Spenser's Legal Language

LAW AND POETRY IN EARLY MODERN ENGLAND

Andrew Zurcher

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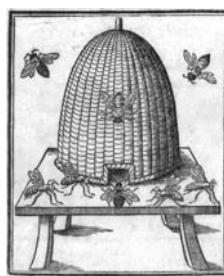
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Item finis huius rei est ut sopiantur iurgia vitia propulsentur, et ut in regno conservetur pax et iustitia. Ethicae vero supponitur quasi morali scientiae quia tractat de moribus.

William de Bracton, *De legibus et consuetudinibus Angliae*

If the wife be deliuered of a Monster which hath not the shape of mankinde, this is no issue in the Law, but although the issue hath some deformity in any part of his body, yet if he hath humane shape this sufficeth.

Sir Edward Coke, *The first part of the Institutes of the Lawes of England*

ACKNOWLEDGMENTS

Acknowledgments

ABBREVIATIONS AND CONVENTIONS

List of Abbreviations

Baker, *IELH*   J. H. Baker, *An Introduction to English Legal History*, 4th edn (London: Butterworths, 2002).

Baker, *LPCL*   J. H. Baker, *The Legal Profession and the Common Law: Historical Essays* (London: Hambledon, 1986).

Baker and Milsom, *SELH*   J. H. Baker and S. F. C. Milsom, eds, *Sources of English Legal History: Private Law to 1750* (London: Butterworths, 1986).

Bracton, *De legibus*   Henry de Bracton, *De legibus et consuetudinibus Angliae* [*On the Laws and Customs of England*], trans. G. E. Woodbine, ed. Samuel E. Thorne, 4 vols (Cambridge: Belknap Press for the Selden Society, 1968).

BL   British Library, London.

CCCHA   *Colin Clouts Come Home Againe*

CCM   *Calendar of the Carew Manuscripts Preserved in the Archiepiscopal Library at Lambeth*, 6 vols (London: HMSO, 1867–73).

CHRP   *The Cambridge History of Renaissance Philosophy*, ed. Charles B. Schmitt et al. (Cambridge: Cambridge University Press, 1988).

Coke, *Institutes I*   Sir Edward Coke, *The First Part of the Institutes of the Lawes of England* (London: John Jaggard, 1628).

Cowell, *Interpreter*   John Cowell, *The Interpreter: or booke containing the signification of words: of all, or the most part of such words and termes, as are mentioned in the lawe writers, or statutes* (Cambridge: J. Legate, 1607; facsimile repr. Menston: Scolar Press, 1972).

CSPI   *Calendar of the state papers relating to Ireland, 1509–1670*, 24 vols (London: HMSO, 1860–1912).

Fiants   Kenneth W. Nicholls, ed., *The Irish Fiants of the Tudor Sovereigns During the Reigns of Henry VIII, Edward VI, Philip & Mary, and Elizabeth I* (Dublin: Edmund Burke, 1994).

FQ   *The Faerie Queene. Disposed into twelue bookes, Fashioning XII. Morall vertues.*

Hamilton	Edmund Spenser, *The Faerie Queene*, ed. A. C. Hamilton, 2nd edn (London: Longman, 2001).
HB	*An Hymne in Honour of Beautie*
Hughes and Larkin	Paul L. Hughes and James F. Larkin, eds, *Tudor Royal Proclamations*, 2 vols (New Haven: Yale University Press, 1964).
MED	Hans Kurath et al., eds, *Middle English Dictionary* (Ann Arbor: University of Michigan Press, 1952–).
MHT	*Mother Hubberds Tale*
MLF	J. H. Baker, *A Manual of Law French*, 2nd edn (Menston: Scolar Press, 1990).
OED	*Oxford English Dictionary*, 2nd edn (Oxford: Oxford University Press, 2006).
NA (PRO)	National Archives (formerly the Public Record Office), Kew, London.
ODNB	*Oxford Dictionary of National Biography* (Oxford: Oxford University Press, 2004–07).
Rastell, *An exposition*	John Rastell, *An exposition of certaine difficult and obscure words, and termes of the lawes of this Realme, newly set foorth and augmented, both in french and English, for the helpe of such younge students as are desirous to attaine the knowledge of the same. Whereunto are also added the olde Tenures* (London: Richard Tottel, 1579).
Rastell, *Statutes*	William Rastell, *A colleccion of all the statutes. Whereunto are added the statutes made in the xxxix. yere of Elizabeth* (London: T. White and Bonham Norton, 1598).
RR	*Ruines of Rome*
RT	*The Ruines of Time*
SC	*The Shepheardes Calender*
SE	A. C. Hamilton et al., eds, *The Spenser Encyclopedia* (Toronto: University of Toronto Press, 1990).
The Statutes at Large	*The Statutes at Large*, 2 vols (London: Bonham Norton and John Bill, 1618).
STC	A. W. Pollard and G. R. Redgrave, *A short-title catalogue of books printed in England, Scotland, & Ireland and of English books printed abroad, 1475–1640*, 2nd edn (London: Bibliographical Society, 1976–91).
Termes de la Ley	*Les Termes de la Ley: Or, Certain difficult and obscure Words and Terms of the Common Lawes and Statutes of this Realm now in use expounded and explained* (London: J. Streater for the Company of Stationers, 1659).

