compleat Gentleman* (1622, 142), Henry Peacham explains that 'the ancients of our Nobility for the greater part, acknowledge themselves to bee descended out of *Normandy*, and to have come in with the Conquerour, many retaining their *French* names' (I.ii. notes to lines 7-9). Letoy's desire to trace his ancestry may also be an appeal to the interests of the gentry in the audience, as Lisa Hopkins notes that 'the study of genealogy, along with that of heraldry, was one of the great crazes of the Jacobean and Caroline periods' (1994, 56).



Is France, and England England,  
And the Sea passable to transport a fashion. (*Antipodes*, sig. C1r-v)

Whilst his concern for his heraldry is trivialised by the emphasis on his family importing fashion from France, particularly as Letoy himself dresses ‘more like a pedlar, / Then like a Lord’ (*Antipodes*, sig. C1v), this may be a comment on the importation of French fashions at the Caroline court because of the Queen’s influence. There is, potentially, an underlying concern here that France may not be as separate from England in fashion or governance as ‘France / Is France, and England England’ ought to suggest.

It is in this context of madness, conquest and antiquity that the play-within-the-play is produced. In order to cure Peregrine’s travel madness, Hughball pretends to have taken him to the Antipodes where:

The people through the whole world of *Antipodes*,  
In outward feature, language, and religion,  
Resemble those to whom they are supposite.  
They under *Spaine* appeare like *Spaniards*,  
Under *France* *French-men*, under *England* *English*  
To the exterior shew: but in their manners,  
Their carriage, and condition of life  
Extreamly contrary. (*Antipodes*, sig. C4r)

During Peregrine’s travels in Anti-London, he and the on stage audience are told of, and witness, many of these contrary practices, most of which concern issues of law, authority and governance: sergeants running away from a gentleman who wants to be arrested, wives ruling their husbands, servants governing their masters/mistresses and children instructing their parents. The interjections of Peregrine’s observing family, particularly Diana, commenting on the differences between anti-London and its English counterpart serve, in part, to highlight the points of similarity as well as the differences (Butler, 1984, 215).

The first thing Hughball tells him about the Antipodes is that although in London ‘the Magistrates / Gouverne the people: there the people rule / The Magistrates’ (*Antipodes*, sig. C4r), suggesting that the focus of this play-within-the-play will be issues of governance. In a domestic version of such issues, Peregrine witnesses a conversation between the gentleman, his wife and her serving-woman, in which the Lady, endorsing Antipodean practices, instructs her husband that he must sleep with the merchant’s wife:

La[dy]: You know your charge, obey it.

[...]

Wom[an]: What is his charge? or whom must he obey?  
 Good madam with your wilde authority;  
 You are his wife, tis true, and therein may  
 According to our law, rule, and controwle him.  
 But you must know withall, I am your servant,  
 And bound by the same law to governe you,  
 And be a stay to you in declining age,  
 To curbe and qualifie your head-strong will,  
 Which otherwise would ruine you[...]

La.: Insooth she speaks but reason. (*Antipodes*, sig. E3v)

Despite the Lady’s assertion that her instruction is unproblematically clear, the servant’s response suggests otherwise. Associating the Lady’s legitimate authority with her ‘head-strong will’ implies an arbitrariness in her commands which undermines this authority by making it ‘wilde’, thus leaving her husband in doubt of exactly what he is supposed to do. As ‘*The Antipodes* presents an anti-London which is at once an inverted image of London and an accurate representation of it’ (Steggle, 2004, 111), the play here contains a warning about the consequences of Charles’ manipulation of law and arbitrary authority (for example, in projectors and

the award of monopolies, which are also shown to be Antipodean practices).<sup>49</sup> If law and its representatives are inconsistent or arbitrary, the play suggests here, subjects will be left with no clear law to follow.<sup>50</sup> Moreover, this wilfulness not only leads to confusion but to the potential ‘ruine’ of the ruler. To prevent this, the law places the Lady under the influence of her servant, who is bound to ‘curbe and qualifie’ her wilfulness. If this is Anti-London, then London has no check on the ruler’s authority and the audience is left to question, given the already suggested outcomes of arbitrary action, whether this really should be the case. That the mistress’s ‘head-strong will’ is contrasted with her servant’s ‘reason’ suggests a tempering influence over Charles in the common law itself, but there is also the possibility that the servants who should be called to stabilise the king’s ‘wilde authority’ are members of Parliament, servants of the king in being his subjects, and representatives of the law in proposing and debating statutes.

During his visit to the Antipodes, however, Peregrine does not merely watch the action, he participates in it, much to the consternation of one of the actors: ‘he puts me out, my part is now / To bribe the Constable (*Antipodes*, sig. H3r). Finding

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<sup>49</sup> Although monopolies had been made illegal by statute in 1624, Charles I and his Attorney General had found ways around the legislation in order to raise more money for the King’s coffers, ‘in clear violation of the spirit of the law’ (Orgel and Strong, 1973, 64), although particular projects were excluded from the condemnation of the 1624 Statute; monopolies held by corporations, and for limited periods, inventions were legal (Butler, 1987, 30). In including monopolies and projectors in his vision of anti-London, Brome perhaps illustrates ‘the unfitness and ridiculousness of these Projects against the Law’ that Bulstrode Whitelocke noted in the projectors of James Shirley’s 1634 masque, *The Triumph of Peace* (Whitelocke quoted in Orgel and Strong, 1973, I, 65). The controversial nature of monopolies under Charles is emphasised by their frequent and often ridiculous representation in drama of the period. Richard Brome’s *The Court Begger* (licensed 1632) presents several projectors and focuses specifically upon one man trying to make his fortune in projects. In Act IV, scene I of Shirley’s *The Bird in a Cage*, the idea of monopolies is made to look ridiculous when Grutti comments that it is a shame Morello cannot have a patent for his new clothes (he is punished for his attempts to visit the Princess in the tower by being made to wear his disguise of a petticoat for a Month at court). Projectors also come in for criticism under the good rule of Pulcheria in Massinger’s *The Emperor of the East* (see Chapter 2, pp. 104-5).

<sup>50</sup> The consequences of the separation of royal authority and law, and the confusion over what the law actually demands is explored in greater detail in Brome’s *The Queen and Concubine*. See below.

his way into Letoy's actors' tiring house, he attacks the stage properties and proclaims himself king by conquest:

on the suddaine, with thrice knightly force,  
 And thrice, thrice, puissant arme he snatcheth downe  
 The sword and shield that *I* playd *Bevis* with,  
 Rusheth amongst the foresaid properties,  
 Kils Monster, after Monster; takes the Puppets  
 Prisoners, knocks downe the Cyclops, tumbles all  
 Our jigambobs and trinckets to the wall.  
 Spying at last the Crowne and royall Robes  
 Ith upper wardrobe, next to which by chance,  
 The divells visors hung, and their flame painted  
 Skin coates; those he remov'd with greater fury,  
 And having cut the infernall ugly faces,  
 All into mamocks) with a reverend hand,  
 He takes the imperiall diadem and crownes  
 Himselfe King of the *Antipodes*, and beleeves  
 He has justly gained the Kingdome by his conquest. (*Antipodes*, sig. G1v).

Despite the doctor's previous explanation that the Antipodes is not full of monsters and exotic creatures, but of people with contrary customs and manners, Peregrine's 'Mandevile madnesse' (*Antipodes*, I4v) leads him to believe that he does really see a Cyclops, and his desire to take possession of the 'imperiall diadem' emphasises his desire to explore and conquer foreign lands prefigured in his talk of Drake, 'Candish' [Cavendish], Hawkins and Frobisher (*Antipodes*, sig. C3r).<sup>51</sup> However, in light of Letoy's concerns to assert his name's pre-Norman Conquest antiquity over fancy, and the concern the play-within-the-play has with law and authority, it is significant that Peregrine claims kingship through conquest, and in his madness, thinks this is just. Letoy's comment on this, 'Let him enjoy his fancy' (G2r), further undermines the idea of right to absolute rule through conquest which the

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<sup>51</sup> Julie Sanders reads Peregrine's conquest of the tiring room as a rite of passage in freeing himself from his father's influence: 'The infantilising prohibitions of his family are swept away in the assertive role he assumes as a romance hero in his attack on the stage properties of the actors' tiring house' (1999b, 146).

ridiculousness of taking a country through conquest over an army of stage properties already calls into question.

Nevertheless, in what his rights and conquest suggest to be an inverted echo of *The Queenes Exchange*, Peregrine sets about ‘to governe / With purpose to reduce the manners / Of this country to his owne’ (*Antipodes*, sig. G2r) through imposing his absolute authority on the people of the Antipodes. His knighting of a judge who presides over a trial where only the judge is satisfied by the verdict, exclaiming ‘Most admirable Justice’ (*Antipodes*, sig. G4v) suggests that this is not the bringing back of unreasonable government to one of reason and custom which would have been promised if Bertha had reduced Osriik’s government to hers.<sup>52</sup> The doctor encourages king Peregrine to ‘make discovery of passages / Among the people’ in disguise, so he can ‘perceive / What to approve, and what to correct among ’hem’ (*Antipodes*, sig. H1v), and it is during this time that Peregrine begins to come to his senses. Watching the arrest of a gentleman because a woman assaulted him, Peregrine intervenes:

Per. Call you this justice?

Doct. In th’ *Antipodes*.

Per. Here’s much to be reform’d. (*Antipodes*, sig. H3r)

Peregrine’s acknowledgement that this is not justice marks a step in his recovery from madness. He frees the gentleman, and begins to order that the lady is taken to prison, until the Doctor reminds him, ‘At first shew mercy’ (*Antipodes*, sig. H3r). Hughball’s role as king Peregrine’s chief Officer in the play-within-the-play, and as physician for Peregrine’s madness, places him in a position to educate the king in a

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<sup>52</sup> See Chapter 5 for a discussion of this trial.

more temperate method of government and the husband in a more temperate way of living.

On recognising how much there is to be ‘reform’d’ in the Antipodes, Peregrine considers sending for advice: ‘What if *I* crav’d a Counsell from New England / The old will spare me none’ (*Antipodes*, sig. I1v). There may be here a direct reference to the absence of parliament from real London (Butler, 1984, 218). Old England either cannot spare a ‘Counsell’ for Peregrine because Charles is currently ruling without a parliament, or because were one to be called it would be needed there. Doctor Hughball’s response, ‘*Is this man mad?*’ (*Antipodes*, sig. I1v), suggests that his wish to call a parliament is a step towards his recovery from arbitrary madness. His movement away from madness and immediate imposition of his absolute power by Conquest is indicated when Peregrine ruefully claims ‘Twill aske long time and study to reduce / Their manners to our government’ (*Antipodes*, sig. H4r) on seeing a man-scold on a ducking stool. Unlike the earlier suggestion that reducing their manners to his own may involve the imposition of his own madness on the country, here he not only refers to the extent of the contrary behaviour in the country, but calls to mind the long study which Coke claims is necessary for a true familiarity with the common law (Coke, 1629, *Institutes I*, 97b). This change will not be a rapid imposition of the will of an arbitrary monarch by conquest, but a careful introduction of reason into the activities of the Antipodes.

The final straw for the new king of the Antipodes, and the indication of Peregrine’s return to rationality, comes when he fully understands the arbitrary nature of justice and law in his kingdom:

Doe you provide whips, brands; and ordaine death,  
 For men that suffer under fire, or shipwracke,  
 The losse of all their honest gotten wealth:  
 And finde reliefe for Cheaters, Bawdes, and Thieves?  
 I'll hang ye all. (*Antipodes*, sig. I3r).

The Antipodeans' response is given in terms of custom and law:

Let not our ignorance suffer in your wrath,  
 Before we understand your highnesse Lawes,  
 We went by custome, and the warrant, which  
 We had in your late Predecessor's raigne;  
 But let us know your pleasure, you shall finde  
 The State and Common-wealth in all obedient,  
 To alter Custome, Law, Religion, all,  
 To be conformable to your commands. (*Antipodes*, sig. I3r)

This vocabulary for debating legal positions is now familiar, but here the terms are used unexpectedly. In an inversion of the assertion of the supremacy of customary law presented in *The Queenes Exchange* and contemporary legal tracts, here the ridiculousness of the Antipodean's customs and their willingness to conform to Peregrine's commands invites the audience to accept the imposition of monarchical law. That Byplay claims Peregrine's predecessor had allowed the customs, also jars with notions of customary common law existing independently of the monarch.<sup>53</sup> It may be that this too is the Antipodean reverse of how things are in London; however, what is significant about Peregrine's attempt to change the laws in the Antipodes is that his laws, in contrast with those of the Antipodeans, will be laws of *reason*, not arbitrary judgements. His outburst against the irrational customs of the Antipodes marks his return to reason from madness.

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<sup>53</sup> Parr's gloss to this line suggests that this is a 'clear allusion to the reign of James I, when the court was a place of licence and excess and was perceived to set a bad example to the country' (note to IV.iv.737-4).

At the end of his journey through the Antipodes, Peregrine is introduced to the Antipodean princess, played by the (still mad) Martha, who has been bequeathed to him by the late sovereign. Although he momentarily ‘falls backe againe to *Mandevile* madness’, concerned over marrying the princess in case she is a Gadlibrien, Byplay advises him, ‘For the safety of your Kingdome, you must do it’ (*Antipodes*, sig. I4v). It is possible that this advice makes reference to the idea that marriage to the legitimate heir of the kingdom would make his claim to the throne less questionable, or that marriage and the production of heirs was necessary to maintain political stability. However, in the domestic and political analogy in which Peregrine’s kingly madness affects his subject/wife, his (re)marriage to Martha will also cure her of her madness, returning his (English) household to correct order. Peregrine states that he cannot marry the princess because he already has a wife at home, and ‘A Crowne secures not an unlawfull marriage’ (*Antipodes*, sig. I4r). Significantly, Peregrine’s new embrace of reasoned law brings him to recognise the limits to his kingly power. Although Hughball removes this problem by claiming that Martha is dead and her spirit now ‘animates this Princesse’ (*Antipodes*, sig. I4r), Peregrine’s objection positions the king, by his own admission, as undoubtedly subject to law. Lawful, productive marriage is not the solution to the problem of law and prerogative in this play as it was in *The Queenes Exchange*; rather, it is symbolic of a well-ordered household (political or domestic) where all concerned hold their proper place: subject to established rational law.



### **Destabilising legal authority: *The Queen and Concubine***

Although *The Antipodes* glances towards the potential for legal confusion when authority is not rational, and advocates a return to reasoned government subject to law, this play, like *The Queenes Exchange*, does not explore the consequences of irrational rule in any detail beyond the suggestion that illness/madness at its head will cause illness in the body politic. It is with these consequences that *The Queen and Concubine* is concerned. Developing the theatrical representation of absolutism as madness established in *The Queenes Exchange* and presented in *The Antipodes*, and the image of a choice between a representative of law/reason and absolutism/passion as marital partner for the monarch, *The Queen and Concubine* explores the corruption, disharmony and confusion which potentially occurs when reason and law are rejected in favour of passion and will.

It is clear almost from the beginning of the play that Gonzago is prone to act irrationally and arbitrarily. His strangely and rapidly conceived jealousy of his wife's commendations of Sforza, a general in his army who has given the king good military service, and his consequent change of heart towards Petruccio, a banished courtier, leads Horatio to comment on Petruccio's return to court that: 'It must be so, this is one of his un-to-be-examin'd hastie Humours, one of his starts: these and a devillish gift He has in Venerie, are all his faults' (*Queen and Concubine*. sig.B4r). Although Horatio makes light of these as Gonzago's only faults, as the play progresses it becomes clear that it is these faults in the king which bring about a crisis in government and potential chaos on the country. This mention of his

‘devillish gift in Venerie’ in relation to his rapidly changing humours paves the way for his pursuit of Alinda.

To Lodovico’s questioning of the King’s ‘dotage’ on Alinda, Horatio replies: ‘Come, think upon Law and Regal Authoritie. The king’s Power Warrants his Acts’ (*Queen and Concubine*, sig. C6v). For Gonzago and Horatio, the king’s will is law, enforceable by his power. Although he makes a show of ruling in accordance with legal procedures (Eulalia is tried in a court, albeit a corrupt one) and governs in conjunction with a parliament, it is clear that Gonzago exercises an absolute authority. Unlike *The Queenes Exchange*’s Bertha, of whom we can initially think more generously in calling her Lords as council, Gonzago calls his parliament to approve his divorce and remarriage only for the sake of appearance:

King: Now to this Censure, for due Orders sake.  
 And for which end this Parliament was call’d;  
 Your Voyces are requir’d: do ye all approve it?

Omnes: We do.

Lodovico: We must.

King: What say you, Lodovico?

Lodovico: We do; Heaven knows against my heart.

Eulalia: My thanks unto you all, that do obey  
 So well with one consent your Sovereign Lord.  
 (*Queen and Concubine*, sigs. C4r-C4v)

Gonzago’s assertion that parliament was called for ‘due Orders sake’ suggests something of his own aversion to sharing any judicial power; however, it also serves to highlight Gonzago’s undermining of order even whilst he claims to uphold it. This is an early indication that arbitrary royal action undermines the stability of legal authority, an idea which becomes increasingly evident later in the play. That

Lodovico feels compelled to condemn Eulalia here, however reluctantly, is clear from his 'we must' set against the easy 'we do' of the other courtiers. One of the reasons he must condemn her is that she has been found guilty of adultery in a court of law, albeit through perjured witnesses and falsified evidence engineered by Flavello and Alinda, once again suggesting the manipulation and undermining of legal processes by arbitrary rule. Flavello describes the trial to Alinda before it is shown on stage, and the theatre audience (who now know about their bribing of witnesses) watches it only in dumb show, emphasising that in this trial justice is only *seen* to be done; what is said and what is true is irrelevant. For this parliament, too, what is true means very little. Whatever the lords may think, it is clear from Gonzago's speech regarding his new Queen that Lodovico has no safe choice other than to give his assent:

I your King  
 Am Subject to this all-deserving Lady,  
 And do require you not alone to hear  
 What I can say, but without all denial  
 That you approve, confirm what I will say.  
 ...  
 I hope none rates our will or his own life  
 So meanly, as to give least contradiction. (*Queen and Concubine*, sig. C5r)

The parliament must be seen to approve of the King's marriage to Alinda, and of her coronation. Gonzago's vocabulary is commanding ('I... do require you'), and his threat of execution for dissent is apparent. The emphasis throughout the parliament scene is on obedience to, and ratification of, Gonzago's kingly will. However, there is a strange contradiction in his claims to be both able to command their obedience and yet be subject to Alinda himself. This signals his complete submission to will and with this, the play suggests, comes a reduction of kingly

authority. Alinda herself describes his ‘raging dotage’ on her as ‘the weakness of the King’ (*Queen and Concubine*, sig.C2r).

It is not only Gonzago’s complete submission to his passion for Alinda that represents arbitrary authority in this play, however; Alinda comes to embody this absolute power. It is Alinda who explicitly asserts the independence of royal power, telling her father in response to his objection to her relationship with the king that ‘Sovereignty you know, admits no Parentage’ (*Queen and Concubine*, sig. B8r). Her own ambition, exacerbated by Flavello’s administration of ‘Pills that puff’d her up / To an high longing, till she saw the hopes / She had to grow by’ (*Queen and Concubine*, sig. B6v) grows to such an extent that she attempts to bring about the realisation of this statement, asking Gonzago to have her father killed (‘’twas she that sought his Head’ (sig. H4v)). This arbitrary cruelty is continued when she persuades the king to banish his son, and sends assassins to attempt Eulalia’s life in her exile. That her natural ambition is accelerated by an ‘unnatural’ drug also suggests something of the unnaturalness of Alinda’s arbitrariness. Her demands become increasingly cruel and arbitrary, provoking even Horatio, the courtier who loves and hates just as the king does (*Queen and Concubine*, sig. B5v) to state, ‘She’s mad beyond all cure’ (H1r) and the king to observe:

What wild Affections do in women reign!  
 But this is a Passion past all President.  
 O ’tis meer Madness, mix’d with Divellish cunning,  
 To hurl me upon more and endless mischiefs.  
 (*Queen and Concubine*, sig. H1v)

This combines the theatrical presentation of wilfulness as being womanly, and of arbitrary absolutism with madness.<sup>54</sup> This madness is beyond even any precedent the arbitrary Gonzago has seen, and his reference to ‘Divellish cunning’ emphasises the unnaturalness of her behaviour. In her madness Alinda tried to explain her actions, saying, ‘she thought, that being now a Queen, / She might by her Prerogative take Heads, / Whose and as many as she listed’, a comment which expands on Horatio’s earlier comment that ‘the Kings Power Warrants his Acts (*Queen and Concubine*, sigs. H4v and C6v). As Alinda here, punished by a real madness, seeks pardon from what she believes is her father’s ghost, it is clear that both statements of unlimited power and prerogative ought to be revised.

In contrast with Alinda’s unreasonable exercise of prerogative power, Eulalia is presented as an idealised image of restraint:

you know too well the King,  
How apt his Nature is to fell oppression.  
The burden of whose crueltie long since,  
If by the virtuous Clemencie of his Wife  
It had not been alay’d and mitigated,  
Had been a general subversion.  
And now that Peerless Princesse being depos’d,  
Whose vertue made her famous, and us happy;  
And he re-married to this shame of women,  
Whose vileness breeds her envie and our mischief,  
What can we look for but destruction? (*Queen and Concubine*, sig. C7v)

The description of Eulalia’s clemency mitigating Gonzago’s cruelty is reminiscent of the arguments discussed in Chapter 2 for the need for law to moderate the passionate acts of a fallible, human king. However, a link is also made here between Eulalia and established law in the use of the word ‘Clemencie’, which has

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<sup>54</sup> Eulalia too is associated with female wilfulness, but her ‘wilfulness’ is in a steadfast obedience to Gonzago’s decree despite it being against her. Andrea’s comment ‘but for this wilfulness in her, I should not think her a woman’ (*Queen and Concubine*, sig. E1v) rather than suggesting an arbitrariness in her, instead emphasises her more-than-human patience and obedience.

been used once before in the play to describe the laws of Sicily which ‘are so well rebated / With Clemencie, and mercie’ that they prevent Eulalia’s execution for alleged adultery.<sup>55</sup> However, Eulalia’s clemency has not only prevented Gonzago’s cruelty, but also averted a ‘general subversion’, the word associated in *The Queenes Exchange* with the replacement of established customary law with the rule of an absolute monarch (*Queenes Exchange*, sig. B1v). Here, Eulalia’s compassion, as well as her maintenance of due order emphasised later in the play, has prevented chaos and potential rebellion against the King. In sharp contrast with Eulalia’s maintenance of order, however, Alinda will prove to be the ‘destruction’ of the state. That Lodovico and Horatio propose the only way to prevent this subversion and destruction is Alinda’s death suggests an urgent need to curtail arbitrary prerogative rule for the good of the government and the country.

Eulalia herself, like the Saxon laws of Bertha’s kingdom, and the reason restored to Peregrine, is also associated with the health of the body politic. The province of Palermo, which ‘Kings have customarily laid out / For their Queens Dowry’ and where lawyers and doctors were never previously needed has been struck by ‘foul Infection, Pain and Sorrow’ (*Queen and Concubine*, sigs. E2v, E2r) since the King banished Eulalia. Although Pedro suggests that this is a punishment for them as the people of her province in lieu of the king’s execution of Eulalia, the queen herself provides an alternative: ‘Might you not judge as well, it was th’

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<sup>55</sup> Clemency is used again later in the play, also regarding Eulalia’s attitudes to legal judgement:

Our Shool Mistris doats upon  
Clemencie, it is fit that we run mad upon crueltie  
So meeting her in the midst, we shall jump into the Sadle of Justice.

Again, madness is associated with arbitrariness and cruelty. Somewhere between cruelty and clemency, this suggests, lies justice. However, the scene emphasises Eulalia’s clemency over Andrea’s ‘cruelty’, as Poggio worries, comically, that ‘if the Candle of her mercy be not put out, / We shall shortly, see more honest men then Knaves among us’ (*Queen and Concubine*, sig. I2v).

injustice and the wrongs the innocent Queen hath suffer'd , that has brought sense of her injuries upon her Province?' (*Queen and Concubine*, sig. E3v). With the gift of healing that a genius gave her to help sustain her, Eulalia sets about curing the illnesses of her people, because, as Lodovico claims, 'perfect health I think dwells only where / Good Eulalia remains'. Andrea's repeated complaint 'I am out of joynt... Out a joynt, out a joynt, I am all out a joynt' (*Queen and Concubine*, sigs. E4r-v) is representative of the state of the country when there is a divorce between the king and the law.

The introduction of Alinda as initially possessing 'simple Countrey Innocence', Sforza's concern that the 'the air of court' had already 'infected' her (*Q&C.*, sigs. B4v, B7r) despite her relatively short stay there, and her rapid descent into arbitrary madness suggests that this play will present a juxtaposition of court and country values, an idea further suggested in Eulalia's choice to stay in Palermo amongst the country rustics and her comparison of her simple life there in comparison with that at court (*Queen and Concubine*, sigs. D6v-D7r).<sup>56</sup> However, the parallel scenes in Sicily and Palermo demonstrate that it is the cause of these events and their resolution which are the concerns of the play rather than a contrasting ideology of court and country.

The 'pettie parliament' of Palermo provides both a contrast to and a comic echo of Gonzago's pretended parliament to banish the Queen and recognise Alinda:

Do not I understand the purpose of our meeting  
Here in our pettie Parliament, if I may so call it?

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<sup>56</sup> Butler reads the play's movement from court to country as a 'shift to more popular forms of government' and the play's final country festival as representing a nostalgia for an 'Elizabethan idea of an organic community in which the members participate fully' (1984, 40 and 39).

Is it nor for a Reformation, to pull down  
 The Queens mercy, and set up our Justice?  
 For the prevention of a superabundance of Treason  
 Dayly practiced against her? (*Queen and Concubine*, sig. I2v)

The language of ‘reformation’ and justice in this passage also associates the ‘justice’ of the king and Palermo’s rustics with contemporary affairs at the Caroline court, where Charles’ attempts to introduce legal reforms caused some controversy.<sup>57</sup> The parliament is ‘pettie’ in being a less important (that is less official) version of Gonzago’s parliament, constituted by men of lesser rank, and in being largely ineffective as its decisions are all overturned by the Queen in a restoration of order which is juxtaposed with Gonzago’s destruction of it in forcing his parliament to assent to the banishment of Eulalia and accept Alinda.<sup>58</sup> It seems from this speech that their concerns are far from trivial in their care for the safety of the Queen, but the express purpose of their meeting – to pull down the Queen’s mercy and set up their own justice – is a baldly stated version of what Gonzago achieved with his parliament in banishing the Queen and her ‘clemencie’ and instituting his and Alinda’s arbitrary judgement.<sup>59</sup> In a similar way, the ‘pettie Parliament’ wish to impose summary execution, without trial or processes of law, upon those who attempt Eulalia’s life. Eulalia makes clear, however, that such an action would make the rustics no better, and certainly no less guilty, than her attackers; her concern is always for the upkeep of the law: ‘you transgresse / As

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<sup>57</sup> In arguing the need to introduce summary justice to prevent treason, the ‘pettie Parliament’ also echoes one of the reasons given for Charles’s resort to arbitrary imprisonment without showing cause, presented in this play in the imprisonment of Sforza who is told only that he is imprisoned because ‘’Tis the Kings pleasure’ (*Queen and Concubine*, sig. D2r), and reminiscent of the royal argument that the knights of the Five Knight’s Case were imprisoned *per speciale mandatum domini regis* (‘by his majesty’s special command’) (See Chapter 1, p.30). The possibility for abuse of this practice is evident in Petruccio’s concern that Sforza’s life may be forfeit to the King’s fury rather than his law (*Queen and Concubine*, sig. D3r).

<sup>58</sup> *OED*, ‘petty’ *adj.* and *n.* 1a and b, 2a.

<sup>59</sup> *OED*, ‘petty’ *adj.* and *n.* 2b.



much his Laws in spilling of their blood, / As they had done in mine' (*Queen and Concubine*, sig. F8v).<sup>60</sup>

In his divorce from Eulalia and his marriage to Alinda, Gonzago moves further away from the forms and procedures of established law. The imprisonment and death of Sforza are commanded at the King's (and Alinda's) whim, not through any legal channels, and the various attempts on Eulalia's life engineered by Alinda and Flavello provide clear examples of the disrespect for law and order at Gonzago's court. As the play progresses, this divorce of royal authority and law destabilises both law and authority. The king himself comes under threat as the soldiers, revolting against Petruccio for the death of Sforza, come to the palace:

in the late Execution  
Of Death-doom'd *Sforza*, which the Souldier  
(Not looking on [the King's] justice, but the Feud  
That was betwixt *Petruccio* and him)  
Resents as if it were *Petruccio's* Act,  
Not yours, that cut him off. (*Queen and Concubine*, sig. H2v)

The soldiers believe Petruccio's life should be forfeit for the murder of Sforza, despite his royal warrant. However, when he claims that he disobeyed the king's order, the soldiers accuse him of lying and maintain their claim to his blood, but simultaneously offer him to the king's punishment for disobedience:

We dare to kill the Hangman of our General,  
And think it fits our Office best: though you  
Have Law enough to wave our care and pain,  
And hang him up your self: for he affirms  
That he let *Sforza* live 'gainst your command;  
And that's the lie we treat of. (*Queen and Concubine*, sig. H3v)

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<sup>60</sup> In this 'pettie Parliament' Brome does not necessarily advocate the form of popular government suggested by Butler (1984, 40); indeed, in the potential lynching attempted by these countrymen, away from Eulalia's influence and contrary to the law and the King's command, the play seems to condemn, not endorse, popular government without a figure of legitimate authority.

The claims of the King, law and justice have been separated and thus undermined to such an extent that there is no possibility of justice for Petruccio whether he did or did not carry out the king's command; innocence in a world of arbitrary justice is insignificant. Although the soldiers do not believe his claims of innocence, his admission of disobedience gives the king 'Law enough', that is, sufficient evidence whatever the truth of the matter, to punish him for his action. The confusion that accompanies the soldiers' demands is indicative of the potential chaos of a State without due legal process. The only way to defuse the situation is for Sforza to return, unharmed, to the King's favour. This can be achieved in the play because Petruccio has deceived Gonzago in Sforza's death; significantly, this method of restoring order requires the reversal of all of the king's arbitrary judgements on Sforza.

The difficulty of Petruccio's position and scene of confusion caused by arbitrary action is echoed in the concerns of the country rustics that in rescuing Eulalia from those Alinda sent to kill her they have fallen foul of an edict ordering that no one is to aid the former queen in her banishment:

Poggio: How? what have we done? In relieving her from killing, we are all become Traytors.

Lollo: That's an idle fear: we knew her not,  
Which now we do, we may again reliver her  
Into their hands, for them to kill her yet:  
And then there's no harm done.

Poggio: So let us give them their swords again; and when they have done their work, to make all sure, we'll hang them for their pains, and so keep the Law in our own hands while we have it.

*(Queen and Concubine, sigs. E6r-E6v)*

The ridiculousness of this situation masks its more serious undertones. This is one of several similar incidents in the play, all of which suggest that the uncertainty caused by arbitrary actions leaves subjects in doubt over what is and is not legal. That the rustics can logically claim that if they hand the queen over to her killers ‘then there’s no harm done’, though couched in comedy, is a shocking realisation of the chaos that the will of Gonzago and Alinda can bring about, and the need to take law into their own hands in order to keep on the right side of it allows the possibility that subjects as well as kings can disregard established law. The comedy of the situation, which remains comedy only because Eulalia’s insistence on the due process of law prevents a lynching, hides the chaos which would result from the countrymen’s arbitrary ‘legal’ decisions. The ‘destruction’ (*Queen and Concubine*, sig. C7v) Lodovico feared for the court when Eulalia was banished is only kept in check in Palermo by her presence.

It is not only that Eulalia has influence over the rustics, however; more than this, they acknowledge her as Queen, a legal authority separate from that of the king:

Alphonso: Your selves are Traytors  
 In succouring ’gainst the Law, a dissolute woman  
 Whom I command you, in the Kings high name  
 To yield into my hands:

Lollo, Poggio, Andrea: You shall be hang’d first.

Alphonso: By whose Authority?

Lollo: By the said womans Sir.  
 She is our Queen and her Authority is in our hands.  
 (*Queen and Concubine*, sig. I3v)

Despite the King's decree that Eulalia should not be aided and that she is no longer Queen, she has become, to the rustics of Palermo, the figurehead of an independent legal authority, and this authority is held in higher regard than the King's. Eulalia herself, however, is always obedient to the King and refuses their title of Queen (*Queen and Concubine*, sigs. G3v-G4r), emphasising that it is Gonzago, not Eulalia, who is responsible for the rustic's institution of a separate legal authority through his misuse of law, and his embrace (literal and figurative) of arbitrary absolutism in Alinda.<sup>61</sup> Eulalia's unquestioning and submissive obedience to Gonzago's will throughout the play problematises the division of law and prerogative I am making here. However, her obedience maintains order, and it is this orderliness and her associated virtue (set against Alinda's mad ambition and disorder) which finally bring Gonzago to realise his error in divorcing the rightful queen.<sup>62</sup>

The potential radicalism of the people's institution of their own legal authority is, however, diffused in the audience's knowledge that Gonzago has already (privately) rejected Alinda because of her cruel demands and reinstated Eulalia as his Queen. Unlike the happy resolution of *The Queenes Exchange* brought about by the marriage of the monarch and the common law, and the restoration of reason in the reunion of Peregrine and Martha, the reacceptance of Eulalia as Queen, and thus the remarriage of royal and legal authority, is not sufficient in *The Queen and Concubine* to bring about a satisfactory resolution. Alinda is quite literally brought to her senses and recognises her folly, begging

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<sup>61</sup> I have taken the image of embracing arbitrary rule in Alinda from Butler (1984, 36).

<sup>62</sup> Catherine Shaw argues that the play's main concern is the exploration of virtue, contrasting Alinda's corruption with Eulalia's 'inviolate' virtue. Like Butler, she suggests the movement from court to country is restorative: 'The action moves from the court world dominated by fortune and the desire for material growth and social advancement to a green world dominated by nature and the desire for spiritual growth and moral advancement' (1980, 102, 100), but this fails to take into account the dubious legal manoeuvrings of the 'pettie parliament' discussed above.

pardon from her father, the King, the Queen and the Prince before asking to be allowed to retire to a convent 'To spend this life in Tears for [her] amiss' (*Queen and Concubine*, sig. K1r). Importantly, Gonzago, too, having recognised his errors, is to leave the political arena and retire to a monastery, leaving the kingdom to the Prince's government:

King: So haste we to *Nicosia*, where (my Son)  
 In lieu of former wrongs, Ile yield thee up my Crown and  
 Kingdom.  
 Your vertuous mother (whom may you for ever  
 Honour for her pietie) with these true  
 Statesmen, will enable you to govern well.

Horatio: Who makes a doubt of that? (*Queen and Concubine*, sig. K1r)

Arbitrary rule must not only be recognised as inappropriate, and even dangerous to the stability of the state, it must be entirely removed from the political sphere. That Gonzago emphasises to his son that ruling in conjunction with his mother will enable him 'to govern well' highlights the importance of law and order for good governance, and implies that his government with Alinda, and without Eulalia, has not been good. Horatio's comment here on the future good government of Sicily is consistent with his characteristic agreement with the king; throughout the play he has, in a ridiculous caricature of the sycophantic courtiers of Bertha's court, done the King 'that service, just to love / Or hate as the King does' (*Queen and Concubine*, sig. B5v). Nevertheless, this statement reinforces Gonzago's acknowledgement of the need for rule by established law and due order, suggested in his praise of Eulalia's piety. However, Horatio's rhetorical question also invites the audience to pass judgement on the legal politics which have been presented to them in the course of the play. There is very little basis for disagreement.

## Conclusion

The recurrent motif of the royal marriage in these dramatised debates over prerogative and law, places significant emphasis upon the necessary union of both forms of legal authority if stable, harmonious government and a sense of justice is to be maintained. However, this unity is fragile, and easily undermined. The resolution of *The Queenes Exchange*, like *The Guardian* discussed in the previous chapter, is haunted by the possibility of Osriik's continued arbitrary government, and Bertha's sovereign authority will remain dominant, despite her acceptance of common law in her marriage to Anthynus. Peregrine's (re-)marriage to Martha (and Joyless's acceptance of his chaste wife) marks the return of both the ruler and the ruled to reason, and the royal Peregrine's acknowledgement that his position does not allow him to act above the law suggests that for health to be restored to the body politic, monarchy must be subject to law. This is advocated, too, in *The Queen and Concubine* in the hopeful image of the future government of Sicily, in which the Prince will replace his father, and remain subject to the guidance of his mother, Eulalia; monarchical will is subject to an established, independent legal authority.

The movement towards the subjection of monarchical authority to law is set alongside the disintegration of reason into madness, which is representative of, and brought on by, the unrestrained exercise of prerogative powers. Attempts to manipulate the law are shown to be acts of madness, literally in Offa and Alinda, fictionally in the Antipodes, but also metaphorically, as such actions destabilise the

State, threatening both the monarch and the commonwealth. This association of intemperate monarchical will with madness in the theatre coincides with an increased emphasis in the contemporary politico-legal arena upon the reason of the law, both inherent in law itself and in the cumulative wisdom of the lawyers, set against the potentially arbitrary judgements of absolute monarchy. The wise and reasonable thing for a king to do, these plays suggest, is to uphold the ordering power of established law above the prerogative. Whilst the dramatic confines of the theatre, and the generic boundaries of tragi-comedy and comedy, allow the exploration of the destabilising effects of absolutism without real consequences, the political arena does not. The only means to maintain a stable, just government is to subordinate royal authority to the power of an independent established law.

## Chapter 4

**Decentralising Legal Authority:  
From the centre to the provinces**

Positions of legal authority in the localities fell to men from a variety of social strata, from the local petty constable (often a man of humble background) to the Justices of Peace (local landowners or gentry) to the Lords Lieutenant (usually titled men).<sup>1</sup> Such figures were responsible for the enforcement of central law and policy in their area, and were officially the representatives of central authority in delivering justice. The responsibilities of local authority figures were wide-ranging, and will be summarised, along with the structures and hierarchies of authority that led from the centre to the provinces, in the first section of this chapter. Justices of Peace:

be called Justices (of the peace) because they be Judges of Record; and withal to put them in minde (by their name) that they are to doe justice (which is, to yeeld to every man in his owne by even portions, and according to the Lawes, Customes, and Statutes of this Realme,) without respect of person.

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<sup>1</sup> Indeed, Keith Wrightson suggests that petty constables, at least, were often poor men pressed to take the position because villagers were notoriously reluctant to accept the responsibility (Wrightson, 1980, 26). For a detailed discussion of the selection, responsibilities and activities of village constables, see Joan Kent (1986); Thomas Cogswell (1998) provides a discussion of the position and activities of the Earl of Huntingdon, Lord Lieutenant of Leicestershire. For a more general discussion of the power and position of Lords Lieutenant, and their relationship with local sheriffs and justices, see Victor Stater (1994, especially the introduction and chapters 1 and 2).



They are named also Commissioners (of the peace) because they have their authority by the Kings Commission (Dalton, 1635, 7).

Appointed by the king through the Privy Council, Justices were the main representatives of central authority in the localities, and, I will argue in a reading of Brome's *The Weeding of Covent Garden* (1632), on the Caroline stage. However, figures of local authority were also involved much more in the negotiation and mediation of central law, than in its direct enforcement; Justices of Peace and, particularly, constables walked a precarious line between following their instructions from higher authorities, and maintaining peace and their place in local society. As Keith Wrightson argues:

The order of the village community could survive occasional drunkenness, erratic church attendance, profane language, neglect of the licensing and apprenticeship laws. It was more likely to be disturbed by the enforcement of the host of penal laws which might excite new conflicts and drain, in fines, its resources. What really mattered was the maintenance of specific, local, personal relationships, not conformity to impersonal law (Wrightson, 1980, 25).

The division of central legislation and local government into two separate concepts of order that this implies suggests a negotiation of law enforcement in the localities which took into account not only the relationship of the 'offender' to the law, but also of the official to the law and to the community. Such complexities of local authority will be explored here with regard to Ben Jonson's *A Tale of a Tub* (1633). Finally, it will argue that increased attempts to centralise legal authority in the provinces, in parallel with Charles I's exercise of prerogative rule at the centre, emphasised the divisions between concepts of central and local legal governance, and brought about, Brome's *A Joviall Crew* (1641) suggests, a fragmentation of law, government and society.

### From the Centre to the Provinces

Aside from the Lord Lieutenants whose main responsibility was military (although they occasionally, as a figure of high local standing, attempted to resolve disputes amongst their neighbours), the Justice of the Peace was the most prominent figure of permanent judicial authority in many regions in the Caroline period.<sup>2</sup> Justices were appointed by the Privy Council, served indefinitely, and could only be removed from office at the King's will. They reported their activities to the Judges of Assize, who in turn reported to the Privy Council on the Justices. However, this system of monitoring was not all one way; the local justices, Kevin Sharpe notes, were also encouraged to report back to the Council on the activities of the Judges whilst in their area (Sharpe, 1992, 435). The hierarchy of justice figures was not for monitoring purposes only, however; it also acted as a chain of communication: the King gave his address in Star Chamber to the Assize Judges, who then passed on new (or emphasised) issues of policy to the local justices on their circuit.

The Justices of Peace in each county met every three months for the quarter sessions, the main forum for local justice.<sup>3</sup> Some justices, however, chose to meet more often in 'petty sessions' in order to deal with pressing county business, or to reduce the workload for the quarter sessions. These petty sessions were initially set up on an informal basis but the Book of Orders of 1631, which sought to increase

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<sup>2</sup> Stater suggests that the responsibilities of the Lords Lieutenant increased throughout the early Stuart period, and that this was a reflection of the *ad hoc* nature of early Stuart government (Stater, 1994, 26). J. A. Sharpe notes that 'arbitration through friends, respected members of the community, the local clergyman, or even through the intercession of justices of the peace, must have kept many disputes and differences from entering the courts' (Sharpe, 1980, 112).

<sup>3</sup> Much of this paragraph is based upon Sharpe, 1992, 430-438. See also Fletcher, 1986, *passim*.

officials' co-operation and impose a greater order upon local governance, ordered the institution of regular monthly petty sessions:

Orders 1.

That the Justices of Peace of every Shire within the Realme doe divide themselves, and allot amongst themselves what Justices of the peace, and what Hundreds [a division of land in the county] shall attend monethly at some certain places of the Shire. And at this day and place, the High Constables, petty Constables, and Churchwardens, and Overseers for the poore of those Hundreds, shall attend the said Justices. And there inquirie shall be made, and Information taken by the Justices, how every of these Officers in their severall places have done their duties in Execution of the Lawes mentioned in the Commission annexed, and what persons have offended against any of the said Lawes. (Charles I, 1630, sigs. E4r-E4v)

Those officers who had neglected their duties were to be punished, and note taken of this, along with any fines levied and how these had been spent. Details were then to be sent quarterly in a written report to the High Sheriff of the County, for him to report back to the Privy Council. The extent to which this order was carried out varied from county to county.<sup>4</sup>

Despite the importance of their position in law enforcement, local governance and county welfare, Justices of the Peace received no formal training. However, there were some 'handbooks' for Justices, which laid out their responsibilities and the statutes for their enforcement. William Lambarde's *Eirenarcha* (first published in 1581) and Michael Dalton's *The Countrey Justice* (first published 1618) presented the statutes pertinent to their office, and justices' jurisdiction with respect to felony, larceny, theft, and the raising of hue and cry. Apart from their expected judicial responsibilities, however, *The Countrey Justice* showed that justices were also responsible for determining paternity, poor relief and

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<sup>4</sup> A J Fletcher argues that the implementation of any central authority directives in the counties varied from place to place and official to official (1986, *passim*).

road maintenance. The popularity of such manuals is attested by the fact that by 1620, *Eirenarcha* had reached its twelfth edition (Sharpe, 1992, 431n.217), and *The Countrey Justice* was reprinted for the fifth time in 1635. The anonymous *The Complete Justice A Compendium of the particulars incident to Justices of the Peace, either in Sessions or out of Sessions* (1637), containing not only information from the statutes, resolutions of judges and approved authorities, but also references to the relevant passages of Dalton's and Lambarde's works, suggests the authority these volumes carried.

Primarily, Dalton stated, the justices were commissioned by the King to keep his peace:

The conservation of this peace (and therein the care of the Justice of Peace) consisteth in three things, *viz.*

1. In preventing the breach of the Peace, (wisely foreseeing and repressing the beginnings thereof) by taking surety for the keeping of it, or for the good behaviour of the offenders, as the case shall require.

2. In pacifying such as are in breaking of the peace[...]

3. In punishing (according to Law) such as have broken the peace.

But of the three, the first, the preventing Justice, is most worthy to be commended to the care of the Justices of Peace. (Dalton, 1635, 10)

Before stating the Justices' responsibilities, however, Dalton also notes that:

Justice may be perverted in many wayes, (if [the justices] shall not arme themselves with the feare of God, the love of Truth and Justice, and with the authority and knowledge of the Lawes and Statutes of this Realme).

(Dalton, 1635, 7)

These are, he says: fear of 'the power or countenance of another'; attempts to favour friends or family; hatred of one party or another; expectation of a gift, fee or reward; 'Perturbation of minde; as anger, or such like passion'; ignorance of knowing what should be done; 'presumption' (when a justice acts on their own will without law or

warrant); ‘Delay; which in effect is a denying of justice’, and ‘precipitation’ (rash actions without due examination) (Dalton, 1637, 7).

Justices of Peace, however, were not the only law enforcement officials. Amongst their responsibilities was that of appointing High Constables (two in each Hundred), who were assisted by Petty Constables. Of the local officials, the High and Petty Constables were most integrated into the society they served, and were mostly yeomanry / farmers and ordinary men like husbandmen or shopkeepers respectively. They were more engaged in the everyday life of their local community, and as such faced a more complex negotiation between their responsibilities and life in their community than the justices, and indeed are the primary focus of Wrightson’s essay ‘Two Concepts of Order’ quoted above. They were responsible for effecting hue and cry (rousing the local people to search for criminals), collecting taxes / loans, making presentments to the assembled justices at petty and quarter sessions, and escorting those who were summoned to appear before the sessions. In this way, it was they, not the justices, who were directly responsible for reporting their friends, family and neighbours’ misdemeanours. Unlike Justices, they were not protected by a high social status, nor were they appointed by the king’s Privy Council. Constables usually held their position only for twelve months, after which they had to go back to their everyday lives in the same community, facing any repercussions from their neighbours, without what little protection their post had previously offered.<sup>5</sup> That they had to live in the community, and thus with the consequences of their actions, must have held substantial influence over the decisions made by all local officials, but this does not

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<sup>5</sup> For a detailed discussion of position of constables, see Wrightson, 1980; Sharpe, 1980, and Kent, 1986. The same problems arose for ship money sheriffs (Lake, 1981, 57).

necessarily imply widespread corruption (although figures such as the constables and clerks of Brome's *The Northern Lasse* and Thomas Nabbes' *Covent Garden* suggest a perceived undercurrent of dishonesty amongst local lawmen). The increased demands upon constables brought about by the Book of Orders and ship money collection in the 1630s exacerbated the constables' problems, making recruitment to the post more difficult. Justices were forced to appoint men from a broader base of lower status men and new families (Sharpe, 1992, 439), and these men would inevitably carry less natural authority than those of locally established families or men of higher status.

The collection of the forced loan (1626) and ship money (during the 1630s) not only tested the constables and those above them in the chain of local governance, but also highlighted the tensions between the priorities of local and central authorities.<sup>6</sup> Charles' attempts to raise these extra parliamentary monies were met with some resistance, in part because of their dubious legality (extra parliamentary taxation was illegal) – there were those who refused to collect or pay their allotted amount for this reason – and in part because those commissioned to collect the money chose to do what was best for the financial well-being of their local community.<sup>7</sup> Ship money sheriffs with responsibility only for the collection of such funds were appointed in the localities, and although this 'constituted a decision to bypass the usual hierarchies of county government' (Lake, 1981, 59), it

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<sup>6</sup> For a detailed discussion of the introduction, enforcement and implications of the Forced Loan, see Richard Cust's *The Forced Loan and English Politics 1626-1628* (1987, *passim*). For more detail on ship money, see Sharpe, 1992, 567-598; Peter Lake's discussion of Cheshire ship money provides a close focus upon the different methods of the individuals involved in its collection, and of their communication with the Privy Council (1981, *passim*).

<sup>7</sup> Lords Lieutenant who displeased the King over the forced loan temporarily lost their position (Stater, 1994, 17), and Fletcher states that some country justices were also dismissed for opposition to ship money (Fletcher, 1986, 10). Sharpe, however, argues that there is little evidence to support this statement (Sharpe, 1992, 436).

did not sidestep the clash of local and national interests present in local officials: some managed to assert the rights and concerns of their community with regard to ship money assessments, whilst also appearing loyal to the King and Privy Council.<sup>8</sup> The Privy Council, too, exploited the dual loyalties (and personal concerns) of the ship money sheriffs, who were financially responsible for any shortfall in the collection in their year of office:

[T]hey were not only playing on his sense of obligation to the King's service (and his fear of the practical consequences of any failure on his part) but were also exploiting his sense of obligation towards his own county. Left with no choice but to administer the writ the sheriff could be relied on to minimize its effects in the local context. After all he had to live there after his year in office (Lake, 1981, 57).