Variorum	Edmund Spenser, *The Works of Edmund Spenser, A Variorum Edition*, ed. Edwin Greenlaw, Charles C. Osgood, Frederick M. Padelford, et al., 11 vols (Baltimore: Johns Hopkins Press, 1932–58).
A view	*A view of the present state of Ireland, in Variorum*, X: *The Prose Works*, ed. Rudolph Gottfried, pp. 43–231.
VG	*Virgils Gnat*

Journal Title Abbreviations

ANQ	*American Notes & Queries*
HLQ	*Huntington Library Quarterly*
MLR	*Modern Language Review*
PMLA	*Publications of the Modern Language Association of America*
PQ	*Philological Quarterly*
RES	*Review of English Studies*
RS	*Renaissance Studies*
SEL	*Studies in English Literature 1500–1900*
SP	*Studies in Philology*
SS	*Spenser Studies*

Conventions of citation

Spenser's poetic works are cited by title and line number from *Variorum*. References of the form (X.y.z) are to *The Faerie Queene* by book, canto, and stanza number, and appear parenthetically in the text. References to *The Shepheardes Calender* (*SC*) are by month and line number. Spenser's prose works, and those of E. K. and Gabriel Harvey associated with them in the *Variorum* edition, are cited in the standard way by *Variorum* title, volume number, and page number. All references to 'A Letter of the Authors . . . to Sir Walter Raleigh', to *A view of the present state of Ireland*, and to Spenser's other prose works are to the *Variorum* edition and are cited by the page number of the relevant volume only.

Statutes are cited by the conventional system: 23 H. 8 cap. 9 refers to the ninth chapter of the statute enacted in the twenty-third year of Henry VIII. Where Parliament issued more than one statute in a given regnal year, the abbreviation 'St.' for 'Statute' is used.

Chapter 1

INTRODUCTION:
READING SPENSER'S LANGUAGE

ARCHIMAGO, the Enchanter plotting to separate the knight of the Redcrosse from his companion, Una, has already by Book I, canto ii of *The Faerie Queene* made a first attempt. Summoning a dream from hell, and joining to it the manage of a 'faire-forged Spright', he has toiled Redcrosse's brain with a vision of Una's wantonness, but to no effect. Remarshalling his powers, he creates of the same dream and spirit a waking vision, to which, arousing Redcrosse from his bed, he urges him. The three stanzas in which Spenser narrates this seminal event provide a representative example of the poet's total mastery of his poetic language:

> Forthwith he runnes with feigned faithfull hast
>   Vnto his guest, who after troublous sights
>   And dreames gan now to take more sound repast,
>   Whom suddenly he wakes with fearful frights,
>   As one aghast with feends or damned sprights,
>   And to him cals, Rise rise vnhappy Swaine,
>   That here wex old in sleepe, whiles wicked wights
>   Haue knit themselues in *Venus* shameful chaine;
> Come see, where your false Lady doth her honor staine.
>
> All in amaze he suddenly vp start
>   With sword in hand, and with the old man went;
>   Who soone him brought into a secret part,
>   Where that false couple were full closely ment
>   In wanton lust and leud embracement:
>   Which when he saw, he burnt with gealous fire,
>   The eie of reason was with rage yblent,
>   And would haue slaine them in his furious ire,
> But hardly was restreined of that aged sire.
>
> Retourning to his bed in torment great,
>   And bitter anguish of his guilty sight,
>   He could not rest, but did his stout heart eat,

> And wast his inward gall with deepe despight,
> Yrkesome of life, and too long lingring night.
> At last faire *Hesperus* in highest skie
> Had spent his lampe, and brought forth dawning light,
> Then vp he rose, and clad him hastily;
> he dwarfe him brought his steed: so both away do fly. (*FQ* I.ii.4–6)