The localism that could be detrimental to central authority's will here was turned to its advantage.

The disadvantage of bypassing the usual county hierarchy in such a way, however, was that it allowed the direct questioning of the royal prerogative, in the authority given by the king to the sheriffs. Unlike the Justices of Peace, who were given authority by the king to uphold and provide justice within common and statute law, ship money sheriffs acted only with the authority of the King's prerogative, making them 'a direct link[...] through which the unalloyed power of the King's prerogative was to be brought to the locality' (Lake, 1981, 59).<sup>9</sup> The extent of the King's prerogative was, in this case, not a matter for debate amongst lawyers, parliament and the king in the way that passing the Petition of Right had

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<sup>8</sup> See Peter Lake's discussion of the sheriffs involved in the collection of ship money in Cheshire (1981, *passim*, especially 45-50).

<sup>9</sup> By contrast with the sheriffs, Richard Cust and Peter Lake argue that the institutions of local government were seen primarily as representatives of parliamentary authority in the localities in their discussion of the ideals and ideologies espoused by Sir Richard Grosvenor, chief justice of the peace in Cheshire (Cust and Lake, 1981, 45).

been, but a matter that affected all subjects in the localities directly and financially. Their reaction to the sheriffs' authority could then be seen as a reaction to the prerogative, and thus Peter Lake argues, 'it was not possible to react against ship money without also raising a whole series of questions about the nature and limits of the King's authority' (Lake, 1981, 61). If people were unco-operative with the sheriff, they were disobedient to the King. In attempting to bypass the chain of local authority in the provinces, ship money and its sheriffs created a fissure in the presentation of royal authority by subjecting it to the mediation of individuals' capabilities and influence.

The enforcement of law and royal policy, then, depended upon the influence, charisma and efficiency of the local authority figure(s), and upon the co-operation of the local people. Although Caroline local officials were not always representatives of the king's prerogative (as in the case of the ship money sheriffs) they were always representatives of the king's judicial authority. The next section will discuss this representation of central authority in *The Weeding of Covent Garden*.

### **Central authority: *The Weeding of Covent Garden***

Brome's *The Weeding of Covent Garden* presents several figures of authority: the local Justice (Cockbrayne), two fathers (Croswill and Rooksbill) and the Captain of a band of youths called the Philoblathici (Driblow). The parallel positions these men hold might suggest a proliferation of authorities in the play;



indeed, Butler has argued that ‘Brome’s Covent Garden is full of law of all varieties, but order and authority there is none’ (Butler, 1984, 157). In what follows I would like to argue that, whilst the play does present a variety of potential authorities, ultimately, the legal authority in this play resides in the single figure of the Justice of the Peace, suggesting a single, unified focus of legitimate legal authority.

Cockbrayne is a particularly proactive local official, who takes his responsibilities very seriously, reminding himself of his duties regarding bawdy houses and prostitutes (‘I guess what she is, what ere I have said. O Justice look to thine office’ (*The Weeding of the Covent-Garden*, sig. B5r)), and actively seeking out wrong doers to punish in order to rid Covent Garden of its ‘weeds’, suggesting a concern that the newly built houses are filled by appropriate people.<sup>10</sup> Cockbrayne compliments Rooksbill, a developer of Covent Garden, on the state of the building, saying ‘All, all as’t should be!’. Rooksbill’s response, ‘If all were as well tenanted and inhabited by worthy persons’, leads the justice to a lengthy discussion of the progress of all new developments:

Cockbrayne: Phew; that will follow. What new Plantation was ever peopled with the better sort at first; nay commonly the lewdest blades, and naughty-packs are either necessitated to ’hem, or else do prove the most forward venturers[...] And do not weeds creep up first in all Gardens? and why not then in this? [...] And for the weeds in it, let me alone for the weeding of them out. And so as my Reverend Ancestor *Justice Adam Overdoe*, was wont to say, *In Heavens name and the Kings*, and for the good of the Common-wealth I will go about it.

Rooksbill: I would a few more of the Worshipful here-about (whether they be in Commission or not) were as well minded that way as you are Sir; we should then have all sweet and clean, and that quickly too. (*Weeding*, sigs. B1v-B2r)

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<sup>10</sup> Hereafter *The Weeding of Covent Garden* will be abbreviated in references to *Weeding*.

Here, Cockbrayne's declaration that he acts in heaven's name, and the king's and for the good of the common wealth justifies his actions through all possible authorities from the highest seat of justice (heaven), through the king to the people, and his earlier decision to actively seek out criminals suggests something of the demands of central authority in the Book of Orders for an increased efficiency in its local officials. In this statement, he also claims heritage in Jonson's Jacobean justice, Adam Overdo (*Bartholomew Fayre*) and like Overdo, his officiousness will do him little good. This heritage also hints towards the way Cockbrayne intends to weed Covent Garden: in disguise. His comparison between the development of Covent Garden and colonial expansion ('new Plantation') is significant as a comment upon the expansion of London into greenfield areas on its outskirts.<sup>11</sup> At the time, there were royal proclamations against further building around London, except for on existing foundations (Sanders, 1999a, 51), and the Earl of Bedford had to petition the king in order to build at Covent Garden. In January 1630/31 the king instructed the Attorney General to prepare a licence for Bedford, and a pardon for any offence committed against royal proclamations against building (Brett-James, 1935, 169). However, if central authority was against any further expansion of London, this does not fully explain the colonial analogy. The explanation lies, I suggest, in the intended market for the houses, to which Rooksbill hints in his wish for 'worthy persons' and Cockbrayne refers in his compliments on the building: 'I Marry Sir! This is something like! These appear like Buildings! Here's Architecture exprest indeed! It is a most sightly scituation, and fit for Gentry and

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<sup>11</sup> Matthew Steggle notes that until the earl of Bedford commissioned its redevelopment for housing in 1631, Covent Garden had been a greenfield area (2004, 47). Julia Merritt discusses the layout of the Covent Garden development, suggesting it was designed to exclude the undesirable poor 'by eliminating the types of areas in which the poor traditionally congregated' (2005, 196-199, quotation at 197). For early seventeenth century testimony regarding the movement of undesirables to colonies before more respectable gentlemen, see Miller (1990, 357).

Nobility' (*Weeding*, sig. B1r). Martin Butler states that '[t]he square was designed deliberately as an area of fashionable housing' and 'Covent Garden[...] was the newest and most prominent example of the gentry's foothold in London' (Butler, 1984,147). The country gentry, then, are 'colonising' London. Charles sought to deal with this with the proclamation of 1632, 'Commaunding the gentry to keep their Residence at the Mansions in the Country, and forbidding them to make their Habitations in *London* and places adjoining'. *The Weeding of Covent Garden's* Crosswill, however, has contrary ideas: 'He has had an aime these dozen years to live in town here but never was fully bent on't until the Proclamation of restraint spurr'd him up' (*Weeding*, sig. C2r). He has, however, found a way to circumvent the proclamation; he has 'sold all [his] land to live upon [his] money in Town here, out of danger of the Statute' (*Weeding*, sig. F5v). His deliberate crossing of the proclamation is representative of Crosswill's intentionally contradictory attitude.

Crosswill sees his authority as the ability to act utterly arbitrarily and embodies the extreme of untempered will. The dramatic convention and the patriarchal political theory which equates fathers with kings, suggests that he should be seen as a representation of the king's authority.<sup>12</sup> Julie Sanders makes this point particularly succinctly, arguing that in *The Weeding of Covent Garden* and other such plays: 'the space of the family is used as a means for exploring the wider problems of the monarch-father's relationship with his children-subjects in the body politic or wider commonweath' (Sanders, 1999a, 68). Crosswill arrives in Covent Garden as a potential tenant for Rooksbill's properties, and when he first appears, he is complaining of his children's behaviour. Although they behave in ways that

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<sup>12</sup> For a discussion of patriarchy, see chapter 2, especially pp.76-79.

‘other fathers would rejoice at’ (*Weeding*, sig. B2v), it is not enough that they speak of obedience ‘Or that [they] are obedient. But I will be obeyed in my own way’

(*Weeding*, sig. B2r). For his daughter, this is choosing her own husband:

But she has a humour, forsooth, since we put your son by her, to make me a match-broker, her marriage-Maker; when I tell you friend, there has been so many untoward matches of Parents making, that I had sworn she shall make her own choice, though it be of one I hate. Make me her match-maker! Must I obey her, or she me, ha? (*Weeding*, sig. B3v).

Katherine’s refusal to make her own choice is a response to Crosswill and Cockbrayne’s sudden and irrational decision to call off her marriage with Cockbrayne’s son Anthony. Crosswill believes his fatherly authority gives him the power to do whatever he pleases and exercises this power at every opportunity, and in this way embodies the fears of arbitrary action by the king raised by the imposition of Charles’ personal rule. Often his arbitrary decisions are merely a test of his children’s obedience; yet this backfires, as Crosswill’s arbitrariness raises in his children a spirit of opposition and deviousness that would not necessarily have arisen if he did not attempt to thwart their plans at every turn:

thou know’st ’tis his custome to crosse me, and the rest of his children in all we do, to try and urge his obedience; ’tis an odde way: therefore to help my self I seem to covet the things that I hate, and he pulls them from me; and make shew of loathing the things I covet, and he hurles them doubly at me, as now in this money. (*Weeding*, sigs. C6r- C6v)

After a long soliloquy on his actions and their response, Crosswill himself acknowledges his fault in creating his children’s behaviour, saying ‘I could beat my selfe for getting such children’ (*Weeding*, sig. F7v). (A parallel for this can be found in the play’s Captain Driblow, who actively encourages disorder in his followers).<sup>13</sup> In the same way as Mihil tricks money from his father, Katherine

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<sup>13</sup> cf. Butler 1984, 156.

pretends to want to leave Rooksbill's house to trick her father, who had decided to leave, into staying. This deliberately contrary behaviour in his children and his own repentance for creating it serves as a warning to Charles about the dangers of imposing arbitrary rule. Wilfulness in the ruler provokes wilfulness in the subjects.

More significant than his daughter's behaviour in this respect are the 'disobediences' of his sons: Gabriel has changed from 'imitating a soldier' (*Weeding*, sig. E2r) to behaving like a Puritan, and Mihil has, Crosswill believes, become a student of law at the Inns of Court. Puritans and lawyers were both groups with whom Charles I wrangled on occasion, the former objecting to the potential catholicising of the English church, and the latter for Charles's prerogative infringements upon common and statute law. Gabriel admits at the end of the play, when Dorcas's honour is restored through marriage with Nicholas, that he was merely acting the Puritan to displease his father in return for being sent away earlier (a decision which unintentionally allowed Nicholas to seduce and leave Dorcas). His choice of words here, however, is significant, as he 'acknowledg[es] [his] formal habit was more of *stubbornnesse* then true devotion' (*Weeding*, sig. G7v, my emphasis). This suggests a certain contrariness in all Caroline Puritans, emphasised by Katherine and Lucie's earlier interchange:

Kat: [...] *I think verily he does it but to crosse my father, for sending him out of the way when the mischief was done.*

Luc: *I will not then beleeve 'tis Religion in any of the gang of 'em, but mere wilful affectation.* (*Weeding*, sig. E3r)

Gabriel's 'affectation' however, not only displeased his father, but gave him a religious vocabulary which suggests heavenly retribution for Nicholas, but also allows personal violence:

It had been good to have humbled him, though into the knowledge of his Transgression. And of himself for his soules good, either by course of Law, or else in case of necessity, where the Law promiseth no release, by your own right hand you might have smote him, smote him with great force, yea, smote him unto the earth, until he had prayed that the evil might be taken from him. (*Weeding*, sig. E8r)

The comic repetition of ‘smote’ both emphasises Gabriel’s anger with Nicholas and ridicules the zealous fervour of seventeenth-century puritans. It should be noted, though, that this violence becomes an option only ‘where the Law promiseth no release’. Submission to appropriate authority is still important to Gabriel.<sup>14</sup>

Mihil’s ostensible study of the law also infuriates his father. Although Crosswill himself placed Mihil as a student in London, his disappointment to find his son studying law rather than reading romances plays on the knowledge that the Inns of Court were as much a ‘college’ for young gentlemen who wished to enjoy London society and advance themselves at court as places to study the law.<sup>15</sup> Mihil’s demonstration of his legal knowledge, put on as a show to his father using borrowed books and gowns, and other pretend students (the shoemaker and tailor to whom he owes money), leads Crosswill himself to admit as much:

Did I leave thee here to learn fashion and manners, that thou mightst carry thy self like a Gentleman, and dost thou wast thy brains in learning a language that I understand not a word of? ha! I had been as good have brought thee up amongst the wild Irish (*Weeding*, sig. C4v).

The reference to the Irish perhaps continues the colonisation analogy, but more significant is Crosswill’s objection to Mihil’s legal learning: he does not understand it. I do not wish to argue that Brome is suggesting Charles I is ignorant of the law,

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<sup>14</sup> In fact neither ‘smiting’ nor law catches up with Nicholas who is, instead, persuaded by his friends to marry Dorcas without official intervention. This circumvention of the legal authority by the philoblathici perhaps gestures towards the community negotiation of law I suggested in the introduction to this chapter.

<sup>15</sup> See Introduction, pp.4-5.

but this may suggest a (deliberate?) misunderstanding of the law on the King's part. The terms that Crosswill uses to prevent Mihil continuing his study too are significant: 'Away with books. Away with Law. Away with madnesse. *I, God* blesse thee, and make thee his servant, and defend thee from Law, *I say*' (*Weeding*, sig. C4r), and again later, an interchange between Crosswill and Mihil confirms this association of studying law and madness:

Mi: They are Gentlemen of my standing, Sir, that have a little over-studied themselves, and are somewhat ---

Cros: Mad; are they not? And so will you be shortly, if you follow these courses. Mooting do they call it? you shall moote not mute here no longer.  
(*Weeding*, sig. C5r)

This is, of course, an inversion of the law/reason, madness/arbitrary rule equations evident in Caroline drama as discussed in Chapter 3. The explanation for this may lie in Crosswill's deliberately contrary nature, and thus it might be expected that he should reverse the convention. His prayer that Mihil be defended from law could be taken as a slight upon crooked lawyers and legal practices, but in terms of Crosswill as a representative of Charles I, his wish that heaven may defend him and his sons from law evokes the divine right of kings in protection of royal prerogative (Crosswill's arbitrary authority) against the claims of law.<sup>16</sup> As this is *Crosswill's* prayer though, it can be understood as a perverse wish.

Mihil's apparent studiousness, however, is a cover for his real 'occupation' in town as a member of the Philoblathici, the 'brothers of the blade and battoon' led by Captain Driblow (a further figure of authority), who swear to protect each other

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<sup>16</sup> Mihil's exposition of 'remitter' to his pretend students is taken from Coke's *Institutes*, fol.347b-348a, and is close to direct quotation. The choice to quote from Coke is also significant in this presentation of the clash between law and kingly authority, as Coke was one of the main proponents of rule by common law against prerogative (see Chapter 3).

and their companions, be disrespectful to all but their brotherhood unless they can gain from them ('let no man take wall of you, but such as you suppose will either beat you or lend you money'), and to undermine the law:

That you be ever at deadly defiance with all such people, as Protections are directed to in Parliament, and that you watch all occasions to prevent or rescue Gentlemen from the gripes of the Law brissons. That you may thereby endear your selfe into noble society, and drink the juice of the Varlets labours for your officious intrusions (*Weeding*, sig. D3v).

Protections were warrants for safe conduct or immunity from arrest usually issued by the king to those in his service. That the protections here are offered by parliament suggests an intention to undermine *all* forms of authority.<sup>17</sup> In this respect, it is interesting that Nicholas draws a comparison between his Philoblathici brothers and Gabriel's puritan brothers:

But we are brethren, sir, and as factsous [*sic*] as you, though we differ in the Grounds, for you, sir, defie Orders, and so do we, you of the Church, we of the Civil Magistrate; many of us speak i'th'nose, as you do; you out of humility of spirit, we by the wantonnesse of the flesh; now in devotion we go beyoud [*sic*] you, for you will not kneel to a ghostly father, and we do to a carnal Mystresse (*Weeding*, sig. F4v).

This comparison of Mihil, Nicholas and Gabriel's positions suggests that puritans, like the philoblathici, deliberately set out to flout authority.

That the brothers of the blade can so easily 'convert' Gabriel from his Puritan ways to drunkenness may, like the revelation of his pretence, also be a comment on the sincerity of puritans. His transformation from Puritan to Militia Captain threatening to 'do Martial Justice on you all' (*Weeding*, sig. G4v) is not too far in violence from his previous desire to 'smite' his enemies, but presents him as

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<sup>17</sup> Matthew Steggle argues, alternatively, that the reference to the parliamentary protections is a topical reference relating to the revival of the play in 1641, as parliamentary protections were a contentious issue at that point (2001, paragraph 20).



more acceptable to his father (and thus Caroline central authorities) but also as an embodiment of several contentious issues of the period. His complaint that his ‘troops’ are ill-trained and equipped (*Weeding*, sigs. G4v-G5r) was a real problem for the Caroline militia, and his threats of martial law reflect fears of its imposition in towns with military garrisons which had been had been argued against in the Petition of Right.<sup>18</sup> This opens the question as to what forms of behaviour are acceptable to both the Caroline populace and the king. Gabriel’s threat to enforce such law changes the threat to order he embodies from one of disobedience to Church authority to a threat to local authority, as commissions of martial law undermined the authority of Justices of the Peace.<sup>19</sup>

Cockbrayne’s attempts to ‘tread out the spark of impiety, whilst it is yet a spark and not a flame; and break the egge of a mischief, whilst it is yet an egge and not a Cockatrice’ (*Weeding*, sig. B2r), and thus weed Covent Garden, involve infiltrating the philoblathici. His attempts result in his first being soundly beaten by the brothers, then left to pay their inn bill with Clotpoll, and then being beaten by two prostitutes, Bettie and Francisca (Frank). His determined statement, ‘I will not yet desist; but suffer private affliction with a Romane resolution for the publicke welfare’ (*Weeding*, sig. D6r) is admirable and suggests a genuine concern for the common good. However, his letter to Crosswill explaining his absence suggests ulterior motives:

He is upon the point of discovery in a most excellent project for the weeding of this Garden? What Garden? What project? A project he says here for the good of the Republike, Repudding... He is ambitious to be call’d into

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<sup>18</sup> Cogswell’s discussion of Huntingdon’s efforts in training and equipping the local militia is particularly informative regarding these problems (1998, *passim*). See Lockyer (1999, 272) and Chapter 1, pp.33, 47-8 for the concerns over the imposition of martial law in the Petition of Right.

<sup>19</sup> See Russell, 1979, 359, and Lockyer, 1999, 272. Also, Chapter 1, p. 33.

authority by notice taken of some special service he is able to do the state  
 aforehand (*Weeding*, sig. F7r).

Crosswill's easy dismissal of any concern for the common good ('Republicke,  
 Repudding') is unsurprising given his cross-will and arbitrary nature, and perhaps  
 suggests a lack of concern for this in Charles's arbitrary government. Cockbrayne's  
 motives here, too, are less than altruistic in wishing to advance his own position in  
 weeding Covent Garden. In seeking to advance himself through his enforcement of  
 the law rather than in acting for the common good despite his earlier claims that he  
 would do so, Cockbrayne can be seen to represent Charles I's dubious use of law for  
 his own gain.<sup>20</sup>

The misapplication and abuse of law by figures of authority is a recurring  
 theme in much of Caroline drama, from Justice Squelch's manipulation of the law  
 and his authority to keep Holdup as his mistress in *The Northern Lasse* (1629) to  
 Constable Busie in Glapthorne's *Wit in a Constable* (1636-8) who uses his position  
 as a trusted and respected mediator in the community as a means to engineer good  
 marriages for his daughters, outsmarting the gallants and alderman Covet:

Covet: Dare you doe this sirrah?

Busie: Yes, and answer't too sir.

Y've met a Constable that has the wit  
 To know the power of's office. (*Wit in a Constable*, sig. H4v)

Throughout the play, Busie's focus is on proving that there can be wit in a  
 constable; it is only at this point that he reveals that this wit is in knowing what his  
 position allows him to do. This abuse of law, position and authority is also given

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<sup>20</sup> Butler argues similarly (1984, 153).

sustained treatment in *Tale of a Tub*, which will be discussed in the following section.

Cockbrayne's scheme advances him very little. His infiltration of the philoblathici and storming of the tavern result in confusion as he finds respectable community members amongst the carousers who agree to stand as surety for each other and their relatives in the philoblathici. Cockbrayne finds that he cannot arrest Crosswill and his children, or Rooksbill and his, and discovers that another of the Philoblathici is his own son: 'Why *I* know not whom to commit now', he says (*Weeding*, sig.G8v). In this confusion, Brome nods towards the ties of friendship and community which Wrightson argues complicated the activities of local officials. However, this confusion merely facilitates a satisfactory resolution to the play; it is not the dominating issue. Rather, the proper exercise of authority and obedience is brought to the fore. The parallel positions of Cockbrayne, Crosswill, Rooksbill and Driblow, along with Gabriel's puritan authorities, have led critics to argue that the proliferation of authority figures in this play suggests a complete lack of authority in Covent Garden. Matthew Steggle has associated this lack of authority closely with the play's setting, as Covent Garden had strong puritan links, and it did not become a parish in its own right until fourteen years after the play was written and therefore did not have its own local authority figures (Steggles, 2004, 47-8).<sup>21</sup> Butler argues that there is a more general confusion over legitimate legal authority:

Brome simply [sets] these various sorts of authority at war with one another, the point being that no one figure can claim any more 'authority' than the next, since the actions of each arise from a narrow personal (and often contradictory) idea of what constitutes law (Butler, 1984, 154-5).

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<sup>21</sup> Steggle explains the spread of tavern activities in the play in this way, as lacking their own local officials would inevitably interfere with tavern licensing (Steggles, 2004, 48-9).

However, I would argue that despite their parallel positions as authority figures, Cockbrayne, Crosswill, Rooksbill and Driblow are not really competing authorities (unlike, for example, *The Queen and Concubine*'s King and Eulalia's council). Indeed, a satisfactory resolution to this play is ultimately brought about through the intervention of and submission to, the appropriate officials:

Vintner: There's no escaping forth. And Gentlemen, It will but breed more scandal on my house, and the whole plantation here, if now you make rebellious uproar. Yield your weapons, and welcome Justice but like subjects new, and peace will follow.

...

Mihil: They shall yield up their weapons. So do you.

Capt: Yes yes 'tis best.

Clot: Shall we, sir, shall we?

Mih: Yes sir, you shall. (*Weeding*, sig. G6v).

Mihil's insistence that the Philoblathici give up their swords to the local authority figure, and Crosswill and Rooksbill's legitimate desire to bail their relatives rather than stand unofficially in the way of their arrest, imply deference to the constable and Justice Cockbrayne. Although there are other authority figures in the play, they do not hold higher power than Cockbrayne, and they know this. Even Captain Driblow who potentially fights against Cockbrayne's authority, acknowledges this in his interchange with Clotpoll before the justice's arrival:

Clot: If our sight offend you,  
Know we are men that dare forbear the place.

Capt: I son, let's go, our stay is dangerous.  
They look like Peace-maintainers, we'll fall off. (*Weeding*, sig. G6v)

The harmonious ending to the play is brought about by acknowledgement of the legitimate authority of the justice, and Covent Garden is eventually weeded when those who have not been submitting to the relevant authorities do so.<sup>22</sup> That Cockbrayne chooses not to enact his powers of arrest suggests the necessary mediation of strict laws to bring about a satisfactory resolution. Nevertheless, this does not cause a dilemma for Cockbrayne; the authority to enforce or mitigate the law is his alone. There is no divided authority in this play.