Even a careless reader will note with pleasure the dense use of alliteration, the syntactical confusion, and the insistent use of repetition by which Spenser's language mirrors the urgent discombobulation of rousing Redcrosse from his troubled sleep; but closer attention to this poet's diction, and the way it is deployed, yields only further consistencies between matter and form. 'Repast', for example, might stand out in the first of these stanzas as an odd choice. It usually means something like 'refreshment', and might here be thought extensible to 'repose', and yet its etymological root in Latin *pascere*, 'to feed' (which also produces words like 'pasture', something a past-oral poet like Spenser would have known well), insists on associations with feeding, eating, banqueting. Spenser's use of the word sets up a parallel between tranquillity and peaceful feeding that is not resolved until the end of the quoted passage, where the knight, now disturbed, 'did his stout heart eat', wasting 'his inward gall with deepe despight'. In a temporally inverted causation characteristic of a passage rife with such contortions of consequence, Redcrosse's ultimately 'self-consuming' anxiety makes him, as early as stanza 4, a feeder; throughout the passage, we come to realize, he has been prone to 'rumination'. That the etymology of 'anguish' (from Latin *anguere*, 'to choke, strangle', via Old French *anguisse*, 'choking') and the semantic field of 'torment' (which includes, during the early modern period, 'a griping or wringing pain in the bowels', later called *tormina*) further link Redcrosse's mental distress to eating and digestion only compounds these repeated associations.

The minute attention to etymology, semantics, and syntax continues in the fifth stanza. When Redcrosse 'suddenly' awakes, his suddenness echoes that of Archimago in the previous stanza ('Whom suddenly he wakes . . .'), both collapsing the temporal interval between the two usages, and transferring Archimago's suddenness successfully to his victim. This is particularly crucial because, as Spenser and his Latinate readers would well have known, the adverb 'suddenly' derives originally from Latin *subitus*, from *subire*, 'to come or go stealthily'. 'Sudden' and 'suddenly' are, of course, fairly common words frequently appearing in *The Faerie Queene*, but, by this point in the poem, Spenser has only used 'suddenly' twice before – in the first canto (I.i.18 and I.i.24), in precisely the same kind of mirroring exchange as here. There Redcrosse's suddenness answered – and was contaminated by – that of Errour's 'huge traine', where here his suddenness again answers, and is contaminated by, the similarly craftily abrupt intrusion of Archimago. The doubly temporal play in which this suddenness engages the reader – referring her back to Archimago's wily waking, as well as to Errour's subtle enfolding –

is aptly collocated, in stanza 5, with 'amaze' (or 'a maze'), and brilliantly plays to the syntactical inversion of the stanza's first line, which in a less tortuous moment might have read, 'he suddenly start(ed) up all in amaze'. The way in which suddenness is handed from Errour to Redcrosse in canto i, and from Archimago to Redcrosse in canto ii, also creates the rhetorical structure from which depends the repeated use throughout this passage of (sometimes quasi-) transferred epithet ('troublous sights', 'fearful frights', 'gealous fire', 'furious ire', 'guilty sight'), a kind of hypallage peculiarly suited to the symbolic (or material) psychology of Spenserian allegory.

Pressing further, the reader might note the abrupt apocope of 'vp start', that by dropping the preterite ending 'ed' simulates Redcrosse's sudden awakening; the grammatical confusion here – 'vpstart' was often used as a noun in this period, and seems suspiciously appropriate for the only 'younker knight' of the poem – is echoed by the similarly ambiguous 'couple' of line four, which is pulled toward a verbal use by the verb's relevant sexual meaning. And lest the reader think the apocope of 'start' a fudge to fit the metre, it is carefully prepared by that of 'amaze' itself, which wants the expected final syllable 'ment'. Curiously, this final syllable belatedly appears in line four, as if, rather than omitting the conclusion of the word, Spenser simply suspended it. As a lexeme, 'ment' has always presented a stumbling block for editors. Most, like A. C. Hamilton, take it to mean something like 'joined together, knit in sexual intercourse', a reading perhaps suggested by the brokerage of 'implied', itself a substitute for 'meant'; and it may well have been one of Spenser's intentions here to provoke that kind of metaleptic ratiocination. But 'ment' also beautifully completes the suspended 'amaze', which begins in being roused roughly from sleep, and ends, with a slap, in Redcrosse's realization of his earlier dream, as he (thinks he) finds Una entangled in the 'embrace-ments' of a lewd squire. 'Realization', too, may play its part in this especially inspired bit of diction: the suffix -*ment*, as Spenser would demonstrate in the subsequent use of 'embracement', turns a verb into a noun, reifying a verbal action as a state. The experience of 'coming to', perhaps, is precisely this process of 'getting a handle on things', of turning something fluid and inchoate into something that can be named, assimilated, acted upon: 'which when he saw . . .'. The pain of this realization is given particular point by its situation in the only couplet ('couple') of the Spenserian stanza, where the two-ness of 'couple' leads inexorably to the sexual union of 'embracement', which the scansion ensures the reader takes in its lewd, French sense, and which, as if in a parting blow, gives Redcrosse a glimpse, with the jealous exactness of the betrayed eye, of 'cement'.[1]

With this dense and exhilarating wordplay in hand, line seven of the fifth

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[1] See Donne's 'The Extasie' for the bawdy pun on 'cement', occasioned in the sixteenth century by the association, through the common spelling 'sement', with 'semen'.