### **Divided loyalties: *A Tale of a Tub***

Although *The Weeding of Covent Garden* nods towards the conflicting loyalties experienced by local officials, its primary concern is with the appropriate imposition of, and obedience to, judicial authority. As a representative of kingly judicial power, Cockbrayne ultimately holds the highest authority in the locality of Covent Garden. Matthew Steggle's comment that Covent Garden had to rely on the services of officials shared with neighbouring areas (Steggles, 2004, 48) may go some way to explaining this lack of personal conflict, although Cockbrayne's ties of friendship and family are not entirely irrelevant to the resolution of the play. Instead, I would like to argue that there is little conflict in Covent Garden because there is only one legitimate authority figure here (however dubious his motives and activities may be); there is no hierarchy. The conflict for figures of local authority comes with the need to reconcile the demands of higher authorities with those of the

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<sup>22</sup> A similar argument is made in Heywood and Brome's *The Late Lancashire Witches*: 'Sir, I have heard, that Witches apprehended under hands of lawfull authority, doe loose their power; And all their spels are instantly dissolv'd' (*Late Lancashire Witches*, sig. L1v). Order is indeed restored in the betwitched household when the witch is taken into custody by the local constable.

community. In this section, I will explore this distinction with regard to the detailed depiction of local authority hierarchies in Jonson's *A Tale of a Tub*.

Throughout the personal rule, Charles I sought to impose a greater sense of order upon what central government saw as the often haphazard enforcement of law in the provinces. Thus he issued the Book of Orders (*Orders and Directions*) in 1631:

Whereas divers good Lawes and Statutes, most necessary for these times, have [...] been with great wisdom, pietie, and policie, made and enacted in Parliament[...] And whereas we are informed that the defect of the execution of the said good and politique Lawes and Constitutions in that behalfe made, proceedeth espicially from the neglect of duetie in some of Our Iustices of the Peace and other Officers, Magistrates, and Ministers of the Peace, within the severall Counties, Cities and townes. (Charles I, 1630, sigs. B3r-B4r).

Accordingly, the Book of Orders attempted to institute regular meetings of Justices of Peace within each county to monitor the activities of all local officials and punish those who were lax in law enforcement (*Orders and Directions*, sigs. E4v-F3r).

This attempt to impose central control over the localities was met with differing levels of enthusiasm; 'the Book of Orders [...] failed not so much because it was openly resisted as because it was not properly enforced' (Fletcher, 1986, 57). The criticism of officials in *Orders and Directions* assumes an easy choice between the neglect of duty and enforcement of law, failing to take account of local circumstances:

[T]he Book presupposed a common pattern of priorities, a national agenda for magisterial effort. Justices of Peace, however, believed they knew their own counties, the needs of their countrymen and the most glaring deficiencies of their subordinates better than anyone in London. (Fletcher, 1986, 57)

The local law enforcers acted in what they saw as the best interests of their county, and, as with the collection of the forced loan and ship money, problems arose when this conflicted with central government's policies and directions. For example, the forced acceptance of apprentices ordered in 1618 and 1627, and restated in *Orders and Directions*, proved difficult in the 1630s; '[t]he matter had been allowed to lapse for so long that in some areas it was not easy all of a sudden to find enough suitable masters for large numbers of boys and girls' (Fletcher, 1986, 216). The disruption caused by attempts to enforce apprenticeship would cause greater disorder than the unemployed youth.

Justices' flexibility regarding the opening and licensing of alehouses too paid attention to the sustained peace of the province rather than the strict enforcement of central legislation. On one hand, justices had to acknowledge the interests of local suppliers and brewers, the wishes of their clerks who received fees for awarding licenses, and the demands of local inhabitants for a place to drink and socialise (Fletcher, 1986, 247); on the other, was the tightening of alehouse regulation determined by central government (to whom the Justice was ultimately, if haphazardly answerable). This particular balance of interests can be seen in Thomas Nabbes' justice, Sir Generous Worthy, in *Covent Garden*, as he arrives at an alehouse:

Sir Gen.: Ha! My sonne here; and Mr *Ierker!*  
 I came i'th' person of authoritie,  
 Invited by your noise. But put that off,  
 Out of my love borne to the generall good,  
 I doe advise you to be temperate:  
 That the faire hope conceiv'd of growing virtues  
 Might not be lost. (*Covent Garden*, sig. H1v)

Sir Generous sees no need to be heavy handed with his judicial authority in this case, but nevertheless, the mention of it suggests a warning to those present that they are in breach of regulations. His reasoning, ‘Out of my love borne to the generall good’, could relate to the previous phrase (he has put off his authority because of his love for the general good), or to that following (out of concern for their good, he advises temperance). Either way, his concern for the local community overrides the strict enforcement of law. It is also worth pausing here to discuss the drinkers’ response:

Ierk: Sir, we are Gentlemen; and by that priviledge  
 Though we submit to politique Government  
 In publique things may be our owne law-makers  
 In morall life. If we offend the law  
 The law may punish us; which onely strives  
 To take away excess, not the necessity  
 Or use of what’s indifferent, and is made  
 Or good or bad by’ts use (*Covent Garden*, sig. H1v).

Jerker takes the interference as an affront to his gentlemanly honour and privilege to regulate his own moral behaviour. Perhaps, then, Nabbes suggests that alcohol consumption should not be a matter for law, particularly amongst gentlemen. Butler places emphasis on the drinkers’ gentlemanly status, suggesting that the play presents gentleman as being capable of governing themselves, especially in their personal lives, arguing that in ‘Nabbes’s *Covent Garden*, an independently minded gentry indignantly criticise the rigours of a repressive authority’ (Butler, 1984, 151). Whilst this is true, to an extent, it fails to take account of Sir Generous’s mediation of these stricter laws, and indeed, the fact that Sir Generous is also a gentleman. His decision not to press his authority at the alehouse is not specifically related to the drinkers’ gentlemanly status, or to the fact that one of them is his son, but rather for the ‘generall good’. It is important to note that Jerker does not claim a



‘privilege’ for gentlemen above the law in its appropriate jurisdiction (‘If we offend the law / The law may punish us’). This does, of course, raise questions as to what the law should regulate and who should make these decisions, which are not resolved in the play. The scene ends with Sir Generous buying wine from the vintner, admonishing him to ‘keepe good orders’ (*Covent Garden*, sig. H3r), and inviting all of the gentlemen to his house for dinner in a demonstration of ideal gentlemanly hospitality, a significant part of the establishment and maintenance of good order.<sup>23</sup> This complex set of relations between centre and locality, officer and local community forms the background, and even, I would argue, the subject, of Jonson’s *A Tale of a Tub*.

The setting of *A Tale of a Tub* is Valentine’s Day in Finsbury Hundred. The Marian or Elizabethan period setting of the play suggests a deliberate nostalgia, but the problems of law and order presented are, as Julie Sanders suggests, those of a 1630s Caroline community (1997, 456).<sup>24</sup> The action of the play takes place in Finsbury and other specifically named places which are not quite in London, but not quite far enough away to be essentially provincial. Sanders argues that Finsbury Hundred is in an ‘uncomfortable proximity to London’, and this contributes to the

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<sup>23</sup> See also Brome and Heywood’s *Late Lancashire Witches* (1634) where the hospitality of the local gentleman is the only stable factor in the disorder caused by the witches, and Shirley’s *Lady of Pleasure* in which the balance between privilege and hospitality suggested in Nabbes’s scene between the alehouse gallants and Sir Generous is given a more direct contrast in the positions of Bornwell, who used to be renowned for his hospitality in the country, and his wife who now claims privilege in the city. Butler argues that Charles I’s commanding the gentry back to their country estates sought in part to reinstate this kind of order-keeping, whilst maintaining better communication between Whitehall and the provinces during the personal rule (Butler, 1992b, 181-2). My analysis of *A Joviall Crew* below will discuss in more detail the position of gentry versus local Justices.

<sup>24</sup> Butler’s argument that this pre-Stuart setting provides a rebuke to the Caroline subjects ‘whose response to social change was to create a divisive ideology of discipline’, not their king, and the nostalgia is for a time ‘that has yet to hear the name puritan’ (Butler, 1990, 24). The play’s primary concern, however, is the working and hierarchies of local authority. For a discussion of the potential explanations of the pre-Stuart setting, see Butler, 1990, 5, 26; 1992b, 180, 183-4.

undercurrent of political tension in the play (1997, 459).<sup>25</sup> Whilst I do not wish to disagree with her argument, I believe the play's geography – being not quite inside London, and not quite outside it – also emphasises the 'in between' central and provincial status of local law officers which I have already established, and encourages such a reading of the play's High Constable Toby Turf.

Turf has arranged the marriage of his daughter Audrey to John Clay, through the traditional Valentine's Day marriage lottery during which Turf and his wife were married thirty years before. The choice of husband seems to have involved the whole community as 'All the wise o'th' hundred' (all local officials: the petty constable, headborough, and thirdborough) are met at Turf's house 'to conclude in Counsell, / A Husband, or a Make for Mrs Awdrey' (*Tale of a Tub*, sigs. J3r-v).<sup>26</sup> Thus the spirit of community and neighbourliness of the hundred under Turf's authority is illustrated by the festive gathering of Audrey's wedding. However, the wedding is consistently delayed, and the festivities postponed, whilst Turf goes about the business required of him by his position. Leah Marcus argues that Audrey's marriage to Pol-Martin at the end of the play presents the triumph of festival (evident in the Valentine's Day ritual) which local officials and dignitaries seek to suppress through imposition of various forms of law, suggesting that what is at stake in the play is festival versus law, making the play a celebration of Charles I's reissue of the Book of Sports in 1633 (Marcus, 1986, 133, 107). However, the interferences with the wedding are not planned, ultimately, to prevent the festivities taking place, but to allow a change of groom. The wedding is, rather, the

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<sup>25</sup> Sanders associates this with the radicalism of Essex in the period discussed by Keith Wrightson in 'Two Concepts of Order', and the autonomous stance near-London communities adopted on political issues (Sanders, 1997, 459).

<sup>26</sup> *A Tale of a Tub* will be abbreviated to *Tub* in subsequent references.

demonstration of a peaceful neighbourliness which is disturbed by the intervention of authorities from outwith the community for their own gain. What disturbs the peace of this village is, as Martin Butler argues, the ‘interference of the external world of law into the communal peace of the hundred’ (Butler, 1990, 21).

The first demand on Turf is created by a dispute between Hannibal (Ball) Puppy (Turf’s man) and Basket Hilts (Squire Tub’s Governor) who has come, sent by Squire Tub, to disrupt the festivities. Turf intervenes, asserting the origin of his authority:

Turf: I charge you in the Queenes name, keepe the peace.

Hilts: Tell me o’ no Queene, or *Keysar*: I must have  
A legge, or a hanch of him, ere I goe.

Medlay: But zir,  
You must obey the Queenes high Officers.

Hilts: Why must I, Good-man *Must*?

Medlay: You must, an’ you wull.  
(*Tub*, sig. K4v)

The necessity of obedience to local officials and the authorities they represent is thus asserted as the first plot to delay the wedding begins. There is an equation of the Queen’s power with the constable’s, and there is no immediate conflict in these authorities. Hilts’s reference to ‘Keysar’ here, however, draws attention to an almost incidental tale of a Roman constable that Scriben, Medlay and Turf later discuss:

Scriben: I can tell you  
A thousand, of great *Pompei*, *Caesar*, *Trajan*,  
All the high Constables there.

Turf: That was their place:

There were no more.

Scriben: *Dictator*, and high Constable  
Were both the same.

Medlay: High constable was more, tho'!  
He laid *Dick: Tator* by the heeles.

Pan: *Dick: Tator!*  
H' was one o' the Waights o' the Citie. I ha' read o' hun.  
(*Tub*, sig. M4v)

On the surface, this comic interchange highlights the rustic simplicity of the provincial officials Medlay and To-Pan, who believe Dick Tator was a real person. However, Scriben and Turf's comments have a more serious political undertone. In suggesting that the constable and the dictator were the same in ancient Rome, Scriben elevates the lowly constable to the status of imperial power, leading Sanders to infer an oblique criticism of Charles's government:

[W]as it so far a leap of the imagination to consider that in 1633 there was a real person who used the title of Caesar in order to aggrandize his position rhetorically, and that very possibly his attempt to rule without Parliament came close to constituting a form of dictatorship? (Sanders, 1997, 459)

However, Scriben's constable does not merely assume imperial status in their conversation, but goes beyond it, placing 'Dick Tator' in the stocks (laying Dick Tator 'by the heels'). In the provincial Hundreds, the High Constable is the highest local authority; kingly dictation will receive little favour. It is perhaps worth noting at this point that Turf is also capable of discoursing 'of the great Charty' (Magna Charta) to his subordinates (*Tub*, sig. I4v). Thus divisions begin to appear in the implied unity of local and central authority that was suggested in Turf's command to keep the peace in the 'Queenes name'. That the discussion about Dick Tator comes shortly after Turf's claim that he will 'triumph over this

Justice, as becomes a Constable' (that is, foil Preamble's plans to marry Audrey) suggests that these divisions affect all levels of the local authority judicial hierarchy.

Turf does eventually manage to impose order on the near-brawling Puppy and Hilts, pledging his own authority as promise of punishment for the offender (Puppy): 'For him, / On my authority, he shall lie by the heeles'. Puppy appeals to Turf's clerk (Clench) to intercede so that he will not have to miss the wedding, but Turf is adamant that 'If he lye not by the heeles, / Ile lie there for 'hun' implying an absolute determination to see justice done (*Tub*, sig. K4v). The demands of justice and the wedding festivities can both be met as Hilts drops his charge, and Turf insists that Puppy will make amends. As soon as this potential obstacle to the festivities is overcome though, Hilts presents a further problem for Turf, charging him to raise hue and cry to find robbers who allegedly attacked him and his captain (in fact this is a ruse to delay the wedding so that Squire Tub can steal Audrey away). Turf is immediately torn between community life epitomised in the wedding plans and doing his duty:

Turf: As Fortune mend me, now, or any office  
 Of a thousand pound, if I know what to zay,  
 Would I were dead, or vaire hang'd up at *Tiburne*  
 If I doe know what course to take, or how  
 To turne my selfe, just at this time too, now,  
 My Daughter is to be married: Ile but goe  
 To *Pancridge* Church, hard by, and returne instantly,  
 And all my Neighbour-hood shall goe about it.

Hilts: Tut, *Pancridge* me no *Pancridge*, if you let it  
 Slip, you will answer it, and your Cap be of wooll;  
 Therefore take heed, you'll feele the smart else, Constable.  
 (*Tub*, sigs. L1r-L1v)

Hilts' assertion that the constable will have to answer if the hue and cry is not raised immediately is no empty threat; village constables were often held

responsible for the value of stolen items, or indeed for the ship money they were commissioned to collect on behalf of the sheriff. Turf himself acknowledges this: ‘shud we leave the zearch / I am in danger, to reburse as much / As he was rob’d on; I and pay his hurts’ (*Tub*, sig. M1v).

In an example of the ways in which local government hierarchy was supposed to function (in accordance with the Book of Orders) Turf is later brought before Justice Preamble to answer both dropping the hue and cry and hiding Clay, who is accused of the robbery. However, this hearing illustrates how open the system is to corruption, as Preamble uses it extort money from Turf. Preamble’s choice of language at this meeting contributes to the interplay of law, order and community in the play:

Pre: I cannot choose but grieve a Soldiers losse:  
And I am sory too for your neglect,  
Being my neighbour; this is all I object.

Hug: This is not all; I can alledge far more  
[...]  
                                  Let not neighbour-hood  
                                  Make him secure, or stand on priviledge.  
  (*Tub*, sig. N3r).

Preamble’s seeming concern that his neighbour should be so remiss plays on Turf’s own understanding of his position in society, but is, in fact merely a cover for Preamble’s plot against Turf, to keep him away from the church and his daughter. He uses the same feigned rhetoric of neighbourliness during his engineered ‘arrest’ of Squire Tub (*Tub*, sig. L4r). Preamble’s obsequious response to Captain Thums’s (Chanon Hugh) concern, ‘Sir, I dare use no partiality’ (*Tub*, sig. N3r), contrasts starkly with Turf’s sincere determination justifying his arrest of his intended son-in-law: ‘I will doe mine office, / An’ he were my owne begotten a thousand times’

(*Tub*, sig. L2r). Preamble again uses this language of community to pretend a favour to Turf, asking Captain Thums, ‘then Ile pray you, ’cause he is my neighbour, / To take a hundred pound, and give him day’ (*Tub*, sig. N4r). As an abuse of the discourse of neighbourliness which maintained peace in the provinces, this could be seen as representative of the Crown’s (mis)use of the local and national loyalties of its officers to make central policy seem less incompatible with the wishes of the community.<sup>27</sup> That Preamble intends to take this money himself is further evidence of the exploitation of provincial officers for the personal gain of higher authorities.

Preamble’s plans to disrupt Audrey’s wedding to Squire Tub involve the introduction of a third layer of authority into the province. He arranges for his Clerk, Miles Metaphor, to dress as a pursuivant to arrest Tub:

Pre: Ha you acquaintance with him [a pursuivant]  
To borrow his coat an houre?

Hugh: Or but his badge,  
’Twill serve: A little thing he weares on his brest.

Pre: His coat, I say, is of more authority:  
Borrow his coat for an houre. I doe love  
To doe all things compleately, Chanon *Hugh*;  
Borrow his coat, *Miles Metaphor*, or nothing.  
(*Tub*, sig. K2r)

Butler suggests that, throughout, the play dwells on the way authority lies in the signs of office rather than the person of the office holder, arguing that this presents a failure of local authority (Butler, 1990, 23). However, here it is the agent of central authority who needs to command respect through his dress. The badge of their office means less, according to Justice Preamble, than the clothes central officials

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<sup>27</sup> See Lake, 1981, 57.

wear which demonstrate their higher status. Turf, on the other hand, seems to be highly respected in the community, at least by his inferiors ('A right good man!' (*Tub*, sig. K4r)), and his clothing is not mentioned. If this does suggest a failure of authority in the provinces then, it lies, more subversively, with the central authorities not the local. Metaphor's pursuivant adds a higher authority to which the Justice must defer:

Pre:                                   It is a warrant,  
   In speciall from the Councill, and commands  
   Your personall appearance. Sir, your weapon  
   I must require: And then deliver you  
   A Prisoner to this officer, Squire *Tub*.  
   (*Tub*, sig. L4r)

Personally making Tub's arrest 'I' the Queenes Majesties name, and all the Councils' (*Tub*, sig. L4r), the pursuivant provides a direct link between Whitehall and the province, and as Butler argues, presents the direct incursion of the 'arm of princely government' into the locality (Butler, 1992b, 181). Once again the interference of authority and imposition of law from outside the Hundred causes delay to Audrey's wedding, and she is snatched away by Justice Preamble.

Although Preamble's claims of neighbourhood and community are bogus, the other local officials attempt more carefully to balance upholding the law with causing as little disruption to the community as possible. During the officers' search for criminals, Medlay voices concerns: 'Masters, take heed, let's not vind too many: /One's enough to stay the Hang-mans stomach' (*Tub*, sig. M1r). The occasional prosecution is enough to show central authority their willingness to enforce law without being over-officious. Turf himself genuinely struggles to negotiate the demands of the community (Audrey's wedding) and the demands of his position:



Turf: Were never honest Varmers thus perplext.

...

Turf: Hath Justice *Bramble* got my daughter *Awdrey*?

A little while, shall he enjoy her, zure.

But O the *Huy* and *Cry*! That hinders me:

I must prusue that, or neglect my journey:

Ile ene leave all: and the patient *Asse*,

The over-laden *Asse*, throw off my burden,

And cast mine office[...]

[...] Ile no more High Constables.

(*Tub*, sig. M2v)

On discovering Preamble's plot, Turf can no longer negotiate his divided loyalties, and chooses to abandon his post to salvage the wedding. His plaintive comment about 'honest Varmers' reminds the audience that High Constables were not professional officials; rather, they were local yeoman farmers, who took on the post in addition to their usual occupation. Whilst his references to the overburdened ass indicate the pressure Turf is under, to the theatre audience who know that the robbery is a ruse, the repetition of 'asse' also hints that the High Constable's superiors are using their legal authority 'to make and ass out of him'. Turf's problem of pursuing Hue and Cry or preventing Preamble's seduction of Audrey is not resolved, but dissolved: Squire Tub tells Turf that the robbery was a trick concocted by Preamble to seize Audrey. Although Tub's explanation is not quite the truth (Clay's guilt was his plot) it does allow Turf to resume his post, 'I take my office back: and my authority/ [...] Neighbours, I am / High Constable againe' (*Tub*, sig. M3r). Turf's distinction between his office and authority acknowledges that the office itself does not necessarily give authority, but it also emphasises Turf's own authority in his community. It seems, however, that Tub's revelations are not sufficient to dispel Turf's concerns:

The Huy, and Cry, was merely counterfeit:

The rather may you judge it to be such,

Because the Bride-groome, was describ'd to be  
 One of the theeves, first I'the velonie.  
 Which, how farre 'tis from him, your selves may guesse.  
 (*Tub*, sigs. M2v-M3r).

Tub uses the High Constable's knowledge of members of the local community to convince him to drop the hue and cry and prevent the wedding. This, of course, is in his own interests, not for Turf, and once again plays on the constable's loyalty to, and knowledge of, the community for personal gain.

Finally, Turf's conflicts of loyalty in this situation are resolved as Audrey marries Pol-Marten, Lady Tub's usher. Marcus reads this as evidence that 'the irrepressible energies of festival operate outside even its own mechanisms for containment – but no harm is done' (Marcus, 1986, 133). However, the happy ending is, as Sanders argues, only a veneer (Sanders, 1997, 443). The tension between the strict enforcement of law and the community activities is only dispelled because all responsibility is taken from Turf. Audrey's marriage takes place without the knowledge of any of the local officials, and none of the demands on him as High Constable are legitimate: the robbery was indeed a ruse, cancelling any need to prosecute Clay, or lose his own money in restitution. The fragility of this veneer is easily seen:

Medlay: What of *John Clay*, *Ball Puppy*?  
 Puppy: He hath lost –  
 Medlay: His life for velonie?  
 Puppy: No, his wife by villanie.  
 (*Tub*, sig. M2v).

The urgency of Medlay's questioning and potential severity of the reply is dissolved in the comic juxtaposition of the punishment for crime and the trickery of his rivals.

But that these outcomes are interchangeable, emphasised by the close similarity of ‘life’/ ‘wife’ and ‘velonie’/ ‘villanie’, presents the serious implications of the misuse of law.

Unusually, the play provides regular summaries of the action. Metaphor, Turf and Audrey (*Tub*, sigs. L4v-M1r, M1r and M4v respectively) all give summaries of the plot so far, which explain the changes of the groom for Audrey, and thus emphasise the contrast between the good of the community and the attempted personal gain of the Justice and Squire. The most detailed of these, however, is Medlay’s masque commissioned by Squire Tub which concludes the play. The masque shifts the focus from an examination of the local to the central. Lady Tub’s welcome to her ‘neighbours’, ‘Now doth Totten-Hall / Shew like a Court’ (*Tub*, sig. Q1r), aligns the Tubs firmly with the royal court rather than the local men. Their position as owners of a Saltpetre mine confirms this association, and is a further example of the ways in which the centre is seen to exploit the provinces.<sup>28</sup> The representation of the planning and performance of the masque might go some way to explain why the play was not liked at court as Medlay is a sharply satiric caricature of Inigo Jones (Butler, 1992b, 179). However, what the masque repeats from the play is the self-interest of those representative of central government (the Tubs and Preamble) and their abuse of legal mechanisms and authority by which Charles sought to reform law enforcement in provinces, that is, presentments to Justices and active local gentry.

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<sup>28</sup> Saltpetre (used in gunpowder) was a contentious issue in the 1630s, as searches which were often destructive were conducted to collect hidden stores from the provinces. Central government gained at the expense of the localities (Sanders, 1997, 461-2).

The implications of corruption amongst the local justices and the presentation of the imposition of central law in the provinces as unpopular and disruptive would be enough to create some discomfort at the court which sought to tighten control over localities, and this possibly explains why the play was not liked at court. The problems caused by the interference of central authority in the provinces cannot be masked (masqued?) by celebratory performances (particularly, Jonson might suggest, if they lack his invention over Jones' designs), nor are they, as Butler suggests they are, 'marginalized, diffused or transcended' (Butler, 1990, 24) in the play. The manipulation of law and legal authority for personal ends in *A Tale of a Tub* critiques the Caroline court's self-interested interventions in the provinces (such as ship money and Saltpetre). Importantly, it is these abuses of law and authority by those in positions higher and more central than his own that cause the divided loyalties of the High Constable, and make his task of keeping order in the provinces impossible. Whilst the play does what its prologue denies, in pretending 'State affairs', these do indeed 'shew what different things / The Cotes of Clownes, are from the Courts of Kings' (*Tub*, sig. I2v), and emphasises that these entities are not, and should not be the same.