stanza comes as a thrilling shock. First of all, the whole line is syntactically inconsistent with the rest of the sentence. The subject of 'saw' in line six, of 'would haue slaine' in line eight, and of 'was restrained' in line nine, is 'he'; whereas the subject of the intervening clause in line six is 'the eie of reason'. The infelicity of this shift of subject only becomes apparent, again retrospectively, in line eight, directly after the reader's encounter with yet another inscrutable Spenserism, 'yblent'. Hamilton, with no discussion, glosses this affectedly archaic past participle as 'blinded', a reading consistent with Spenser's use of the same word in contexts like 'Aprill' of *The Shepheardes Calender*, where Thenot laments of Colin, 'Ah foolish boy, that is with loue yblent' (and here E. K. glosses the word with 'Y, is a poeticall addition. blent blinded'). Indeed, Spenser's use of the word in canto ii of Book I of *The Faerie Queene* might be thought to imitate Chaucer, his ultimate source, very directly in the Miller's Tale, where Absolon is nearly 'yblent' by the 'thonder-dent' of Nicholas's fart. But Spenser, like Chaucer, also uses 'blend' in its other sense, to mean something like 'to stir up, confound, agitate, trouble', as in *Amoretti* 62:

> Then shall the new yeares joy forth freshly send
> into the glooming world his gladsome ray:
> and all these stormes which now his beauty blend,
> shall turn to caulmes and tymely cleare away. (ll. 9–12)

Similarly, in *Mother Hubberds Tale*, Mercury reproaches the lion toward the end of the poem for his criminal negligence, 'that here liest senseles'

> The whilste thy kingdome from thy head is rent,
> And thy throne royall with disohonour blent. (ll. 1329–30)

It seems likely that, without the aid of the *OED*, and the etymological and morphological researches that generated it, Spenser made no hard distinction between the two forms of 'blend', but considered it to be a verb that meant something like 'blinds by clouding', where the clouding was occasioned by agitation and contamination. When he uses the past-participle 'yblent' of Redcrosse, then, punning conspicuously on 'eie-blent', he probably expected the reader to see something not so limited as 'blinded', but rather 'clouded, fouled, blinded by agitation'. All of the many temporal, grammatical and semantic confusions of this passage (literally) culminate in this moment of extraordinary agitation, a culmination that a gloss like 'blinded' fails to register.

It should be obvious from the analysis of a short passage like this that Spenser was a poet who took his diction, and the ability of his readers to assimilate and understand that diction in all its nuance, seriously. The wordplay we have seen at work in the opening to canto ii of Book I depends on the reader's alertness to semantic ambiguity, to etymology (even of apparently familiar words), to colloquial and cant usages, to cognates in classical or continental

languages, and borrowings, to grammatical ambiguity, to the usages of earlier and contemporary poets, and to the supposedly simple matters of orthography and pronunciation. To register a full sense of the artistry of a passage like this one, an alert reader will need to call on all of this skill in words, constantly tracking and backtracking the development of sense as the verse is turned out. And yet these are not habits of reading stressed by modern editions of early modern English poets like Spenser, nor are they habits of reading exemplified in much of the criticism that is written about these poets today. Despite its many virtues, and its insistence on attention to Spenser's language, even so heavily annotated an edition of *The Faerie Queene* as that of A. C. Hamilton (1977, 2001) does not, plausibly cannot, and probably should not pause as profitably over words like 'suddenly', 'anxious', 'ment', and 'yblent' as we can suppose a poet like Spenser would have expected from his first readers.[2] Similarly, a scholarly critical reading of a passage such as this one – the kind of thing one might expect to find in a monograph on Spenser – will tend to ignore, or in the best case, assume, such base-level readings. For the sake of consistency, as an example one might take a short passage from the second chapter of