**Fragmented authority: *A Joviall Crew***

*A Tale of a Tub* examines the position of the local constable and the pressures that attempts to centralise local government, particularly though central abuse of law, places upon him in the maintenance of order. The problems presented, however, are specific to the High Constable; there is little exploration of

the wider picture, that is, the effect on the people and the country. Richard Brome's *A Joviall Crew* continues to advocate the mediation of the strict imposition of central law in the provinces but in doing this, this section will argue, illustrates a fragmentation of authority in the polarisation of the royal court and the landowning gentry, and further, what causes, and is at stake through, this division.

The countryside authority in this play is embodied in the figure of Oldrents, who at the beginning of the play is the epitome of the benevolent gentleman landlord. His companion Hearty observes:

What justice can there be for such a curse  
 To fall upon your Heirs? Do you not live  
 Free, out of Law, or grieving any man?  
 Are you not th'onely rich man lives un-envied?  
 Have you not all the praises of the *Rich*,  
 And prayers of the *Poor*? Did ever any  
 Servant, or Hireling, Neighbour, Kindred curse you,  
 Or with one minute shorten'd of your life?  
 Have you one grudging Tenant? will they not all  
 Fight for you? Do they not teach their Children  
 And make'em too, pray for you morn and evening,  
 And in their Graces too, as duly as  
 For King and Realme? The innocent things would think  
 They ought not eat else. (*Joviall Crew*, sig. B2r-B2v)

That Oldrents can be seen as a provincial governor is suggested in the comparison made here between Oldrents and the King. As his name suggests, Oldrents represents the traditional landowning gentry, helping his tenants and exercising gentlemanly hospitality.<sup>29</sup> His hospitality extends to friends and strangers as well as the crew of beggars he accommodates in his barn, and in contrast with those men raised to a higher status through the purchase of titles or kingly favour, his wealth and status too are traditional, as Randall later explains that Oldrents's ancestors

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<sup>29</sup> Sanders notes that charging old rents would indeed be kind to his tenants, as rental costs for farmlands increased threefold between 1600 and 1688 (Sanders, 2002a, 4 n.12).

have held that house for over three hundred years (*Joviall Crew*, sig. I4r). Throughout the play, Oldrents's servants also give testimony to their happiness and his generosity. The butler claims that 'my Master, for his Hospitality to Gentlemen, his Charity to the Poor, and his bounty to his Servants, has not his Peer in the Kingdom' and Randall, the bailiff, comments that 'we, his Servants, live as merrily under him; and all do thrive [...] And I have now, without boast, 40*l.* in my Purse' (*Joviall Crew*, sig. K2r, K1r). Steggle notes a discrepancy here in the amount Randall has been able to save from his salary over the lifetime he has spent in his employ, and the 'hundred a yeer, at least' (*Joviall Crew*, sig. I4v) that Oldrents spends on accommodating beggars, thus undermining the beggars' claim to live cost free and contrasting the world of the beggars with that of loyal servants (Steggle, 2004, 170).

Oldrents's generosity and hospitality is not enjoyed by all those it affects, however; his daughters feel they suffer, rather than enjoy it, claiming that the beggars are: 'Happier than we I'm sure, that are pent up and tied by the nose to the continual steam of hot Hospitality, here in our Father's house, when they have their Aire at pleasure in all variety' (*Joviall Crew*, sig. D2r). This leads to a discussion of liberty between the ladies and their beaux:

Hilliard: Why Ladies, you have liberty enough; or may take what you please.

Meriel: Yes, in our Father's Rule and Government, or by his allowance. What's that to absolute freedom such as the very Beggars have; to feast and revel here today, and yonder to morrow [...] ther's Liberty! (*Joviall Crew*, sig. D2r)

The reference to 'Rule and Government' reinforces Oldrents's position as a local governor, and invites comparison with the King, particularly as the vocabulary of

‘absolutism’ is introduced. However, it is clear that Oldrents’s government is not absolute – he allows Springlove to make his own choice whether he goes begging: ‘My love shall give thy will preheminance; / And leave th’effect to Time and Providence’ (*Joviall Crew*, sig. C1r) – and that his government is offered, as Sanders argues, in contrast with Charles’s personal rule (Sanders, 2002a, 5).

This implied contrast is confirmed by the other figure of authority in the play, Justice Clack, who embodies absolute authority. Unlike Oldrents’s daughters’ relative freedom to choose their husbands, Clack has arranged a marriage for his ward Amie, from which she is running when she meets the crew of beggars. In this Amie chose, Clack complains, ‘rather to disobey me, than to displease her self. Wherein (altho’ she did not altogether transgresse the Law) she did both offend and prejudice me, an Instrument; nay I may say, a Pillar thereof’ (*Joviall Crew*, sig. M3r). This identification of himself with the law suggests an analogy with Charles’s prerogative rule, emphasised when Clack asserts that he is ‘a Justice of the *Kings*’ rather than the usual Justice of the *Peace* (in fact, this comes immediately after Clack tells Martin to ‘Hold [his] *own* peace’) (*Joviall Crew*, sig. M3v, my emphases). In respect of royal prerogative, it is also significant that Amie is Clack’s Ward, not his daughter, as wardship provided a significant amount of extra-parliamentary (prerogative) funding for the King.<sup>30</sup> Thus royal absolutism once again finds its way into the provinces. That Clack’s son Oliver has travelled from London to Amie’s wedding (*Joviall Crew*, sig. H1v) cements his links with central authority.

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<sup>30</sup> At the end of James’s reign, wardship was worth approximately £40,000 a year to the crown, by 1637 this was worth £62,000 and by 1640, £76,000. It was also a significant source of tension between the king and the landowners, whose wealth suffered because of it (Lockyer, 1999, 236, 38). Amie’s complaint that in their ‘inforc’d Matches’ wards are often ‘sold into Captivitie’ (*Joviall Crew*, sig. I3r) is then not merely a comment on forced marriage, but also on the value of wardships.

Clack and Oldrents are also compared in terms of their hospitality. Whilst Oldrents's hospitality, as I have already illustrated, is emphasised throughout the play, Clack is shown to be particularly lacking in this respect, as Randall comments:

Sir, my Master sends you word, and plainly, that without your Company, your Entertainment stinks. He has commanded me saddle his Nags, and away to night. If you come not at once, twice, thrice, he's gone presently, before Supper; He'll finde an Host at an Inne worth a hundred o' you.  
(*Joviall Crew*, sigs. N1r-N1v).

Oldrents's complaining cannot merely be explained by his desire for an excess of joviality, entered upon when his daughters ran away to join the beggars; Clack himself admits that his guests are 'scarce welcome', and drinks all of his good wine himself to avoid sharing it with his visitors (*Joviall Crew*, sigs. N1r, N3v). There is, then an emphatic selfishness to absolute, prerogative rule.

Clack's dealings with Martin, the clerk who helped Amie flee her wedding, emphasise the arbitrariness of his absolutism: 'Have I not born with thee, to speak all thou pleasest in thy defence? Have I not broke mine own Rule, which is to punish before I examine; and so have the Law the surer o'my side?' (*Joviall Crew*, sig. M3v). The notion of acting without law in order to stay on the right side of it should now be familiar from Brome's *The Queen and Concubine*; it is a recurring idea in Caroline drama.<sup>31</sup> Constable Busie's advice to the watch in *Wit in a Constable* also centres on this:

You shall be sure to keep the peace; that is,  
If any quarrell, be ith' streets, sit still, and keepe  
Your rusty Bills from blood-shed; and as't began  
So let it end [...]

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<sup>31</sup> See Chapter 3, pp.186-187



[...]

Next, if a thiefe chance to passe through your watch,  
 Let him depart in peace; for should you stay him,  
 To purchase his redemption he'le impart  
 Some of his stolne goods, and you're apt to take them,  
 Which makes you accessory to his theft,  
 And so fit food for Tiburne (*Wit in a Constable*, sigs. G4v-H1r).

Whereas in *The Queen and Concubine*, this idea was used to highlight the dangers of kingly disregard for law, and here in *Wit in a Constable* to suggest local law officers' susceptibility to corruption (and perhaps Busie's desire to avoid extra work, as the Watch would have to present their prisoners to him), what is presented in *A Joviall Crew*'s use of this idea is a deliberate neglect of law and procedure in order to satisfy Clack's desire to punish.<sup>32</sup> Access to fair and reasonable local justice has been denied through the separation of local landowning gentry and the administrators of central justice. Clack, then, comes to embody the summation of the fears of arbitrary rule, the misapplication of law and abuse of authority.

Clack's self-seeking, arbitrary 'justice' is confirmed in his refusal to let Sentwell tell him of the beggars' arrest:

I can inform my self, Sir, by your looks. I have taken a hundred  
 Examinations i' my daies of Fellons, and other Offendors, out of their very  
 Countenances; and wrote 'em down *verbatim*, to what they would have said.  
 I am sure it has serv'd to hang some of 'em, and whip the rest. (*Joviall  
 Crew*, sigs. M3v-M4r)

This inclination to judge before examination, and punish without reason is far from the ideal local Justice described in Dalton's *The Countrey Justice*.<sup>33</sup> This

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<sup>32</sup> This may be a covert reference to the punishment without proper hearing of those who refused to pay ship money, in case the examination of the case proved that ship money was an illegal extra-parliamentary tax.

<sup>33</sup> Clack is guilty of 'Presumption' ('when without Law (or other sufficient rule or warrant) they (presuming of their owne wits) proceed according to their owne wills and affections') and

indiscriminate hanging and whipping also harks back to the strict imposition of central law in the provinces through the Book of Orders, regardless of the circumstances of the locality or the offender. Indeed, it is over the possible punishment of beggars that Clack and Oldrents most obviously disagree. Hearty's comment 'Pray let 'em play their Play: the Justice will not hinder 'em, you see; he's asleep' (*Joviall Crew*, sig. O1v) is a further acknowledgment of the different forms of order (provincial and central) whereby the activities of the village community can, under the eyes of Oldrents, continue whilst central law 'sleeps'. It should be noted that under the law, travelling players were classed as vagrants, and theoretically should be punished as such; they would be, as we are told twice in the play, 'well whipt and set to work, if [they] were duly and truly serv'd' for their vagrancy (*Joviall Crew*, sig. G4r), and Justice Clack is itching to 'put 'em in Stocks, and set 'em up to the Whipping-post' (*Joviall Crew*, sig. M4v). Clack agrees, however, to allow them to put on their play to entertain his visitors, on the understanding that: 'They are upon Purgation. If they can present any thing to please you [Oldrents], they may escape the Law; that is (*a hay*) If not, to morrow, Gentlemen, shall be acted, *Abuses stript and whipt*, among 'em' (*Joviall Crew*, sig. N3v). To prevent this, Oldrents is determined 'rather than they shall suffer, I will be pleas'd, let 'em Play their worst' (*Joviall Crew*, sig. N4v). That Hearty must remind his friend of this on several occasions during the performance, suggests a deliberate (if well-meaning) stubbornness on Oldrents's part to thwart Clack's plans.

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'Precipitation, or too much rashnesse; (when they proceed hastily without due examination and consideration of the fact'), both of which are listed as ways justice can be perverted by local officers (Dalton, 1635, 7).

If it is the beggar crew that highlights the differences between Clack and Oldrents, it is important to understand what they represent. The children from both houses come to the beggars for their apparent liberty from absolutism (benevolent or arbitrary). They quickly come to realise that this ‘freedom’ is not as idyllic as they had supposed, as they have to find food and shelter, and are always potentially subject to punishment or assault by those of higher status: Vincent and Hilliard are whipped, and Rachel and Meriel are in danger of rape by Oliver, the latter being a further instance of the abuse of authority and exploitation of the provinces by the centre as was noted in *A Tale of a Tub*. Whether these liberties are what the children expected, however, is irrelevant to the idea that Clack and Oldrents disagree on the treatment of liberties of the subject. Aside from the realistic representation of a beggar’s life, then, which does indeed cause conflict between Oldrents and Clack as representatives of different kinds of order, the ‘*Beggars Commonwealth*’ (*Joviall Crew*, sig. E3r) presents an alternative society free from absolute rule.<sup>34</sup> Thus, whilst presenting the cause of contention, however, the beggars also present a possible solution. They are:

The onely Freemen of a Common-wealth  
 Free above *Scot-Free*; that observe no Law,  
 Obey no Governour, use no Religion,  
 But what they draw from their own ancient custom,  
 Or constitute themselves, yet are no Rebels. (*Joviall Crew*, sig. E1r)

Although the beggars acknowledge Springlove as their king, they are free of the impositions of an absolute monarch, whether benevolent (Oldrents) or arbitrary (Clack), as the commonwealth of beggars is ruled by customary or parliamentary laws (those they ‘constitute themselves’). Insisting that the beggars are not rebels

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<sup>34</sup> For a discussion of *A Joviall Crew* as one of several plays of this time presenting an alternative society, see Sanders (2002a, *passim*).

despite living in this way, the play suggests a position between the extremes of deliberately obstructive county gentry and the absolutist monarch, whereby liberty can be maintained under a monarch with the rule of common law through parliament. The date of the play, after the failed short parliament of 1640 and the calling of the long parliament later that year, emphasises the need for such a conciliatory position.

As interlopers into the beggars' kingdom, Vincent, Hilliard, Meriel and Rachel are well placed to compare the beggars' liberties with political subjection, and their concerns are particular to Charles's reign:

Vincent: With them there is no Grievance or Perplexity;  
 No fear of war, or State Disturbances.  
 No Alteration in a Common-wealth,  
 Or Innovation shakes a Thought of theirs.

[...]

Hilliard: We have no fear of lessening our Estates;  
 Nor any grudge with us (without Taxation)  
 To lend or give upon command, the whole  
 Strength of our Wealth for the publick Benefit:  
 While some, that are held rich in their Abundance,  
 (Which is their great Misery, indeed) will see  
 Rather a generall ruine upon all,  
 Then give a Scruple to prevent the Fall. (*Joviall Crew*, sigs. L3r-L3v)

Vincent's observations describe a settled, peaceful state, without fear of war or rebellion or religious upheaval ('innovation'). The recent Scottish wars, personal rule and dissolved parliaments suggest these are all fears relevant to a Caroline gentleman, and Hilliard's description of the beggars' financial freedoms also picks up this theme. The reference to lending or giving on command evokes the collection of the Forced Loan and ship money, and Hilliard's parenthetical 'without taxation' highlights the potential illegitimacy of such Crown demands. Nevertheless, he says,

the beggars are unconcerned about them, whereas the wealthy are unprepared to contribute, regardless of the political consequences. Once again the position of the King and his wealthier subjects are set in opposition. In a political debate which essentially involves the legal rights of subjects over their own property versus the rights of the King, the beggars are free from the fears caused by these commands because they have no estate to lose. Nevertheless, whilst acknowledging the fears of those affected by Charles's laws, Hilliard's comment also notes the necessity of compliance to prevent 'general ruine', and suggests a stubbornness rather than inability in those unwilling to do so who allow a 'scruple' to prevent them. Thus, the debate is brought to centre upon the good of the commonwealth, not the rights of the individual subject and king. Polarising the prerogative position of the king ('without taxation') and the objections of the landowners ('scruple') will bring about this ruin. Only by creating compromise will the situation be rectified.

Although Hilliard leaves his listeners to speculate what the threatened 'general ruine' is, (the beggar-poet) Scribble's masque for the wedding of the two old beggars almost immediately ends this speculation:

Poet: I would have the *Country*, the *City*, and the *Court*, be at great variance for *Superiority*. Then would I have *Divinity* and *Law* stretch their wide throats to appease and reconcile them: Then would I have the *Souldier* cudgel them all together, and overtop them all. (*Joviall Crew*, sig. M1v)

This is a very bleak outlook for the future; the fragmentation of the country in the division of court, city and country will become irreparable without immediate compromise. The future is not so bleak for the beggars in this masque, however, who will 'at last, overcome the *Souldier*; and bring them all to *Beggars-Hall*' (*Joviall Crew*, sig.M1v). At this point the beggars resume their position as an

idealised, free, apolitical entity. Only those who have not been involved in the political wrangling for ‘superiority’ will emerge from it undamaged.

In disagreeing over their approach to the legal status and potential punishment of ‘Statute *Beggars*’ (*Joviall Crew*, sig. E1r), Clack and Oldrents represent a fragmentation of authority, caused by a split between the centre and the provinces in the dissolution of parliament. This fragmentation can only begin to be repaired by attention to the type of political society the same beggars represent. This compromise (monarchy ruling with parliament and in accordance with common law suggested in Springlove’s beggar society) facilitates a happy ending to the play, bringing the Justice and landlord to a greater accommodation between their previously polarised positions. Oldrent’s moral/legal superiority is undermined through the Patrico’s disclosure that he has an illegitimate son (Springlove) by a beggar woman, and the revelation of Oldrents’s ancestor’s own illegitimate legal manoeuvrings to establish his position in society goes some way to levelling him with Clack’s manoeuvrings. Clack too is brought to relax his hold over county governance, providing entertainment for his guests and ‘sleeping’ whilst the beggars put on their play: ‘Law and Justice shall sleep, and Mirth and good Fellowship ride a *Circuit* here to night’ (*Joviall Crew*, sig.N3r). Neither position in itself is particularly satisfactory: the landowner is no longer ideal, and Clack only permits this license because he is drunk. The end of the play is not unreserved in its hope for the future. However through the marriage of Springlove and Amie (Oldrents’s and Clack’s children) who meet at the beggars’ commonwealth which is physically (and metaphorically) in the space between Oldrents’s and Clack’s estates, a reconciliation of these polarised positions is initiated.

## Conclusion.

On the Caroline stage, the Justice of the Peace (as a figure appointed by the Crown) is often used to illustrate the spread of central authority in the imposition of impersonal and prerogative law in the provinces, and its implications for local governance. The conflicts of interest between a usually self-seeking Justice and other figures of authority suggest that Charles I's attempts to centralise the government of the localities were not always in their best interests and created an almost impossible predicament for those who attempted to maintain order – if not strictly law – in their area. *The Weeding of Covent Garden's* Cockbrayne is able to restore order in Covent Garden through the assertion of his authority (when this is for the general good, and recognised by those he governs) because as the only figure of judicial authority he faces no conflicting interest and little challenge. However, *A Tale of a Tub* highlights the difficulties faced by local officials in negotiating community and law, but provides no solution to the problem. As the period progresses, this divide between the demands of central law (increasingly identified with royal prerogative) and provincial life, and between the kingly authorities and local officials, widens on the Caroline stage. Attempts to maintain communication between the centre and the provinces through local landlords is, *A Joviall Crew* suggests, a somewhat doubtful enterprise, and unless a compromise is reached between the centre and the provinces there will be 'generall ruine' (*Joviall Crew*, sig. L3v). In the same way that Charles's attempts to impose a more absolutist regime upon the country brought about a competing authority in the common law,

his attempts to centralise the government of the counties, rather than merely highlighting an existing but unthreatening discrepancy in the attitudes to law of central and local officials, created a fracture in the chain of government from the centre to the localities. This fracture potentially leads to a complete break between the centre and the provinces, and the fragmentation not only of law and government, but society as whole.



## Chapter 5

**Theatre of the Courtroom.**

The trial and subsequent execution of Thomas Wentworth, earl of Strafford, constitutes one of the great set-piece dramas of English history: an intensely theatrical confrontation of one of Charles I's ministers with some of his most determined critics, as well as a curtain-raiser for the confrontations of the Civil War. (Kilburn and Milton, 1996, 230)

There is an inevitable connection between the theatre and the courtroom; trials are inherently dramatic. The Earl of Strafford's trial was conducted, Terence Kilburn and Anthony Milton argue, in a public arena through printed reports of the prosecution and response (1996, *passim*), as well as in the court of Parliament. However, their opening statement focuses not on the trial itself, or indeed upon the publications surrounding it; rather, they highlight the political context of the trial and the theatricality of the occasion, describing it in explicitly theatrical terms ('set-piece drama', 'theatrical confrontation' and 'curtain raiser'). The interconnection of politics, courtroom and theatre, exemplified in Wentworth's trial, is the focus of this chapter. Trials, real and fictional, are the place of the practical imposition of the directives of the legitimate legal authorities discussed in the previous chapters. Here, I will discuss the different kinds of court, perceptions of them in drama, and

the courts' relationship with the king, before examining the use of trial scenes in Massinger's *The Roman Actor* (1625), Ford's *The Ladies Triall* (1638), Brome's *The Antipodes* (1638) and Shirley's *The Traitor* (1631), suggesting that these scenes not only provide an opportunity for the staged presentation of the workings of the law and legal authority – or their *perceived* workings – but also that these scenes, and the theatre, provide a forum for the trial of issues of social, cultural and political importance, including the legitimacy of legal authority itself.

### **Jurisdictions**

Although the King held ultimate judicial power, in practice his role as judge was shared amongst his appointed Judges who carried the commands of the monarch to the localities, and executed the King's justice on his behalf.<sup>1</sup> There were several different law courts during the early Stuart period, from the ecclesiastical courts to the courts of common law (including the Courts of Common Pleas, King's Bench and Assizes), courts of equity (Chancery) and the Conciliar or prerogative courts (Star Chamber, High Court of Admiralty, the Council in the North Parts, and the Council in the Principality and the Marches of Wales), and finally the High Court of Parliament. This section will give a brief overview of the position and jurisdiction of these courts.<sup>2</sup>

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<sup>1</sup> See Chapter 4 for discussion of the relationship between central and local authority.

<sup>2</sup> Unless otherwise indicated, the descriptions of the courts which follow are based upon Baker, 2002, chapters 2, 3, 6 and 7, and information on the Assize courts is based upon Cockburn, 1972, 1-10, 219-236. I will not be discussing the activities of the ecclesiastical courts, the Court of Admiralty, or the Councils of the North and Marches here. For a discussion of ecclesiastical courts' jurisdiction and practices, see Baker, 2002, 126-134; for Admiralty and the Councils, see Baker, 2002, 121-24, and Sharpe, 1992, 448-56.

The Court of Common Pleas had jurisdiction solely over cases concerning commoners, that is, cases of property and land disputes, and therefore not concerning the Crown. Felonies were reserved for the King's Bench and the local Courts of Assize. Although initially an itinerant court following the monarch, the Court of King's Bench finally settled in the early fifteenth century at Westminster Hall.<sup>3</sup> Technically, it only held jurisdiction over Middlesex, but appellants elsewhere could, with permission from the Court of Chancery, move their case to King's Bench if they felt their case would benefit from a less local hearing. The Court of King's Bench held session in the South-East corner of Westminster Hall, with no inner walls separating it from the Court of Chancery in the South-West corner, or from the general activities of 'shopkeepers, cutpurses and sightseers' (Baker, 2002, 37) in the main body of the Hall. Their positions in Westminster Hall made trials at these courts very public events; although public attendance at trials was not always so large, the authorities expected such a large audience for the trial of the second Earl of Castlehaven in 1631 that a gallery was built in Westminster Hall to raise the official proceeding above the general public, and scaffolds for observers were also constructed (Herrup, 1999, 50).<sup>4</sup> The theatrical nature of the Castlehaven trial is confirmed in Charles I's order for a full dress rehearsal of the ceremony of the trial, although this was cancelled when there was found to be no precedent for such a rehearsal (Herrup, 1999, 51). This blending of the social and the legal, of courtroom, theatre and everyday life, is, I will argue, repeated and developed in drama of the period.

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<sup>3</sup> For a detailed description of the development of King's Bench up to the fifteenth century, see also Sayles, 1959, *passim*.

<sup>4</sup> Herrup notes that '[a]dded construction was standard practice in important trials; so many observers had crowded into the Hall in 1616 during the trial of the Earl of Somerset that a scaffold had collapsed' (1999, 50).

All courts were open to the public, and the Courts of Assize made sure that the forms and processes of the common law courtroom were known all over the country. Assizes took place regularly in the localities, conducted by Judges from the Bench Courts of Common Pleas and King's Bench. This allowed for gaol delivery and the resolution of cases outside the capabilities of the local Justices of the Peace, as well as providing the opportunity for the dissemination of the policies of central government in the localities. It was this, Cockburn argues, that made the judiciary indistinguishable from the government whose policies they sought to uphold (Cockburn, 1972, 236). That the judges were appointed by the King also contributed to this perception. More recently, however, Kevin Sharpe has argued that '[a]s a bench [...] the judges were far less the willing agents in royal programmes than they are often presented' (Sharpe, 1992, 663), and indeed, a number of dismissals for failure to comply with or enforce royal policy under James VI and I and Charles I supports this argument.