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[2] It might at first seem obvious that the interpretation of a rhetorically or conceptually complicated work should require studious application over time; and yet at the same time the apprehension of beauty or meaning in a text seems to occur in a vanishing moment, in the course of any single reading engagement. The experience of coming-to-know a text like *The Faerie Queene* – like that of coming-to-know any polyvalent and recursive text – must thus be one of successive layering of momentous apprehensions. This successive layering can take place if the reader invests time and effort, between readings, in the analysis of the constituent elements of the text; these sundry inquiries will themselves provoke proleptically the pleasures of a further reading, as the synthesizing intuition, stored with new information, interacts with the memory, but the real effect of synthesis will occur most pleasurably at the next reading. Becoming 'expert' in the reading of a particular poet like Spenser, then, is the process of assimilating the experience of reading to that of interpretation: when the interpretation occurs instantly – even if only *in potentia* – in the reader's mind during the course of a single engagement with the text, the sense of temporal synthesis (where the experience of times past and that of the present are gripped as in a handful) is physically delighting. (The transcendence of a historical moment in this synthesis of intellection is a staple of Neoplatonic thought, and is discussed in relation to law in Book 1, chapter 6 of Richard Hooker's *Of the Lawes of Ecclesiasticall Politie* (1593).) It is obvious that any significant text will afford this kind of pleasure, upon application; but the structure of romance allegory in a text like *The Faerie Queene*, as a narratively recursive text, provokes this kind of analysis by giving us intimations, by virtue of the repetition, of the pleasures that the analysis will afford. Just as the experience of study can occasion emergent pleasure by the interaction of learning with the memory, so the automatic syntheses occasioned by the reading of a recursive text will prime the reader to engage in the more pleasurable process of analysis, study, and recomposition. The temporal dislocation of the opening image of *The Faerie Queene* – in which Redcrosse, Una, and the dwarf are all captured instantly in the same visual frame, although they are travelling at different speeds – amounts effectively, among other things, to an allegory of this interpretative process: the reader's momentous apprehension of a text in any instant of reading collapses what are in fact independent and autonomous layers of interpretation, rooted in different conceptual and temporal spaces.

Hamilton's *The Structure of Allegory in* The Faerie Queene, an introduction to the poem for a generation of new student readers. Hamilton's important point, in handling the matter of Redcrosse's dream and subsequent vision, is to connect this episode with Prince Arthur's later revelation (in canto ix) that he, too, has been visited in the night by an amorous and ethereal lady; Hamilton recognizes that the false Una's claim to have left her father's kingdom for 'your owne deare sake' – rather than to find a knight who might achieve her parents' deliverance – blasphemously makes Truth the lackey to idolatry.[3] The connection with Arthur then serves to suggest that the pursuit of adventure for the sake of *kleos*, fame, is to be equated with Redcrosse's errant and idolatrous choice – a troubling reading of a poem that comes to seem deeply ambivalent about its own advertised intentions. But Hamilton's reading, because it does not recognize the verbal play in the passage in canto ii, also misses the way this anxiety is inscribed into the poem's representation of representation: the rearward connection with Errour, joined to the forward connection with Arthur, makes Archimago's attempts to delude Redcrosse sit at a hermeneutical nexus, the bond that ties errant reading to self-glorification; it suggests that a reader of both the earlier and the later passages must be alert, like Redcrosse in the middle passage, to the temporal, grammatical, and moral confusions that attend interpretative choice. In a poem as consistently self-reflexive as Spenser's, where every element of the allegory ultimately reflects back on, *inter alia*, the conditions of its own composition and interpretation, by ignoring the poem's verbal tissue we stand to lose not only a main medium of its meaning, but a fundamental one.

Readers might expect to be forgiven for letting slack a linguistically attentive scrupulousness in the interpretation of an allegorical, fabular poet like Spenser. S. K. Heninger, Jr. has argued that, when reading Spenser, a critic quickly transcends the verbal for the visual and conceptual, which, he argues, is the reason so few people can recall substantial passages of Spenser's verse – whereas almost anyone can reel off whole Hamlets-full of tragical speeches with comparative ease.[4] Spenser's verse seems to exert an allegorical pull away from language and toward the larger structures of meaning which these insignificant vestiges, these 'poor minims', encode. Even in the heyday of the New Criticism, during which years the academy might most have been expected to turn to Spenser with verbal vigour, Spenser's language lay comparatively neglected. C. S. Lewis gives a pretty good index of twentieth-century critical interest in Spenser's use of words, in his influential tabletop-treatise, *Studies in Words*; he cites Shakespeare's influence on, or usage of, his chosen terms about forty times, while Spenser turns up in the discussion only four

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3   See A. C. Hamilton, *The Structure of Allegory in* The Faerie Queene (Oxford: Clarendon Press, 1961), pp. 61–64.

4   See S. K. Heninger, Jr., 'Words and Meter in Spenser and Scaliger', *HLQ*, 50 (1987), 309–22.

times.[5] Certainly the readings of deconstructionist, post-structuralist, and particularly new historicist and feminist critics – all of them with well-painted chapels in a large church of Spenserian criticism – have tended to leave the study of Spenser's language *per se* to one side.