Other courts lay outside the ordinary remit of the common law courts. The Court of Chancery, for example, was a court of equity. It was more concerned with individual cases and fair results than with general rules and the rigid implementation of law, and as it was not a court of record, Chancery judges (usually the Chancellor himself) need not be concerned about setting precedent with their judgements.<sup>5</sup> As it was concerned primarily with issues irresolvable at common law, there was initially no conflict between this court and King's Bench and the other common law courts. However, there were times when Chancery clashed with the common law

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<sup>5</sup> For a more detailed discussion of courts of equity, see Baker, 2002, 105-11, and a shorter definition with a brief history of the Court of Chancery see *ODL*, 'equity *n.*' Courts of record are courts whose acts and judicial proceeding are permanently maintained and recorded. See *ODL* 'court of record'.

courts; Lord Chancellor Ellesmere (1596-1617), for example, heard suits in Chancery which had already been concluded at common law, thus interfering with the jurisdiction of the common law courts and causing conflict between Egerton and the Judges in 1613-1616. The events which followed led to the downfall of Edward Coke as Chief Justice of the King's Bench, and a royal decree which allowed the Chancellor to hear cases in Chancery after judgement had been passed at common law.<sup>6</sup> Indeed, the practice of moving cases from court to court was not unusual and finds its way into Caroline drama, as the lawyer in *The Antipodes* tells his client: 'Your case is cleare; I understand it fully, / And need no more instructions, this shall serve, / To firke your Adversary from Court to Court' (*Antipodes*, sig. F1r). Mihil in Brome's *The Weeding of Covent Garden* also threatens to move the Shoemaker and Taylor through several courts if they try to force him to pay them, making specific reference to Chancery court:

Mihil: You clap a Sergeant o' my back. *I* put in bail, remove it, and carry it up into the upper Court, with *habeas Corpus*; bring it down again into the lower Court with *procedendo*; then take it from thence, and bring it into the Chancery with a *Certiorari*; *I*, and if you look not to't, bring it out of the Chancery again, and thus will *I* keep you from your money till your suite and your boots be worne out before you recover penny of me. (*Weeding of Covent Garden*, sig. C4r)

The deferral of judgement brought about by the unclear limitations of each court's authority here is indicative of the wider problem of destabilised legal authority when the limits of law and prerogative are under question.

The Court of Star Chamber is the clearest example of the problematic combination of court and politico-legal authority. Like Chancery, the conciliar

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<sup>6</sup> Baker summarises the chain of events which succeeded, during which Coke, as Chief Justice of the Kings Bench, entered a legal battle with Ellesmere leading finally to Coke's dismissal (Baker, 2002, 108-9).

Court of Star Chamber was also initially a court of equity, but developed its criminal jurisdiction more clearly than Chancery. Jonson's *The New Inn* makes positive reference to the court for finding truth and bringing about justice:

There is a royall Court o'the *Star-chamber*  
Will scatter all these mists, disperse these vapours,  
And cleare the truth. Let beggers match with beggers.  
That shall decide it, I will try it there. (*New Inn*, sig. G5r)

There is no reason to suppose that Beaufort's professed faith in the justice of this court is ironic or untrue. However, Star Chamber later became the most controversial of the extraordinary courts when it was closely associated with the enforcement of Charles I's policies. This may have been due to its shared personnel with the Privy Council (Jones, 1971, 18), or with the rise in the number of cases at Star Chamber regarding matters of prerogative.<sup>7</sup> Cheyney argues that there was, under Charles, a marked increase in the number of cases brought before the court concerning the punishment of those who opposed or were disrespectful to officials or the sovereign, and that its procedure 'savored far more of the Roman than of the common law' (Cheyney, 1913: 747, 737), contributing to suspicions regarding its association with absolutist policies and practices. The Star Chamber also developed a reputation for secrecy which was not entirely undeserved, despite the fact that, as with the common law courts, it was open to the public.<sup>8</sup> Although it had no authority to sentence to death (this had to be done under common law as the defendant had to be found guilty by a jury of his peers), the gruesome punishments Star Chamber was able to authorise, such as ear cropping and nose slitting, also helped establish a reputation as an instrument of autocratic government. Despite

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<sup>7</sup> Baker notes that the main difference between Star Chamber and the Privy Council meeting was that the Chief Justices of the two benches sat at the Star Chamber meetings, but they did not attend the Privy Council (Baker, 2002, 118, n.4).

<sup>8</sup> Witnesses were examined in secret and their testimonies were not made available to cross-examining counsel until all parties had completed their examination (Barnes, 1962, 228-9).

this, T. G. Barnes argues that Star Chamber did not uphold the King's prerogative any more than the established common law courts, and that defendants were more likely to have their say there than in other courts (Barnes, 1961, 4, 9). Nevertheless, as the Caroline period progressed, Star Chamber did gain a reputation as an instrument of royal policy, acting in the King's interest rather than the people's. Such a perception contributed to its abolition by Parliament in 1641, as it was 'clearly and absolutely dissolved' because 'the proceedings, censures, and Decrees of that Court, have by experience been found to be an intolerable burthen to the subject, and the meanes to introduce an Arbitrary power and Government' (England and Wales, 'Two acts of Parliament' 1640, B2v).<sup>9</sup>

It is not possible to distinguish which of the courts outlined above is represented in the trial scenes to be discussed in the following sections, and attempting to identify particular courts, judges and trials represented in these plays is not the aim of this chapter; as Subha Mukherji has argued, 'instances in which the relation between dramatic fiction and real events is direct and intended are rare' (Mukherji, 2006b, 14). It is, instead, concerned with the ways in which courts and judges were *perceived* to function. What is at stake in trial scenes on the Caroline stage is not the guilt or innocence of the defendant; rather, they present a critique of social, cultural and legal issues of the period including: moral criticism of the theatre in *The Roman Actor*; social assumptions over gender and transgression in *The Ladies Triall*, and perceived practices of judges and prosecutors in *The Antipodes* and *The Traytor*. I will argue that ultimately what is at stake in the trials

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<sup>9</sup> This was not the only complaint against the Star Chamber. The anonymous *The Star Chamber epitomized* also suggests that the clerks and lawyers associated with the Court were perceived to impose unreasonably high prices for their services (Anon, 1641, *passim*).

of these issues on the Caroline stage is a greater trial of legitimate judicial and legal authority.

### **Absolute judicial power: *The Roman Actor***

In the early action of Massinger's *The Roman Actor* Paris, the leading actor, is summoned to appear before the Senate on charges of treason. As he is taken to trial, he encourages his colleagues not to fear the outcome:

Nay droope not fellowes, innocence should be bould  
 We that have personated in the Sceane  
 The ancient Heroes, and the falles of Princes  
 With loud applause, being to act our selves,  
 Must doe it with undaunted confidence.  
 What ere our sentence be think `tis in sport.  
 And though condemn'd lets heare it without sorrow  
 As if we were to live againe to morrow. (*Roman Actor*, sig. B1v-B2r)

The exhortation makes an explicit connection between the stage and his trial, exemplifying the theatre of the courtroom with which this chapter began. That Paris sees the actors' appearance at court as acting 'our selves', suggests he views the trial, and the world, as a theatrical production in which all people act a part. This is a recurrent theme in *The Roman Actor*, in which there are several plays within the play, and where the emperor Domitian himself is often the stage manager.<sup>10</sup> The confidence Paris appeals for in his colleagues is evident in his own actions at trial, as Aretinus asks 'Are you on the Stage / You talke so boldly?' (*Roman Actor*, sig. C1v), confirming the court/stage analogy. However, it is clear that his confidence lies in the theatrical possibility made available by this analogy that a protagonist

<sup>10</sup> For discussions of the theatricality of *The Roman Actor* and the importance of Domitian as stage-manager, see Goldberg, 1989, 203-209, and Hartley, 2001, *passim*. Hartley also discusses in this article the importance of performing obedience to Domitian's power in the play.



condemned to death will live again in the next day's performance. Here the analogy falls short: should the actors be sentenced to death, whatever role they play, they will not live again tomorrow. Indeed, Paris's security even in theatrical resurrection also proves to be misplaced, as he is really killed in Domitian's later production of 'The False Servant' in an enactment of the emperor's arbitrary justice.<sup>11</sup>

The trial itself collapses not only the court and the stage, but also the social, political and theatrical worlds of the play:

Aret[inus]: In thee, as being chiefe of thy profession,  
I doe accuse the qualitie of treason,  
As libellers against the state and Caesar.

Par[is]: Meere accusations are not proofes my Lord,  
In what are we delinquents?

Aret.: You are they  
That search into the secrets of the time,  
And vnder fain'd names on the Stage present  
Actions not to be toucht at; and traduce  
Persons of rancke, and qualitie of both Sexes,  
And with Satiricall, and bitter jests  
Make even the Senators ridiculous  
To the Plebeans. (*Roman Actor*, sigs. C1r-C1v)

In *The Roman Actor*'s world of informers, emperor's spies (of whom Aretinus is one (B1v)) and imperial summary judgements, Paris's statement that 'accusations are not proofes' is an important distinction. However, it also feeds into Paris's defence against the libel charges, in which accusations *do* become proof, not of the guilt of the actors, but of the guilt of the accuser of the acts presented on stage:

And for traducing such  
That are above us, publishing to the world  
Their secret crimes we are as innocent

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<sup>11</sup> See Chapter 2, pp.86-101 for a discussion of the legitimacy of Domitian's arbitrary authority.

As such as are borne dumbe. When we present  
 An heyre, that does conspire against the life  
 Of his deare parent, numbring every houre  
 He lives as tedious to him, if there be  
 Among the auditors one whose conscience tells him,  
 He is of the same mould we cannot helpe it.  
 Or bringing on the stage a loose adultresse  
 [...]  
 [...] if a Matron  
 However great in fortune, birth or titles,  
 Guilty of such a foule unnaturall sinne,  
 Crie out tis writ by me, we cannot help it.  
 [...]  
 If any in this reverend assemblie,  
 Nay e'ne your selfe my Lord, that are the image  
 Of absent *Caesar* feele something in your bosome  
 That puts you in remembrance of things past,  
 Or things intended tis not in us to helpe it.

(*Roman Actor*, sigs. C2r-C2v)

This defence is part of a broad ranging debate over the ‘application’ of characters and stories on stage to contemporary people and events. Although here Paris is accused only of personal satire, Andrew Gurr argues that a ‘substantial change that had taken place by 1620 was the use of plays for a larger scale of political comment than is evident earlier’ and that this ‘made the post of Master of the Revels as censor of plays a much hotter seat than it had been’ (1996, 133-4). Massinger himself was no stranger to censorship over political issues.<sup>12</sup> Paris’s defence claims that if a

<sup>12</sup> Massinger and Fletcher’s *Sir John Van Olden Barnavel* was subject to censorship in 1619 (Reinheimer, 1998, 319). Bentley makes only brief mention of this censorship (*JCS*, III, 416). Reinheimer also suggests that *The Bondman* (1623) ‘flirted’ with censorship, but Bentley’s entry for this play (*JCS*, IV, 765-770) gives no such suggestion. Massinger’s *Believe as You List* was censored and rewritten with the characters’ names changed so as not to reflect so closely recent political occurrences in the Palatinate. Herbert noted on 11<sup>th</sup> January 1630/1: ‘I did refuse to allow of a play of Messinger’s because itt did contain dangerous matter, as the deposing of Sebastian king of Portugal, by Philip the [Second.] and ther being a peace sworn twixte the kings of England and Spayne’ (*JCS*, IV, 762). S.R. Gardiner gives a detailed analysis of the ways in which *Believe as You List* reflects Frederick’s loss of the Palatinate in James VI and I’s reign and can be seen to resemble closely Caroline negotiations with Spain regarding the Palatinate (Gardiner, 1876, 499-503). Allen Gross, however, questions whether Massinger would have sufficient knowledge of contemporary court manoeuvring to give so close an analogy of Anglo-Spanish negotiations as Gardiner suggests, but admits that he cannot disagree with Gardiner’s general parallel between Antiochus and Frederick (Gross, 1966, *passim*, especially 283 and 288). Massinger’s *The King and Subject* (1638) was heavily censored at the King’s command for an explicit comment on prerogative taxation, spoken by a Spanish King to his subjects:

person or play does catch the conscience of someone in the audience, this does not prove the actors intended it, but it does suggest a guilty conscience in the accuser, or a malicious intent in the applier.<sup>13</sup>

Paris's argument is, then, a wider defence of all players from such allegations. That Paris is representative of all actors – Roman and Caroline – is also evident in the other argument of his defence. He is not only concerned with political and personal application, but with a moral defence of playing:

But 'tis urg'd  
That we corrupt youth, and traduce superiours:  
When doe we bring a vice upon the Stage,  
That does goe off unpunish'd? doe we teach  
By the successe of wicked undertakings,  
Others to tread, in their forbidden steps?  
We show no arts of *Lidian* Pandarisme,  
*Corinthian* poisons, *Persian* flatteries  
But mulcted so in the conclusion that  
Even those spectators that were so inclin'd,  
Go home chang'd men. (*Roman Actor*, sig. C2r)

In answering more than he was charged with (the charge against him makes no reference to corrupting youth), Paris emphasises that his trial is a trial of the theatre, not of the actor himself, and thus the platform of the stage(d) trial allows Massinger

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Monys? Wee'le rayse supplies what ways we please,  
And force you to subscribe to blanks, in which  
We'le mulct you as wee shall thinke fitt. The Caesars  
In Rome were wise, acknowledginge no lawes  
But what their swords did ratifye, the wives  
And daughters of the senators bowinge to  
Their wills, as deities.

According to Herbert, who noted the passage as 'for ever to bee remembered by my son and those that cast their eyes on it, in honour of Kinge Charles, my master', who himself read the play and marked this passage as 'too insolent, and to bee changed' (Dutton, 1991, 91). Ironically, this is the only passage of the play that now remains. This passage and Charles's comments, read in the light of Paris's argument that the playwright and actors cannot help it if a person sees themselves in a play's character could produce interesting speculation about Charles' own understanding of his prerogative taxation practices.

<sup>13</sup> 'Part of the reason why the Chamberlain's Men got away with staging *Richard II* for the Essex conspirators was because it had been the conspirators' choice, not the players' to 'apply' the play's story to Elizabeth and Essex' (Gurr, 1996, 133).

the opportunity to respond to contemporary anti-theatrical tracts, such as Alexander Leighton's 'A Short treatise Against Stage-Playes' published in 1625.<sup>14</sup> This treatise was dedicated to 'the High and Honourable House of Parliament Assembled May xxiii 1625' and David Reinheimer suggests that the anti-theatrical element of Parliament must have taken its arguments to heart as their first act prevented the performance of plays on Sundays (1998, 318). It cannot be coincidence under these contemporary theatrical circumstances that it is the Senate, in the absence of the Emperor (who is Paris's patron), which brings Paris to trial. Reinheimer suggests that the scene invites this allegorical reading:

In Rome, Paris should be judged by Domitian, not the Senate, just as the Caroline stage should be under the aegis of Charles's Master of the Revels. But Aretinus drags the actor before the Senate while Domitian is still out on campaign, trying a political end run. Massinger sees Parliament's legislation as the same kind of political machination, a ploy that tries to take advantage of a newly crowned king. (Reinheimer, 1998, 330)

Aretinus's decision to 'reserve to [Domitian] / The Censure of this cause' (*Roman Actor*, sig. C3r) shakes the certainty of Reinheimer's analogy a little, but perhaps also suggests that in such matters Parliament should defer to the king's judgement.

Although Jonathan Goldberg claims that at the end of the scene, the emperor exonerates Paris and the actors (Goldberg, 1989, 204), this is not entirely true: the Senate abandons the matter at the return of the victorious emperor and the case is not mentioned again. We can assume that the players are acquitted as Paris returns to acting, but this is not seen on stage, and the implicit acquittal allows the theatre audience themselves to condemn or acquit the actors. The interpretive power of the audience is confirmed by the closing of Paris' defence: 'I have said, my Lord, and

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<sup>14</sup> For a detailed discussion of the relationship between *The Roman Actor* and this anti-theatrical tract see Reinheimer, 1998, *passim*.

now as you find cause / Or censure us, or free us with applause' (*Roman Actor*, sig. C2v). This is, if one were necessary, a further iteration of the courtroom / theatre analogy in echoing the epilogue of several early Stuart plays but, more significantly, it places the responsibility for theatrical guilt on the (on and off stage) audiences' interpretation.<sup>15</sup> Whatever their decision, however, it is the emperor / king's decision which is the most important. The deferral of the Senate to Domitian demonstrates that in this play, the absolute power of the emperor both supersedes (in their deferral to him) and precludes the judgement of the Senate.

After Paris's Senate appearance there are no trials, but instead summary imperial judgements upon Philargus, Lamia, Sura, Rusticus and, finally, Paris. Domitian's judgement of Paris for his acquiescence in Domitia's desire for him confirms the personal and absolute nature of the emperor's judicial authority:

Caes[ar]:                   O that thy fault had bin  
                                   But such as I might pardon; if thou hadst  
                                   In wantonnesse (like *Nero*) fir'd proud *Rome*  
                                   Betraide an armie, butcherd the whole Senate,  
                                   Committed Sacriledge, or any crime  
                                   The justice of our *Roman* lawes cals death,  
                                   I had prevented any intercession  
                                   And freely sign'd thy pardon.

Par[is]: But for this  
                                   Alas you cannot, nay you must not Sir  
                                   Nor let it to posteritie be recorded  
                                   That *Caesar* unreveng'd sufferd a wrong,  
                                   Which if a private man should sit downe with it  
                                   Cowards would baffell him. (*Roman Actor*, sig.H4r)

That Domitian would rather pardon offences against Rome than against himself is further evidence of his arbitrary judgement, and suggests that his acts toward Paris

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<sup>15</sup> Goldberg notes that the end of Paris's speech is reminiscent of the epilogue to *The Tempest* (1989, 204).

will be of personal revenge unauthorised by Roman law.<sup>16</sup> This time, the trial by the Senate must be bypassed rather than voluntarily passed over because Paris's crime is not capital according to law. His willingness to accept Domitian's sentence without offering a defence to prevent his death ('To hope for life, or pleade in the defence / Of my ingratitude were againe to wrong you' (H4r)) after his previous lengthy defence before the Senate emphasises the personal power and authority of the emperor.<sup>17</sup> Domitian's subjects should not question his authority, and those who do act against him, as demonstrated in Chapter 2, will be punished by his successor.

### **Domesticating judicial authority: *The Ladies Triall***

John Ford's *The Ladies Triall* places the personal judicial power of the emperor of *The Roman Actor* into a domestic setting. The plot of the play centres on the relationship between Auria and his wife Spinella. Auria goes to war, returns successful, and as a reward the Duke appoints him governor of Corsica. At his

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<sup>16</sup> The King in James Shirley's *The Cardinal* is also more concerned with the affront to him of Columbo's murder of Alvarez than with the murder itself:

And if I should forgive  
His timeless death, I cannot the offence,  
That with such boldness struck at me. Has my  
Indulgence to your merits which are great  
Made me so cheap, your rage could meet no time  
Nor place for your revenge, but where my eyes  
Must be affrighted, and affronted with  
The bloody execution? This contempt  
Of Majesty transcends my power to pardon,  
And you shall feel my anger Sir. (*The Cardinal*, sig. D2r)

The repeated calls for justice in this play, along with this preference of Majesty over law demonstrate a corruption of legal authority away from the focus of justice to a manipulation by favourites to further personal interest.

<sup>17</sup> Paris does offer something in mitigation of his crime, so that Caesar may pardon him when he is dead, giving his 'fraitie, / Her will, and the temptation of that beautie / Which you could not resist' (*Roman Actor*, sig. H4r) as his defence. The emperor's poor example explains, although does excuse, a similar action in one of his subjects.

return, his friend Aurelio finds Spinella alone with Adurni and accuses them of adultery. Auria acts as judge at her trial. It is through his position of dual authority that the play questions the judicial power and legal position of the monarch: Auria is representative of political authority in his position as governor of Corsica, and by the husband / king analogy of patriarchalist theory and theatrical convention. Auria himself refers to his domestic kingdom in his initially happy marriage to Spinella:

I had a kingdome once, but am depos'd  
From all that roialtie of blest content,  
by a confederacie twixt love and frailtie. (*Ladies Triall*, sig. F3v)

Whilst it might, in a play which conducts a trial of Spinella's virtue, be assumed that the 'frailtie' referred to here is hers, as the play progresses the social assumptions and judgements of sexual behaviour suggesting this interpretation are brought into question, and the 'frailtie' of male faith becomes a possibility. The play explores several meanings of the 'trial' in its title: the audience will see a trial (test) of Spinella's virtue, her trial (hearing) for her supposed offence, and a trial (questioning) of the contemporary social assumptions regarding gender which led to Spinella's alleged guilt. This is not merely the 'Lady's trial', but also potentially, the 'Ladies' Trial'. It is through these different kinds of trial, I will argue, that the play also presents, less obviously, a trial of legitimate legal authority.

Throughout the play, the use of legal terms maintains a close association between the domestic and politico-legal world. From the moment Aurelio finds Adurni and Spinella together, their argument over her guilt or innocence of adultery is not made in moral terms but in legal ones. Adurni comments, 'Rich conquest, / To triumph on a Ladies injur'd fame, / Without a prooffe or warrant' (*Ladies Triall*, sig. E3r), and Spinella herself picks up on this legal register, saying:

*I must beg  
Your charities; sweet sister, yours to leave me,  
I need no fellowes now: let me appeare,  
Or mine owne lawyer, or in open court  
(Like some forsaken client) in my suit  
Be cast for want of honest plea – – oh misery. (Ladies Triall, sig. E3v)*

Spinella invites a courtroom trial of her honour during which she will represent herself either as a lawyer for her defence, or appear in court without a lawyer to defend herself under presumption of her guilt ('for want of honest plea'). This refers to the legal practice that if a defendant refuses to enter a plea, the court proceeds '*pro confesso*' (as if the accused had pleaded guilty).<sup>18</sup> The idea of Spinella going on trial to defend her virtue is continued in her sister Castanna's concern that Spinella should not be followed:

Ad[urni]: Her resolution's violent, quickly follow,  
  
Cast[anna] By no means (sir) y' aue followed her already,  
I feare with too much ill successe in triall,  
Of unbecoming courtesies. (*Ladies Triall*, sig. E3v)

The word order here allows the possibility that Spinella's trial for her supposed infidelity will meet with 'ill successe' for her, before it becomes clear that Castanna is referring to the trial of Spinella's chastity in Adurni's attempt to seduce her.

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<sup>18</sup> At the trial of Bastwick, Burton, and Prynne in Star Chamber in 1637, the gentlemen were 'injoynd to put in their answers to the Information by Munday next came sennight, by the advice of their counsell, and under their hands, or else the matters of the Information should be taken against them *pro confesso*' (Prynne, 1641, 20-21). Despite attempting to enter pleas they wrote and signed themselves, Bastwick and Prynne were tried *pro confesso* because these were not entered on their behalf and signed by their lawyers (Prynne, 1641, 21-33). Spinella's reference to a 'forsaken client' may make reference to this trial, as Bastwick and Prynne both claimed they were unable to give answer through their lawyers because they refused act for them (Prynne, 1641, 27, 29-30). Charles I's refusal to plead at his trial created much discussion amongst the judges as to whether they should proceed, as they would in a less unusual trial, *pro confesso*, and instructions to this effect were incorporated into the ordinance passed by the Commons on 1<sup>st</sup> January 1649. This was, according to Sean Kelsey, to limit the King's options when he came to trial. Nevertheless, the King was given between nine and twelve more opportunities to enter a plea after the usual time to do so was past (2004, 4, paragraph 9; 8, paragraph 21). This suggests a reluctance to assume the King's guilt, as this meant execution became almost inevitable.



It is not clear that Spinella and Adurni's 'trial' takes place in a courtroom. Indeed, in *The Ladies Triall*, the trial scenes are little more than a discussion between Spinella, Adurni, Aurelio, and Auria, as accused pair, accuser and judge respectively:

Adur[ni]: Stand *Aurelio*,  
 And justify thine accusation boldly,  
 Spare me the needlesse use of my confession,  
 And having told no more, then what thy jealousy  
 Possesst thee with againe before my face,  
 Urge to thy friend the breach of hospitalitie  
*Adurni* trespast in, and thou conceavst  
 Against *Spinella*; why proofes grow faint,  
 If barely not suppos'd, Ile answere guilty.

Aure[lio]: You come not here to brave us.