This inattention to Spenser's language conflicts with another received critical commonplace about Spenser's poetry – that his language is the most indispensably Spenserian element of his work. 'In affecting the ancients, Spenser writ no language', observed Ben Jonson in a curmudgeonly quip to be affixed, ever after, to Spenser's works; and modern readers have taken Spenser at Jonson's word, considering him to be a difficult, stylized, sometimes even pedantic poet, self-consciously obsessed with his literary positioning as the English Vergil, the heir to Chaucer and Langland. Spenser's fussy archaism – extended from diction (the selection of words) to orthography (the spelling of those words) – has subsequently also been adduced to the defence of old-spelling editions of his work, in a conservative campaign so successful that, alone among the works of any one of his contemporaries, his poetry and prose survive in modern editions entirely in the original spelling. Subtle academic readers congratulate themselves not only on their initiated capacity for understanding this spelling and this language, but on their determination to secure and protect it, as the evidence of a range of ideological affiliations and polemical poetic standards that Spenser was anxious to assert in his writing: his Protestantism, his nationalism, his factional and patronage connections, or his emphasis on decorum, to name but a few of these concerns. The marginalization of Spenser's writings in the university curriculum, with their almost total disappearance from mainstream literary culture – in a way that the works of other contemporary poets, from Shakespeare, Donne, and Milton, and even to some degree Chaucer, have resisted – has been considered a plausible or at least necessary price to pay for the preservation of Spenser's original, however difficult, diction and spelling. His language, the assumption runs, is one of the indispensable elements that make Spenser's work Spenserian.

Like most assumptions, though, this one is seldom interrogated, and the more vigorously it has been asserted, the less likely has it been to attract scrutiny, or criticism. For all of Jonson's summary pronouncement, or for the various comments made by other contemporaries on the subject of Spenser's diction in *The Shepheardes Calender* and *The Faerie Queene*,[6] the language of these poems is not perhaps as archaic, or as archaic in the assumed ways, as modern editors and their readers have tended to think. The last major critical study of Spenser's language, itself avowedly preliminary, was published in

5 C. S. Lewis, *Studies in Words* (Cambridge: Cambridge University Press, 1960).

6 For a summary presentation of these comments, see R. M. Cummings, *Spenser: The Critical Heritage* (London: Routledge and Kegan Paul, 1971), particularly the section 'Language and Style', pp. 277–314.

1932, and even that landmark digest of Spenserian criticism, A. C. Hamilton's 1990 *The Spenser Encyclopedia*, was unable after the untimely death of Barbara Strang to include much on this important topic.[7] The now reverend work of Emma Field Pope and Bruce McElderry suggests that our reception of Spenser's archaism is subject to the complicating distortions of historical language development in ways that most readers register only very vaguely; Pope goes so far as to argue that Spenser's language is 'largely the English of his day . . . his vocabulary the vocabulary of his contemporaries', and with this McElderry is in well-documented agreement: while some elements of McElderry's argument deserve reconsideration,[8] there is no disputing his general conclusions, that Spenser's archaic diction is very limited (to a little over 300 words), that this diction is mostly focused on *The Shepheardes Calender*, and that Spenser's neologisms are rationally derived and, *prima facie*, no more aversive than Shakespeare's.

We have thus been left, by succeeding generations of readers, scholars, and editors, in a confused position with respect to Spenser's language. By some accounts, it is considered an inalienable element of his poetry, one that must be preserved in its orthographical originality, because of its innovative archaism – this despite the robust critical work that has questioned that originality and distinctiveness. In the face of this, particularly editorial, tenacity in the retention of Spenser's spellings, and of the sense of his linguistic difficulty, few critics engage with the problem of Spenser's language directly, despite the welter of critical studies of comparable early modern poets, many of them far less celebrated for their verbal artificiality or innovation than Spenser. But then, in turn, in the face of this, we have seen here how Spenser's verse itself invites readers into linguistic and rhetorical analysis, and rewards that analysis with strong and meaningful connections between the artifice of verbal expression in the poems and those larger structures of meaning (intertextual allusion, allegory, etc.) that have dominated critical reception of his works. A student new to Spenser studies might justifiably throw hands in the air and give up: is the language important, or isn't it? Is that much diction worth the intensive study it seems to demand, or not?

This book offers an account of how we might read Spenser's verse, and by

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7 See Emma Field Pope, 'Renaissance Criticism and the Diction of the Faerie Queene', *PMLA*, 41 (1926), 575–619; Bruce R. McElderry, Jr., 'Archaism and Innovation in Spenser's Poetic Diction', *PMLA*, 47 (1932), 144–70; Noel Osselton, 'Archaism', in *SE*, pp. 52–53; and Barbara Strang, 'Language, general, and resources exploited in rhyme', in *SE*, pp. 426–29.

8 In particular, McElderry's reliance on *OED* citation dates as incontrovertible proof of the development of language use is slightly on the credulous side, and some of his local claims about the currency of individual words at given dates should be treated with scepticism. As Jürgen Schäfer has made clear, in his *Early Modern English Lexicoraphy*, 2 vols (Oxford: Clarendon Press, 1989), the *OED*'s first- and last-citation dates must be regarded, at best, as notional, even for printed sources.

extension the verse of some of his contemporaries, in a way more faithful to early modern assumptions about reading, and actual reading practices. It argues that early modern English poets expected their readers to be especially and consistently alert to linguistic elements in verse, and that, for all of the trumpeted 'visual' quality of Spenser's poetry, or of Sidney's 'speaking pictures', this verbal analysis formed the bedrock of the contemporary interpretative structure. In the case of a poet like Spenser, who was transparently interested in, even obsessed by, the creation of an artificial poetic diction for English at a time of rapid linguistic development, it is our responsibility as readers to be unusually sensitive to the types of tortions, novelties, patterns, imitations, and other distinctive effects he introduced into the language of his poetry. This sensitivity must provide the basis of subsequent readings, whether those readings ultimately rely on or diverge from the sense of the language, simply because the language is, without exception and insistently, the *prima materia* of the poet's making, and the reader's consequent unmaking, of meaning. While I will eventually, for reasons I will discuss in a moment, confine my own discussion to a particular subset of Spenser's linguistic artistry – his experimentation with the technical vocabulary of early modern English law – I will follow this example through as a documentation and illustration of the way in which a linguistically hyper-sensitive poet experiments with signification, and draws his readers into that experimentation.

The present study, then, is offered as an avowedly preliminary, and avowedly historical, approach to a reconsideration of Spenser's language. The next chapter follows on from this introduction with an examination of the hermeneutical conditions and the reading practices into which Spenser's poetry was first received; surveying the origins of Elizabethan reading practices in the humanist pedagogy of the period, with its classical and medieval precedents, this chapter attempts to answer Spenser's own distinctive call for lexical 'analysis' (itself only one of Spenser's many coinages in *The Shepheardes Calender*) of his poetry. This chapter also places contemporary hermeneutical theory and practice, and the extant evidence of Spenser's own theory of interpretation, against the model of interpretation and meaning evident in the English legal writing and practice of the period. Spenser's use of preamble and argument, or maxim and emblem, for example, seems to owe something to the legal writing of the period, and many of the hermeneutical conventions implicit in his pastoral and allegorical works – invoking precedent, authority, analysis, comparative linguistics, etymology, and so on – seem to draw on the usual contemporary formulations of legal interpretation. This chapter thus contextualizes Spenser's use of language, and his interest in law and legal language, within the same intellectual tradition of rhetoric and argument, suggesting why a study of his language should naturally gravitate to the legal, and why a study of the law in Spenser's works should itself naturally gravitate to the verbal.

Chapter three provides a summary overview of Spenser's use of legal

diction across all his works. This chapter breaks down the evidence of Spenser's interest in legal words into an architecture of conceptual sets, or blocks, relating to different topics and practices in common and civil law theory and process, including feudal law, land tenure, and real property; property in chattels personal, including debt and usury; contract, covenant, and *assumpsit* (including marriage and trothplight); defamation, sedition, censorship, and the law of words; justice, mercy, equity, and jurisdiction; writ and trial process; legal fictions and colours; legal writing; and Irish (and local English) customs. This chapter also follows on from chapter two by implementing, in exemplary close readings of Spenser's poetry, some of the hermeneutical conventions already seen to characterize Spenser's implicit models of reading and interpretation in *The Shepheardes Calender* and *The Faerie Queene*. The 'pleasing analysis' championed in E. K.'s 'epistle' fronting *The Shepheardes Calender* is in this chapter illustrated in practice, revealing a new, linguistic level to Spenser's allegorical thinking across his works, a kind of reading that is attentive, at the level of the lexeme, to the history, semantic scope, comparative linguistic relations, and technical or other discursive affiliations of individual words. Spenser's almost finical disposition of his legal diction provides, in the analysis, an instructive example of the intensive and fruitful kind of reading that contemporary poets expected of their public.

The following four chapters present exemplary readings of *The Faerie Queene* based on these results. Chapter four considers the language of contract and loyalty in the quests of Amoret and Florimell, exposing Spenser's persistent interest throughout Books III and IV in various types of social and legal bond. The following two chapters focus on Spenser's investigation of the political institutions of government and, increasingly, their deployment in the civil reformation of Elizabethan Ireland. In chapter five I address the extended meditation on justice, equity, and mercy in *The Legend of Artegall*, reconsidering many of the received critical 'truths' about Book V and drawing careful distinctions between Spenser's presentation of justice and equity before turning to the crucial links between this abstract theory and Spenser's specific counsels on Irish policy. Chapter six exposes a hitherto unnoticed preoccupation in Book VI with the legal status of the monarch and, more particularly, with the legitimacy of royal prerogative. By attending to subtle but systematic semantic clues, we may perceive in the *Legend of Sir Calidore* a political programme centred on 'courtesy', the privilege of the monarch in dispensing with or suspending institutional legal process. This chapter again concludes with a contextualisation of these theories in the increasingly dominant concerns with Irish affairs, arguing that the structural relationship of Artegall's justice and Calidore's courtesy exactly mirrors the two-pronged policy directives of Spenser's prose tract, *A view of the present state of Ireland*. In the seventh chapter, I consider what is sometimes considered the culmination not only of Spenser's powers as a poet, but of his obsession with statecraft and of his interest in Irish politics: the enigmatic *Two Cantos of Mutabilitie*. Spenser