Adur.: No *Aurelio*  
 But to reply upon that brittle evidence,  
 To which thy cunning never shall rejoyne.  
 I make my Judge my Jurie, be accountant  
 Whither withall the eagernesse of spleene  
 Of a suspitious rage can plead, thou hast  
 Enforc'd the likelihood of scandall. (*Ladies Triall*, sig. 11r)

Although the play gives no stage directions for scenery to indicate a court, their language ('confession', 'proofes', 'guilty', 'evidence') invites comparison with legal proceedings and presents Auria, whose new position as governor of Corsica makes him the obvious choice, as Judge. In his answer to Aurelio's accusation, Adurni acknowledges his fault in an intention to seduce Spinella, but denies that Aurelio has sufficient evidence other than suspicion to make a formal charge of adultery. His response becomes an accusation before his own judge and jury (Auria) that it is Aurelio, not Adurni, who has brought potential scandal to Auria's house. The collapse of Judge and Jury in one man suggests absolute authority, as Mukherji notes that these roles were kept scrupulously apart in common law

(2006a, 228).<sup>19</sup> Auria himself says little during Adurni's trial, only intervening to ask Adurni to say more when he hears of Spinella's virtue ('On sir and doe not stop.' (*Ladies Triall*, sig. I2r)). The emphasis on 'proofes' and 'evidence' highlights the fact that Aurelio's accusation is based upon nothing more than circumstance, and brings into question the social and cultural assumption (the inevitable infidelity of unmonitored young wives) upon which his judgement is based.<sup>20</sup>

Spinella's language when she appears continues the movement between the trial and the domestic sphere:

Spi[nella]: Tho prove what judge you will, till I can purge  
 Objections which require beliefe and conscience,  
 I have no kindred sister, husband, friend,  
 Or pittie for my plea. (*Ladies Triall*, sig. K1r)

Whereas Adurni admits the intention to commit his crime but denies carrying out the action, Spinella, guilty in neither act nor intention, asks her family who are now the impersonal non-familial court and judge, to assume her guilt (have 'no pittie for my plea'). This draws attention to the fact that Aurelio has already done exactly that in his accusation, and highlights that the same assumption has been made of Levidolche by both Malfato and Martino during the play.<sup>21</sup> Spinella's next

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<sup>19</sup> Mukherji makes this observation in relation to Francis Bacon's position as Inquisitor for the Privy Council and Star Chamber, which involved examination and torture of witnesses and defendants (2006a, 228).

<sup>20</sup> For an exploration of ideas of proof, rhetoric and evidence in relation to common law and Aristotelian notions of artificial and inartificial proof in this play, see Mukherji, 2006a, *passim*.

<sup>21</sup> Dorothy Farr argues that Spinella's trial highlights the wrong conclusions Aurelio comes to about her (based upon his views on marriage for love and young brides) and Malfato's misjudgements of Levidolche's attentions to him as a response to Adurni's abandonment of her. Thus the trial makes both men question the social codes by which they came to these conclusions (Farr, 1979, 134-149, especially 143). Lisa Hopkins argues that Spinella's success at her trial re-writes plays such as *Othello*, in which innocence is not an effective defence and law cannot protect the female characters (1999a, 59-63).

statement continues this determination to stand alone, but implicitly transfers the guilt to those who have distrusted and accused her on such slim evidence:

*I disclaime all benefit  
Of mercie from a charitable thought,  
If one or all the subtillies of malice,  
If any engine of faithlesse discord,  
If supposition for pretence in folly,  
Can poynt out, without injurie to goodnesse,  
A likelihood of guilt in my behaviour,  
Which may declare neglect in every dutie,  
Requir'd fit, or exacted. (*Ladies Triall*, sig. K1r)*

The three conditional clauses here convey Spinella's confidence in her innocence, allowing three possibilities to find evidence against her. These possibilities, however, all involve underhand machinations of 'malice', 'faithlesse discord' and 'pretence in folly', setting her honesty against the dishonesty of those who might accuse her. Indeed, it is this confidence that Auria notices in Spinella's defence, saying, 'High and peremptory, / The confidence is masculine' (*Ladies Triall*, sig. K1r). For him, her innocence is confirmed in her movement away from womanly behaviour. Although Spinella later acknowledges that in this she has 'assum'd a courage / Above [her] force', she does, as Auria requires of her, 'Keepe faire, and stand the triall' (*Ladies Triall*, sig. K2v, K1r).

Assumptions about gender roles also play an important part in Spinella's defence against Auria's assertion that infidelity is unpardonable in their marriage which was for love, not money or status. She replies:

My thoughts in that respect are as resolute as yours,  
The same, yet herein evidence of frailtie  
Deserv'd not more a separation,  
Then doth charge of disloyaltie objected  
Without or ground or witnesse, womans faults  
Subject to punishments, and mens applauded,

Prescribe no lawes in force. (*Ladies Triall*, sig. K2r)

Her alleged ‘frailtie’, she claims, was no worse than Auria’s willingness to believe it without proper evidence. This suggests a kind of frailty in him, which could also be understood in Auria’s own reference to a ‘confederacie twixt love and frailtie’ (*Ladies Triall*, sig. F3v) noted earlier. Spinella’s argument, again blending the domestic and legal worlds, claims that men should set a good example: patriarchally-devised behavioural norms in relationships (‘lawes’) cannot be enforced if men are applauded for their faults and do not set a good example. This perhaps provides the clearest link between the main plot and the sub-plot of the fallen Levidolche who attempts to regain respectability having been used and abandoned by Adurni and rejected by Malfato. Spinella’s comment upon obeying one’s own laws, following closely upon Adurni’s reference to the ‘power’ and ‘soveraignty’ of Spinella’s virtue to set ‘bounds to rebell bloods’ (*Ladies Triall*, sig. I1v) and Malfato’s criticism of Auria’s ‘waste kinde of antique soveraigntie’ (*Ladies Triall*, sig. I4v) when he pretends not to recognise his wife as she kneels to him, can also be seen as a domestically disguised reference to the necessity for the sovereign himself to set a good example in adhering to established laws.<sup>22</sup>

Throughout the process of accusation and trial, Spinella’s ‘masculine’ confidence and reasonable argument are contrasted with Aurelio’s earlier unreasonable reaction when finding her with Adurni:

Spi[nella]: What rests behind for me, out with it.

Aure[lio]: Horror,  
Becomming such a forfeit of obedience,

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<sup>22</sup> See Chapter 2, footnote 14. See also Chapter 3 for a discussion of the consequences of monarchical disregard for law in *The Queen and Concubine*, pp.185-88.

Hope not that any falsity in friendship  
 Can palliate a broken faith, it dares not  
 Leave in thy prayers (fair vow-breaking wanton)  
 To dresse thy soule new, whose purer whitenesse  
 Is sullyd by thy change, from truth to folly.  
 A feareful storme is hovering, it will fall,  
 No shelter can avoyd it, let the guilty  
 Sink under their owne ruine.

Spin: How unmanly  
 His anger threatens mischief! (*Ladies Triall*, sig. E3r-E3v)

In describing his unsubstantiated, angry accusation as ‘unmanly’, the play makes explicit a connection between this unmanliness and tyranny, as Castanna challenges Aurelio to ‘Use your tyranny’ (*Ladies Triall*, sig. E3r) immediately before this exchange. Thus the play participates in the theatrical convention which presents absolutism, tyranny and submission to will as less than manly.<sup>23</sup> Spinella’s questioning of patriarchal authority in calling Aurelio’s outburst unmanly, and of Auria’s position in undermining his charges by reminding him of his duty to her not to accept unsubstantiated accusations against her, presents the kind of questioning of legal authority by a subject which was not countenanced in Paris’s willing submission to Domitian’s tyranny in *The Roman Actor* ten years earlier.

Although tyranny is associated with Aurelio rather than the governor of Corsica himself, Auria’s actions too are questioned and questionable. His part in Spinella’s trial makes him at once ‘judge of both law and fact, and converts the judge’s role from that of impartial referee to that of active inquisitor’ (Mukherji, 2006a, 228-229). Again he is in the legally problematic position of being both judge and jury, and his purpose in trying Spinella is not entirely clear. At times he seems convinced of her innocence, even before her defence:

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<sup>23</sup> See Chapter 2 pp.101-117 and Chapter 3, pp.163-65 for more detailed discussions of this idea.

Revenge! for what? (uncharitable friend)  
 On whom? Lets speak a little pray with reason,  
 You found *Spinella* in *Adurnies* house,  
 Tis like a' gave her welcome very likely,  
 Her sister and another with her, so  
 Invited, nobly done; but he with her  
 Privately chamberd, he deserves no wife  
 Of worthy qualitie, who dares not trust  
 Her virtue in the proofes of any danger. (*Ladies Triall*, sig. F3v)

His appeals to reason dissociate him, through legal and political discourse of the period discussed in Chapter 3, from Aurelio's tyranny. But his belief in her virtue suggests that the trial he forces her to undergo is a cruelly unnecessary testing of her loyalty to him which savours of arbitrary absolutism. For Auria, it is not enough that his wife is chaste; she must prove it through semi-public argument at law.<sup>24</sup>

Having declared at the end of the trial that he finds Spinella's 'vertues as [he] left them, perfect / Pure, and unflaw'd' (*Ladies Triall*, sig. K2v), Auria then, with his accepted patriarchal authority, offers her sister Castanna to Adurni in marriage. Significantly, it is made clear that Auria does not impose his authority on Castanna; rather she has chosen him as guardian of her 'faith'. Nevertheless, there is an uncomfortable convenience to this marriage. It seems it has been planned by Auria, and 'is not sudden, / But welcom'd & forethought' to Adurni (whose attempted seduction of Spinella, not Castanna, initiated the trial) but it has not been indicated to Castanna or the audience before this point. Ford draws attention to the contrivance, as Spinella comments 'The courtship's somewhat

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<sup>24</sup> Mukherji links his desire for such proof to rhetorical hierarchies understood in the period in the 'value-laden distinction in rhetoric between the superiority of artificial proof or 'invention' constructed by the art of the orator, and the inferiority of external, material signs which the orator merely uses'. She argues that in testing Spinella in this way Auria 'sets himself up as a superior user of method in the project of discovery than both Aurelio, who convicts on external, circumstantial proof, and the common lookers-on, who might 'construe' and 'presume' guilt erroneously (I.i.)' (2006a, 229-30).

quick’, but Spinella and Castanna then explain this suddenness respectively as ‘the use of fate’ and the ‘will of heaven’ (*Ladies Triall*, sig. K2v). It becomes clear though, that this is not the will of heaven so much as the will of Auria when he claims that this was his intention throughout:

Make no scruple  
 (*Castanna*) of the choice, tis firme and reall,  
 Why else have I so long with tamenesse nourisht  
 Reports of wrongs, but that I fixt on issue  
 Of my desires, Italians use not dalliance  
 But execution; herein I degenerated  
 From custome of our nation. (*Ladies Triall*, sig. K3r)

Auria’s wording here is significant in the terms of politico-legal theatrical debate identified in this thesis. He has tested Spinella only to bring about the satisfaction of his will (desire), and in doing so has ‘degenerated’ from the custom of his nation, suggesting his absolutist leanings. ‘Degenerated’ is a particularly loaded word here: whilst it can mean ‘to become altered in nature or character (without implying debasement)’, more commonly degeneration implies deficiency or ‘a fall away from ancestral virtue or excellence’.<sup>25</sup> In acting to satisfy his own desires, the ruler who does not follow established customary law is in some way declining from a previously superior form of legal authority. This reading is complicated by the understanding that in not following the custom of his country, Auria has brought about a peaceful resolution rather than challenging Aurelio to a duel for slandering his wife. However, the emotional cost to Spinella of the unnecessary trial, evident in Castanna’s observation ‘She faints’ (*Ladies Triall*, sig. K2v), suggests that the governor’s attempts to confirm his authority by testing subjects’ loyalty and his focus on the ‘issue of [*his*] desires’ rather than the welfare of his subjects is an inappropriate and potentially ‘degenerate’ form of government.

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<sup>25</sup> *OED* ‘degenerate, v.’ 3 and 1.

### Judicial practices: The Antipodes

Whilst *The Roman Actor* and *The Ladies Triall* use trials to subject the judicial and legal authority of the monarch-as-judge to scrutiny in terms of the ultimate monarchical authority to judge, testing subjects' loyalty, and adhering to ones own laws, the position and practices of Judges themselves are not examined. The trial scene in Brome's *The Antipodes* moves the focus away from the King's judicial power and position, presenting instead a comic but critical comment on not only the perceived practices but also the position of lower ranking and local Justices. Unlike the trials already discussed in this chapter, the trial in *The Antipodes* is not real: it is one of the many plays-within-the-play in which events contrary to conventional activities take place, designed by Doctor Hughball with the help of Letoy to bring Peregrine back to his senses.<sup>26</sup>

Having declared himself King of the Antipodes, Peregrine is witness to, and comments on, a trial conducted by Byplay as 'City Governor' (*Antipodes*, sig. G2v). The opening of the trial brings court practices and arbitrary judgement into question:

Byp[lay]: Call the defendant, and the Plaintiffe in.

Sword[-bearer]: Their counsell and their witnesses.

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<sup>26</sup> Although Mukherji refers to Spinella's trial as a 'false trial' (2006a, *passim*), and it is not necessarily carried out in a real court, it is a real trial in that there are real consequences for the accused, whatever the outcome. The trials in *The Antipodes* and *The Traylor* (which I will discuss shortly) are knowingly pretended trials, acted out within the play for a purpose other than judging the accused.



Byp: How now!  
 How long ha you beene free oth Poyntmakers,  
 Good master hilt and scaberd carrier;  
 (Which is in my hands now) do you give order  
 For counsell and for witnesses in a cause  
 Fit for my hearing, or for me to judge, haw?  
 I must be rul'd and circumscrib'd by Lawyers must I,  
 And witnesses, haw? no you shall know  
 I can give judgement, be it right or wrong,  
 Without their needlesse proving and defending:  
 So bid the Lawyers goe and shake their eares,  
 If they have any, and the witnesses,  
 Preserve their breath to prophesie of dry summers.

(*Antipodes*, sig. G2v)

Byplay's immediate reaction to the Swordcarrier's calling of counsel and witnesses is an attempt to maintain control: the hilt and scabbard (symbols of justice) are in *his* hands once the trial has begun, and this hearing is for *him* alone to judge. This determination to proceed with the trial in his own way is continued in his objection to being 'rul'd and circumscrib'd by Lawyers' which, echoing Domitian (*Roman Actor*, sig. D3r), hints towards a kind of absolutism in the governor of Anti-London which disregards the law when judicial expedience requires it. That this desire to be without the rule of lawyers is a practice of Anti-London, which is 'contrary in Manners' (*Antipodes*, sig. E1v) to London, suggests that it should not be the practice of the Caroline legal proceedings, thus making a critical comment on the legal manoeuvrings of Charles I and his Judges which common lawyers did attempt to circumscribe. Byplay's assertion of his ability to give a judgement 'right or wrong' without proving or defending is reminiscent of the arbitrary justice of *A Jovial Crew's* Justice Clack who can inform himself of guilt or innocence by the defendants' countenances alone (*Joviall Crew*, sigs M3v-M4r).<sup>27</sup> Martin Butler suggests that Byplay's 'self-opinionated judge' comes from a long tradition of such figures descending from Jonson's Justice Clement and including Clack, but that his

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<sup>27</sup> See Chapter 4, p.232.

comment on ‘needlesse proving and defending’ may also make reference to ‘the drawn-out arguments and delayed judgement of the Ship Money case’ (Butler, 1987, 216), a particularly controversial issue of prerogative rule. The brief comment about lawyers’ missing ears could snipe at William Prynne, grounding this Antipodean court in contemporary London courts, specifically the Star Chamber, which had begun to gain a reputation for arbitrary royal judgement.<sup>28</sup> Although these practices (acting without lawyers or witnesses) are those of Antipodean Anti-London, in many cases in Caroline London, particularly those heard in Star Chamber, witnesses did not appear in court, their testimony having been given in writing before the defendant appeared in front of the Judge (Barnes, 1962, 229), and trials for felony in the common law courts proceeded, as Byplay will have it here, without the benefit of a lawyer for the defence.<sup>29</sup> In presenting these as Anti-London, contrary practices, Brome passes comment on the (im)propriety of their inclusion in London’s legal proceedings.

The association of the Antipodean court with Star Chamber is continued in Peregrine’s comment on the ‘equity’ of Byplay’s procedure:

Byp: Bring me the plaintiffe, and defendant only.  
 But the defendant first, I will not heare  
 Any complaint before I understand  
 What the defendant can say for himselfe.

Per[egrine]: I have not known such down right equity,  
 If he proceeds as he begins, ile grace him. –  
 (*Antipodes*, sigs. G2v-G3r)

<sup>28</sup> See above, pp. 245-47. Steggle’s suggestion of a date of 1636 for this play (2004, 105-109) would not disallow this allusion, as Prynne’s ears were cropped twice, once in 1633 and once in 1637.

<sup>29</sup> Defendants in trials for treason or felony were not allowed to consult lawyers for points of fact, but they were usually allowed for difficult points in law (Herrup, 1999, 55).

Peregrine's reference to 'equity' does at least suggest a fairness in allowing the defendant to explain himself before passing judgement – something the arbitrary Justice Clack, for example, would not do – but there is, of course, something absurd about his hearing the defence before the complaint, and Peregrine's praise of this as the correct way to proceed in trial is also symptomatic of the madness, associated with arbitrary absolutism and intemperate desire, that the doctor is trying to cure in him.<sup>30</sup> Perhaps Star Chamber's judgements, this suggests, are not as equitable as the Court's designation as a court of equity might imply.

Byplay hears the case: a merchant has brought a gentleman to court for refusing to sleep with his (the merchant's) wife in payment for the cloth he has provided. Although the gentleman offers to pay him twice its monetary value, the merchant will not accept this because it will not satisfy his wife. Byplay's judgement that he himself will take the cloth *and* satisfy the tradesman's wife is an appropriate Antipodean solution to the triviality of the case, but before examining the implications of the sentence it is worth considering the judge's stated reasoning:

Peace, I should  
 Now give my sentence, and for your contempt,  
 (which is a great one, such as if let pass  
 Unpunished, may spread forth a dangerous  
 Example to the breach of City custome,  
 By gentlemens neglect of Trademens wives)  
 I should say for this contempt commit you  
 Prisoner from the sight of any other woman  
 Untill you give this mans wife satisfaction,  
 And she release you; justice so would have it. (*Antipodes*, sig. G4r)

The comic suggestion that it would be disastrous to the city customs in Anti-London if Byplay were to set an example allowing gentlemen *not* to sleep with tradesmen's

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<sup>30</sup> See Chapter 3, pp.166-176 for a discussion of the relationship between madness and absolutism, reason and law in this play.

wives suggests a wish to prevent this becoming common in London. More significantly, however, the comedy of this comment and the triviality of its cause disguise a more serious point: early modern common law legal practice (indicated again by ‘custome’) placed a great deal of importance on precedent, so when pronouncing difficult or controversial judgements in the common law courts of record, the judges not only had to weigh the evidence but take into consideration the implications of the precedent it would set.

The hierarchy established in having both Peregrine (the ‘king’) and Byplay (the ‘City Governor’) of the Antipodes on stage simultaneously, encourages the audience to see Byplay as a lower ranking Judge than Peregrine, Domitian, the Roman Senators or Auria, and it is with the position of the local justice with which the sentence of the Antipodean trial scene is concerned. Although Byplay has stated that he knows how justice ‘would have it’, he chooses to adopt an alternative solution:

But as I am a Citizen by nature,  
 (For education made it so) ile use  
 Urbanity in your behalfe towards you;  
 And as I am a gentleman by calling,  
 (For so my place must have it) ile performe  
 For you the office of a gentleman  
 Towards his wife, *I* therefore order thus:  
 That you bring me the wares here into Court,  
 (I have a chest shall hold ’hem, as mine owne)  
 And you send me your wife, ile satisfie her  
 My selfe. Ile do’t, and set all streight and right. (*Antipodes*, sig. G4r-v)

His comments upon a gentleman’s position and a citizen’s education is an obvious satire upon the behaviour of city traders and gentlemen, but more seriously it suggests the difficult position judges held in trying to negotiate between their position as gentlemen and local authority figures and the citizens for whom they

administered justice, and upon whom they were to press, for example, Charles' potentially illegal extra-parliamentary taxation.<sup>31</sup> Unable to be entirely a citizen because of his position as Judge, and constrained not to be a gentleman by his education, Byplay's solution at first appears to answer both sides of the dispute: the gentleman does not receive the goods for which he has not 'paid', and the citizen's wife is satisfied. However, it is clear that the only person really satisfied here is the Judge himself, who gains free cloth and unquestioned access to the citizen's wife, and Byplay's knowing comment immediately following the sentence, 'Justice is blinde, but Judges have their sight' (*Antipodes*, sig. G4r-v), implies judicial corruption. Yet the fact that this comment is placed immediately after Byplay's explanation that, given his liminal position, this is the only sentence he can pass, raises the question as to whether this judgement is a result of the judge's innate corruption or of his taking advantage of the impossible situation in which he finds himself. Peregrine, the self-proclaimed King of the Antipodes who at this point is still mad, expresses satisfaction with the verdict exclaiming, 'Most admirable Justice' (*Antipodes*, sig.G4v), suggesting that only arbitrary monarchy would approve of either the self-serving action or the situation in which the Justice is placed. Peregrine's subsequent recovery and reformation of the laws of the Antipodes confirms that Antipodean practice is, or should be, an inversion of the organisation of the English courts.

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<sup>31</sup> See Chapter 4, pp. 198-200.

### The process of prosecution: *The Traytor*

The comedy of Brome's courtroom and the easy slippage between inverting and displaying English judicial practices highlights some of the failings of the Caroline judicial system. The lack of legal counsel hinted at in Byplay's comments, and the dramatic, adversarial aspects of trial procedure are explored in more detail in Depazzi's trial in James Shirley's *The Traytor*. Like that in *The Antipodes*, this is an imagined trial. In a similar vein to the interview between Prince Harry and King Henry in Act II of Shakespeare's *Henry IV, Part 1*, acted out by Harry and Falstaff (who each take a turn at being Prince and the King) so that Harry can prepare what he will say to explain his dissolute actions to his father, Depazzi, a conspirator to treason, asks his servant Rogero to act as prosecutor in a preparatory 'trial' so that he can practise his defence.<sup>32</sup>

Despite Depazzi's threat of 'I will beate you, if you wonot imagine at my bidding', Rogero is reluctant to participate, claiming 'Good my Lord it will not become me, being your humble servant' (*Traytor*, sig, E2v). This concern for propriety is notably absent in the similar inversion of servant-master/mistress relations in Pru's position as judge for the days sports in Jonson's *The New Inn*, and suggests the extent of the verbal assault which Rogero associates with treason trials, and which Depazzi expects if he is caught.<sup>33</sup> In response to Rogero's concern for his humble status, Depazzi states:

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<sup>32</sup> The interview acted by Harry and Falstaff is only a prefiguring of this sort of pretended trial, as neither of them actually offers a defence of Hal's actions; rather, as 'King' they take the opportunity either to compliment (Falstaff) or criticise (Harry) Falstaff as a companion for the prince.

<sup>33</sup> See Chapter 1 pp. 33-51 for a discussion of *The New Inn*.

Humble Coxcombe, is't not for my good? I say, accuse me, bring it home, jerke me soundly to the quicke *Rogero*, tickle me as thou lovst thy Lord; I doe defie thee, spare me not, and the divell take thee if thou bee'st not malicious. (*The Traytor*, sigs. E2v-E3r)

The series of violent and uncomfortable metaphors for this interrogation suggest the virulence of questioning Depazzi expects and perhaps the versatility his response will require, and in insisting that Rogero be 'malicious', Depazzi anticipates the worst that will confront him if his plotted treason with Lorenzo is discovered. This staged trial, with permission for the prosecutor to 'spare [...] not' the defendant, allows the presentation on stage not only of an exaggerated version of Depazzi's possible trial, but also of an example of how real treason trials could be perceived by the Caroline theatrical and law-court audiences.

Rogero soon warms to his role, and accuses his master, without evidence, of several attempts upon the Duke's life:

Do not interrupt mee varlet I will proove it, his hunting saddle, and woe shall be unto thy breech therefore, and finding this serpentine treason broken in the shell, doe but lend your reverend eares to his next designes I will cut em off presently. This irreligious nay Atheistical Traitor, did with his owne hands poison the Dukes prayer booke, oh impiety!

[...]

hee hath for this fortnight or three weekes before his apprehension, walk'd up and downe the Court with a case of pistols charg'd, wherewith, as he partly confessed, hee intended to send the Duke to heaven with a powder.

(*Traytor*, sig. E3v)

'[C]ut em off' has particular resonance in relation to perceived Caroline law court activities; although in the sense of the sentence, this is said in relation to expounding Depazzi's further crimes, coming so close to the reference to 'eares' it refers to sentence of ear cropping, reminding the theatre audience of the physical punishments meted out by contemporary courts. Methods of prosecution are questioned here too in the mention of Depazzi's possible atheism. As Cynthia

Herrup argues in her discussion of the trial of the second Earl of Castlehaven in 1631:

adversarial law is as much about style as it is about fact [...] Trials are confrontations, rhetorical swordplay within set rules. Like the swordplay of the theater, trials are constructed to persuade their audiences [...] Regardless of fact and even law, the best performance is the most convincing one. And the most convincing one is usually the one most strategically attuned to the fears and ideals of the judge and jury. (Herrup, 1999, 55)

Thus in stating that Depazzi is not only a traitor, but an ‘atheistical’ traitor, the ‘*ex tempore*’ (*Traytor*, sig. E2v) prosecutor brings his moral character into question, playing upon contemporary fears regarding non-belief, irrespective of his crime and adding a charge of atheism to the alleged treason.<sup>34</sup>

In response to the accusations laid against him, Depazzi asks for evidence of his guilt:

Dep: Will you justifie this? Did I any of these things you tadpole?

Ro: Hold your selfe contented my Lord, he that is brought t[o] the barre in case of treason, must looke to have more objected then hee can answere, or any man is able to justifie. (*Traytor*, sig. E3v)

Depazzi and Rogero here seem to step out of character from the acted trial and converse again as master and servant. However, Rogero’s reply is more than a defence to his master of his insolence, also providing a comment upon the perception of State treason trials: once arrested for treason, a man becomes subject to a barrage of accusations which cannot be justified or defended, and in a trial for

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<sup>34</sup> Being a Catholic and possibly an atheist were accusations incorporated into the trial of the Earl of Castlehaven for rape and sodomy in 1631, shortly before the play was written (Herrup, 1999, 3). Castlehaven’s trial was such a public event that it is possible it had some influence in Shirley’s play. For a discussion of the the Castlehaven trial in relation to John Ford’s *Perkin Warbeck*, see Hopkins, 1999b, *passim*.



felony, defendants had no right to warning of the evidence against them (Herrup, 1999, 55).

It is not merely the subject of the accusations, however, which become impossible for Depazzi to answer, but the nature of the questioning, as his defence is turned against him:

Ro: That that my Lord hath overthrowne him, he saieth hee never sought the princes life, *ergo* he sought his death, besides he hath heard of treason, now he that heareth and discovereth not is equally guilty in fact: for in offences of this nature there are not accessories, *ergo* hee is a principall, and beeing a principal Traitor, hee deserveth condemnation. (*Traytor*, sig. E3v-E4r)

In knowing about the plot, Depazzi is automatically implicated.<sup>35</sup> His inadvertent admission of guilt demonstrates the dangers for the accused of *ore tenus* (oral questioning) carried out by the Attorney General in the Star Chamber rather than the more usual submission of all complaints and answers in writing:

There was much objection to the *ore tenus* procedure even then, and various safeguards were thrown around it. It is not hard to see that it was likely to lead to abuses[...] A man suddenly arrested and privately and skilfully examined, overwrought, and perhaps entrapped into an unintentional and injudicious confession, then retained in the custody of a pursuivant until he was brought, without counsel, into the presence of the most dignified persons of the kingdom, was but ill provided with even such poor protection as the practice of the common-law courts then gave to a culprit'. (Cheyney, 1913, 740-41)

The kind of word play Rogero indulges in returns to the idea of swordplay that Herrup associates with both the theatre and the courtroom (1999, 55), once again explicitly connecting these two forums for debate. Moreover, Depazzi's confession

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<sup>35</sup> In the same way that the earlier accusation of atheism was reminiscent of the Castlehaven trial, so here is the impossibility of being an accessory to particular crimes: all parties were tried as principals in cases of rape and sodomy (Herrup, 1999, 26).

that he knew of treason not only confirms that he is guilty, but gives the prosecutor the opportunity to prevent him giving any further defence:

Dep: Shall I not speake?

Ro: No, traitors must not be sufferd to speake, for when they have leave, they have liberty, and hee that is a Traitor deserveth to bee close Prisoner.

[...]

Ro: I defie al the world that wil heare a Traitor speak, for himselfe, tis against the Law which provids that no man shal defend treason, and he that speakes for him being a Traitor, doth defend his treason, thou art a Capitall obstreperous malefactor. (*Traytor*, sig. E4r)

Although traitors were usually allowed to speak for themselves at trial – C. G. L. Du Cann suggests that Wentworth’s ‘stubborn fight and his final great speech in his own defence’ might have saved him by a vote of his peers (1964, 141) – Rogero’s comment reflects upon a common contemporary argument: those accused of treason (and other felonies) were thought to have no defence, and so were not allowed to consult lawyers for their defence in point of fact, although lawyers were usually allowed for difficult points in law (Herrup, 1999, 55).

The adversarial nature of Depazzi’s acted trial is highlighted when compared with the treason trial in Shirley’s *The Doubtful Heir* (1640). This is not an imagined trial; Ferdinand is on trial for his life having invaded the kingdom claiming to be the rightful king. Ferdinand is allowed to defend himself at trial, although it is made clear that this is a favour bestowed by the Queen not a right:

Although the Queen in her own Royal power,  
And without violating Sacred Justice, where  
Treason comes to invade her, and her Crown  
With open war, need not insist upon  
The Forms, and Circumstance of Law, but use  
Her sword in present execution;  
Yet such is the sweet temper of her blood,

And calmness of her Nature, though provok'd  
 Ino [*sic*] a storm, unto the great'st offender  
 She shuts up no defence, willing to give  
 A satisfaction to the world how much  
 She doth delight in mercy. (*The Doubtful Heir*, sig. C3r)

Whilst Ferdinand's crime is mentioned here, the emphasis is placed upon the Queen's goodness ('sweet temper', 'calmness', 'mercy') and her acceptance of the forms and processes of law despite having no compulsion to do so. It is in fact a demonstration of her mercy that she allows Ferdinand to speak. Later, as if to confirm this image of her justice, Olivia prevents her counsellors from interrupting his defence:

Ferd[inand]: I am *Ferdinand*,  
 And you the fair *Olivia*, brothers children.

Leon[ario]: What insolence is this?

Qu[een]: Oh my Lord, let him  
 Be free to plead; for if it be no dream,  
 His cause wil want an Orator: By my blood,  
 He does talk bravely. (*Doubtful Heir*, sig. C3v)

In this, and the earlier emphasis placed upon her goodness, Shirley presents an idealised image of a just ruler who is prepared to hear arguments on both sides, despite the attack Ferdinand makes on her throne. Her decision to pardon him after hearing him speak, despite her courtiers' 'officious' attempts to have him executed (*Doubtful Heir*, sig. C5r), could be seen as Providential preservation of the rightful monarch, as Ferdinand is in fact the true king, not a pretender to the throne.

Shirley can, therefore, allow the 'traitor' of *The Doubtful Heir* to be pardoned; he has committed no offence. Depazzi, however, who has really conspired to commit treason, escapes execution at this point only because he pleads

to an imagined judge, against a performing prosecutor, and thus can easily bring his trial to an end:

Ro: Hold, hold good my Lord, I am sensible, I ha done, imagine, I ha done, I but obeyd your Lordship, whose batoone I finde stronger then my imagination, my Lord you will answer this to stricke i'th Court thus?

Dep: I Am as wearie ---- harke *Rogero* *Knockes*  
one knocks, see, see thers to make thee amends see good *Rogero*, and say nothing pray heaven it be no pursevant. (*Traytor*, sig. E4r)

Rogero's effortless list of possible criminal activities, and the comedy of his almost plaintiff admission that the 'batoone' is stronger than his imagination, draws the audience's attention away from the potentially serious prosecution Depazzi could face. The beating Depazzi administers to end the trial echoes that which he threatened if Rogero did not 'imagine at [his] bidding' (*Traytor*, sig. E2v), and this, with the emphasis on imagination in Rogero's asking him to stop, highlights that this is only a pretend trial. Rogero's question, 'will you answer this to stricke i'th Court thus', reminds the audience that such an end to the trial – beating the prosecutor – would be impossible were he really indicted for treason against the Duke, just as Depazzi's fear of the imminent appearance of a pursuivant and his need to bribe Rogero to silence illustrates the seriousness of his crime and the trial and execution which would await him.<sup>36</sup>

Unusually for trial scenes, there is no character on stage for Depazzi's trial playing a Judge. Without interjections from a 'judge' the theatre audience are,

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<sup>36</sup> The possibility that this fake trial will be interrupted by the appearance of a pursuivant is made more likely in the theatrical heritage of the scene: Harry and Falstaff's interview in Act II of *Henry IV Part 1* is interrupted by a sheriff who wants to arrest Falstaff for stealing gold. For Falstaff this threat of the law is avoided because Harry first lies for him to send the Sheriff away, and then returns the gold to its rightful owner; Depazzi recants his treachery in fear for his life and pays Lorenzo half the price again of the office he had bought, hoping by doing so to 'induce your Lordship to dismissee mee' and 'have my Lordships good will' (*Traytor*, sig. H1v).

perhaps, given more freedom to give their own comment on the activities and procedures of the trial, but the absence of a justice figure may suggest that this trial scene, unlike the trials of Paris, Spinella and the gentleman / merchant, does not comment on the judicial authority. However, Depazzi does make sure that Judges are at least represented in his staged trial: ‘conceive I prithee, that these chaires were Judges most grave and venerable beards and faces at my arraignment’ (*Traytor*, sig. E2v). The vague description of ‘venerable beards and faces’ suggests that not only are the Judges potentially indistinguishable one from another, but that there is little substance behind their venerable appearance, something confirmed by the fact that the accused and prosecutor in this trial make their addresses to empty chairs. Rogero’s deference to ‘the most understanding seates of Justice: most wise, most honourable, and most incorrupt Judges’ (*Traytor*, sig. E3r) is not only comic – they are quite literally ‘seates’ and no more – but also potentially critical: the only wise, honourable and incorrupt seats of justice in a play so full of plotting, deception, and corruption are the empty ones.

### **Absent Judges and Legal Authority**

The empty seats of justice in *The Traytor*’s trial scene is the most obvious representation of the destabilisation of legal authority explored in all of the trial scenes examined in this chapter. Although the absolute authority of Domitian as Emperor is maintained despite the Senate’s attempt to convict his favourite in his absence (suggesting an already divided authority), from this point, figures of legitimate judicial authority come to be divided, undermined, questioned and,

ultimately, absent in the trial scenes of Caroline drama. Auria's authority is brought into question by his unnecessary exercise of it, and the absolutism of patriarchal law is undermined by Aurelio's rash assumptions about Spinella's virtue; Byplay's judgement is questioned as potentially corrupt but also illustrates the divided loyalties and impossible position of those who are at once an independent legal authority and subject to the King; Olivia's trial of Frederick undermines legitimate authority as it is he, not she, who is the real monarch, and Depazzi's incorrupt, venerable judges are completely absent in the corrupt royal court in which the Duke or Prince's word is enforceable law. In place of these absent figures of legal authority, the theatre audience is invited to be judge not only of the plays and the social and cultural topics debated in them, but also, in the exploration of the use and abuse of authority each play presents, to consider the foundation and legitimate exercise of legal authority itself.

## Conclusion

In 1634, *The Triumph of Peace* was presented at court. Although it is a masque, and not a play of the commercial theatre, it would be a significant omission in a thesis concerned with the theatrical representations of legal authority under Charles I if this masque did not receive some consideration. Written by James Shirley, writer for the Queen's acting company at the Cockpit, *The Triumph of Peace* was unusual in being presented not by the King to the Queen or the Queen to the King, but by the gentlemen of all four Inns of Court. The men learned in the law were addressing the king on the topic of law and prerogative.<sup>1</sup> The lawyers staged a public procession through from Holbourne to Whitehall, enacting the Triumph of the masque's title. The use of triumphal iconography is not unusual for the period;

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<sup>1</sup> There is some debate over the reasons for the presentation of the masque. The records of the Middle Temple in October 1633 suggest that the original pretext for the masque was the birth of the Duke of York; those of the Inner Temple claim it is because there has been 'no representation of any mask or show before the King's Majesty by the four Inns of Court or any of them sithens his Highness' access unto the Crown' (*JCS*, V.1155). However, the most commonly understood reason for producing the masque is the need for a declaration of loyalty by the Inns of Court after the publication of William Prynne's *Histriomastix*, which condemned all plays and revels as inherently sinful (*passim*) and described women actors as 'notorious whores' in its Index. Prynne was a member of Lincoln's Inn at the time of the publication, and had dedicated the book to the 'masters of the bench' at Lincoln's Inn, and to the students of all four Inns of Court. The royal court took great offence; dramatic entertainment played a large part in court life and the Queen frequently acted in court theatricals, and *Histriomastix* was understood to be directly critical of royal activities.

indeed, it borrows the imperial, triumphal iconography of Charles' court. Charles himself had previously danced as a conquering King in Aurelian Townshend's *Albion's Triumph* (1632) in which a Roman Triumph was recreated at Whitehall. This association between Charles and Imperial iconography, and his peaceful reign, allows the understanding that the 'Peace' of the title refers to Charles' personal rule.<sup>2</sup> However, as is clear from Shirley's description of the masque, it was not Charles who rode in triumph through London, nor was it the masquer representing Irene (Peace), but rather the lawyers of the Inns of Court. Already, then, tension is presented between the King's prerogative law and the lawyers as representatives of established law.<sup>3</sup> After a series of antimasques presenting the 'effects / Of peace' (*Triumph of Peace*, sig. B3r) which include Projectors, tavern activities, and beggars who drop their crutches and dance once they have been given money by a gentleman, Irene (Peace) descends, chasing away the disorderly figures, who significantly are connected with aspects of prerogative rule, and the main masque, which presents a more harmonious relationship between the king and the law proceeds.

Irene wonders at the delay of her sisters' arrival, and appeals for Eunomia (Law) to arrive because: 'I'm lost with them / That know not how to order me'.<sup>4</sup>

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<sup>2</sup> Orgel and Strong argue that as the personal rule had been underway for several years, the peace may be recognised as the King's peace. The architecture of the backdrop to the first scene of the masque too, they suggest, is, to its designer Inigo Jones, representative of the King's Peace (1973, pp. 65 and 39)

<sup>3</sup> In Chapman's *Memorable Masque*, another masque which processed through London, Eunomia appears as the 'virgin priest of the Goddess Honour' (*Memorable Masque* l. 76). Eunomia as Law, in this Jacobean masque, is important in moderating access to honour, 'since none should dare access to Honour, but by Virtue; of which Law being the rule, must needs be a chief' (*Memorable Masque* ll.170-171), but law does not have the same independent status as it is allowed in *The Triumph of Peace*.

<sup>4</sup> Contrary to Venuti's argument (1986, .202-3), there is no reason to see Eunomia as symbolic of parliamentary rule in this masque. It is clear, in both the antimasques and the main masque, that *The Triumph of Peace* is concerned with issues of law and prerogative rather than parliamentary



Eunomia descends, claiming she could not have been absent for this night, but compliments Irene for her gentleness in inviting her sister, Law, to join her (*Triumph*, sig. C3r). This presents an ideal relationship between the King's peace in which, despite the fact the law *should* accompany prerogative, the courtesy of the invitation highlights the King's graciousness. This ideal is emphasised as Eunomia and Irene proceed to compliment one another, each trying to give the other precedence:

Irene: Thou dost beautifie increase,  
And chain security with peace.

Eunomia: Irene fair, and first divine,  
All my blessings spring from thine.

Irene: I am but wilde without thee. (*Triumph*, sig. C3v).

It is clear that peace can only be secure with the help of law, but the blessings of law cannot flourish without peace. Eunomia's reference to Irene being 'first divine' may also be a compliment to Charles, commenting upon the divine status of kingship. Eunomia and Irene end this discussion with an announcement of their perfect harmony:

The world shall give prerogative to neyther.  
Wee cannot flourish but together.  
(*Triumph*, sig. C3v).

The use of the language of the personal rule to allow equal importance to Peace and Law does not deny Charles the possibility of prerogative; it does, however,

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government. Eunomia does appear as Parliamentary rule in the Anonymous *Tragedy of the Cruell Warre*, which is modelled closely on *The Triumph of Peace*. This pamphlet is an appeal for cooperation between the King and Parliament in order to bring an end to the Civil War. This re-telling of *The Triumph of Peace* foregrounds the emphasis placed on harmony in this masque.

emphasise that prerogative must work in harmony with law if peace is to produce, as it should, a ‘golden harvest’ (*Triumph*, sig. C3v).<sup>5</sup>

Significantly, it is not until Irene and Eunomia have agreed upon this harmonious union that Dice, Justice, can descend. In this way, the masque instructs Charles that his reign, however peaceful, can only be just if his prerogative exists in a harmonious relationship with law. Kevin Sharpe argues that this part of the masque reveals that there can be no peace without law and justice (Sharpe, 1990, 219). However, the order of the goddesses’ appearances and the association of Peace with Charles’ personal rule suggest a movement in the masque towards a greater sense of justice, rather than specifically towards a more stable peace. For this reason, it is significant that Dice addresses her sister as ‘*chast* Eunomia’ (sig. C4r). If law is to be just, she must be no one’s mistress.

During her descent, Dice comments that her sisters have ‘forsaken Heaven’s bright gate, / To attend another state / Of gods below’ (*Triumph*, sig C4r), giving overt praise to Charles and Henrietta Maria, whom the sisters recognise as Jove and Themis, parents of the Hours and the figures of Divine Power and Divine Law. In these roles, the union of the royal couple represents the union of prerogative and law (Butler, 1987, 132) and once again the emphasis is upon their ‘chaste’ union (*Triumph*, C4v), suggesting that prerogative power, although divine, must be joined harmoniously with law if there is to be justice.<sup>6</sup> For a moment, the King and Queen

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<sup>5</sup> In his dedicatory epistle to Queen Elizabeth in *The Elements of the Common Lawes of England*, Francis Bacon also comments on the necessary union of peace and law, claiming that the Queen is the ‘life of our lawes... because you are the life of our peace, without which lawes are put to silence’ (Bacon, 1630, sig. A2r).

<sup>6</sup> Cf. Butler, 1987, 132. *Coelum Britannicum*, to which gentlemen of the Inns were invited in gratitude for the performance of *The Triumph of Peace*, refers to the image of Charles and Henrietta

become central to the masque's action, as the Genius draws their attention to the masquers from the Inns of Court, and comments that their attention animates the 'sons of Peace, Law and Justice' (*Triumph*, sig. D1r):

No forraigne persons I make knowne  
 But here present you with your owne,  
 The Children of your Raign, not blood;  
 [...]  
 O smile on what your selves have made,  
 There have no forme, no sunne, no shade,  
 But what your vertue doth create,  
 [...]  
 That very looke into each eye  
 Hath shot a soul, I saw it fly. (*Triumph*, sig D1v)

In describing the lawyers as the children of Charles' reign, Shirley again presents an idealised relationship between the King and the law; the lawyers should not be 'forraigne' to Charles' rule. The invitation to the monarch to look and smile on the lawyers allows Charles to participate in the masque in animating their dance, but also realises the notion that the king must acknowledge the law and lawyers to create the harmonious union of the court and Inns which follows later in the revels. Significantly, the king's recognition of the lawyers makes the Hours (Peace, Law and Justice) happy (*Triumph*, sig. D1v-D2r).

This renewed harmony between the court and law is, however, disrupted by a strange sound behind the scenes as 'a cracke is heard in the workes, as if there were some danger by some piece of the Machines falling' (*Triumph*, sig D2r); the

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Maria's chaste marriage as an ideal which the gods are emulating in the heavens in their reforms begun in order to match the virtue of Charles' court. It is particularly noteworthy that Carew too uses this image in reference to law, claiming that as Jupiter is not only commanding chastity and marital fidelity, but maintaining this himself, 'there is no doubt of an universal obedience, where the Lawgiver himself in his own person observes his decrees so punctually' (*Coelum Britannicum*, ll. 243-245). In claiming that the gods are imitating Charles' court, thus praising the King through idealising his actions, Carew also comments on an ideal situation in which the King does follow his own laws. A King who expects his subject to be obedient to law needs to obey it himself.

illusory world of the masque, for a moment, seems as if it will literally come crashing down. This is, however, followed by the ungainly and comic appearance of a group of craftsmen and their wives who, having participated in creating the masque, now insist on being able to watch it:

Painter: I, come, be resolute, we know the worst, and let us challenge a privelledge, those stairs were of my painting.

Carpenter: And that Timber I set up: some body is my witness.  
(*Triumph*, sig. D3r)

The language of their complaint is significant as it is the language of prerogative. Their contribution to the creation of the masque gives them a right ('privelledge') to be present at the performance, but their unexpected presence also challenges the privileged exclusivity of the invited audience, their (mis)use of the language of privilege also suggests a challenge to the King's prerogative over law. The point at which this disruption occurs is also significant as it reminds the audience that, although in the world of the masque the relationship between the King and lawyers has been idealised and as such has made Peace, Law and Justice happy, the masque is only a performance, engineered through machinery and costume. In the practical world outside the masque, this ideal relationship must also be realised and practised. Understanding that the masque will not continue while they remain in the hall, the craftsmen and their wives decide to 'dance a figary' themselves so that the audience will think they are another antimasque, and they can avoid punishment for their intrusion ('we may else kisse the Porter's lodge for 't') (*Triumph*, D3r). Order then is restored and the masquers of the Inns are encouraged to take the ladies of the court to dance. The contrast in grace and order between the craftsmen's 'figary' and the courtly dancing highlights the difference between a country ordered by law and one in which the language of 'privilege' is misused.

In accordance with the order promulgated by the masque, the revels come to an end with the arrival of the morning in the figure of Amphiluche. Sharpe suggests that this indicates that the invasion of her ‘unwelcome light’ (*Triumph*, sig. D3v) brings about the realisation that ‘reality, the outside world, must dawn’ (Sharpe, 1990, 220). Thus Amphiluche continues the negotiation between real and ideal instigated by the craftsmen’s intrusion. However, her appearance also presents the lawyers’ hope that the real and ideal may now begin to coincide; Amphiluche is ‘that glimpse of the light which is seen when the night is past, and the day is not yet appearing’ (*Triumph*, sig. D3v). As much as *The Triumph of Peace* comments upon the problems with Charles’ personal rule in relation to law by presenting an idealised relationship between Peace and Law, the monarch and the masquers, it also anticipates a more constructive relationship between the lawyers and the king in the future.

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The harmony presented, however tentatively, between the monarch and the lawyers, the prerogative and the law in *The Triumph of Peace* is increasingly absent from drama of the commercial theatre. Charles I’s attempts to gain greater and tighter control over the laws of the kingdom, asserting himself as the highest legal authority, led to an increased emphasis on the legitimacy of the common law as an alternative to the king’s will as law. Such assertions, drama of the period suggests,

bring about conflict between the king, the law, and local governors which culminates in the destabilisation, fragmentation and potentially, the disintegration of any legitimate legal authority.

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## Appendix

### **The Dating of *The Love-sick Court* c.1626-1640**

The date of Richard Brome's *The Love-sick Court* has been the most heavily debated of all the plays discussed in this thesis. Most recent criticism agrees that the play was probably composed in the 1630s.

However, Elizabeth Cook posits an early date of 1626, suggesting it was possibly the play licensed as *The Brothers* on 4 November 1626 and wrongly ascribed to Shirley (1947, 286). C. E. Andrews gives 1629 as a possible date based on Fleay's dating (Andrews, 1981, 35). Gerald Bentley, however, suggests that Fleay's decision to date the play to 1629 is based on nothing more than the similarity of its title to another of Brome's plays, *The Love-sick Maid*, licensed in February 1628/9. Bentley himself gives the wide range of dates 1632-1640 (*JCS*. III.77). Although Andrews' argument that a potential source for the play (John Barclay's *Argenis*) was printed in English in 1629 lends support to a date of circa 1629, *Argenis* was also printed in English in 1625, 1628 and 1636, so this source potentially provides evidence for all of the possible dates I discuss here. The currently accepted view of the play is that it is a parody of courtly drama of the 1630s. Martin Butler suggests it was written in the mid 1630s, because *The Love-sick Court* parodies a strain of tragicomedy being exploited in the mid decade by Davenant, Montagu and Carlell (Butler, 1984, 268). For similar reasons, Catherine Shaw suggests a date of 1638

(Shaw, 1980, 29, 118-9), and Matthew Steggle suggests a date between 1637 and 1639 (Steggle, 2004, 11, 137-141). I would also suggest that the play's reference to Tempe points towards a date of, or after, 1632 when the masque *Tempe Restored* was performed at court. Dating the play in the early-mid 1630s would not negate my reading of the play in relation to the Petition of Right, as the issues of prerogative it involved were still current, and the political resonance of the Petition itself continued throughout the period. For example, L. J. Reeve notes that the Petition was often cited in John Hampden's case in the Exchequer Chamber in 1637 and 1638 regarding his obligation to pay ship money (Reeve, 1986, 261).