here revisits and remobilizes many of the legal and political concerns developed throughout the poem (and discussed earlier in the book), orchestrating them into a final rapturous meditation on the apocalyptic crisis facing Elizabeth's government in Ireland in the late 1590s: the rising of O'Neill and O'Donnell in Ulster, and the threat not only of a general Irish insurrection, but of an international Catholic conspiracy to capture Ireland and, ultimately, the crown of England itself. Through careful attention to the semantic nuances of Spenser's diction, it is possible to register the intimate association of the *Two Cantos* not only with *A view of the present state of Ireland*, but with the legal and political concerns that have been gathering momentum throughout the development of *The Faerie Queene*.

In a pair of final chapters, *Spenser's Legal Language* returns from the apocalyptic political and legal crisis of the *Two Cantos of Mutabilitie* to the main current of Spenser's legal preoccupation, in his late lyric works *Amoretti* and *Epithalamion* (completed, if not entirely written, after the second instalment of *The Faerie Queene*, though published before it), with opposition and constitutionalism. The influence of Spenser's sonnets and his marriage-hymn on the poetic careers of Donne and Shakespeare – whose own 'sequences' of 'sonnets' draw heavily on Spenser's model – has not been fully recognized, probably largely because that influence is so intimately bound up in the collective absorption of all three poets in the relation between lyric poetry and contemporary law, legal theory, and legal readers. 'Lyric Opposition in Spenser, Shakespeare, and Donne' returns to many of the words, themes, and arguments of the earlier readings of *The Faerie Queene*, but demonstrates how both Shakespeare and Donne seized on a strong rewriting of these elements in the sonnet and complaint. In the final, brief chapter, 'After Words', I offer some reflections on the implications of Spenser's linguistic, rhetorical, and hermeneutical strategies for the kind of 'Protestant poetics' with which he has normally been credited, and briefly consider the relation of his words, and of 'lexical' reading, to the moral philosophical project and allegorical habits of *The Faerie Queene*, *The Shepheardes Calender*, and many of the shorter poems. The artificiality and patterning of Spenser's diction, like the 'habits' that create *ethos* and the 'habits' that merely clothe it, conspicuously place the language of Spenser's poetry in a paradoxical relation to meaning – the same relation obtaining between things and forms, images and truth, uses and laws.

Yet this book is not only about language and 'habit', but about language and a legal 'habit'. While Chapter 2 will take up in detail the relation of language to law in the rhetorical and literary community of late Elizabethan England, it is right that I should offer a few remarks of a general kind, here, about the legal character of the diction, and hence the readings, under study in this book. The limitation of the present study to legal diction and thought is motivated by a double concern with pragmatism and conceptual integrity. On the one hand, a pilot and in some ways experimental study of this kind could not hope to exhaust the range and depth of Spenser's linguistic play and subtlety; nor, of

course, should it attempt to do so. The limitation of the subject to a single subset of diction, and to a category with such clear professional and semantic contours as that of the law, has allowed me opportunity not only to catalogue the subset in its entirety, but to map the effects of Spenser's use of this diction on our reading of the poetry – which must be the final test of any interpretative approach to a literary work. The choice of legal diction for this study was a pragmatic one, too, in that, unlike archaic diction, a professional language like that of the law is to be distinguished from the rest of Spenser's diction by its properly semantic rather than its etymological or historical associations: a study of legal diction, then, should help to enlarge our critical understanding of Spenser's interest in and experimentation with language, exploring the degree to which his understanding of diction was defined and complicated by a grasp of what we would now call semantics.

The choice of legal diction as a test case for this study was motivated, too, by a sense of integrity of concept: the practice of early modern English common law – as is evidenced by its obsession with Latin and Law French; by its tendency to produce collections of statutes, year books, reports, dictionaries, and annotated editions of legal treatises privileging lexical analysis of legal terms; and by its basic structure as a system of interpretation and application – was founded on many of the same principles as those guiding literary reading in the period. At the same time, the interpretative practices that characterized legal business were directed toward the same ends – the promotion and regula- tion of civility and public order – that came to structure Spenser's work in *The Faerie Queene*, especially in the later books of the poem. A study of legal diction in Spenser's poetry, then, seems to occupy a special place among the many possible studies of Spenser's language, in that it attracts to itself, and superimposes, so many levels of aptness to enterprise; surely here, if anywhere, we ought to see Spenser thinking through, and manifestly exploiting, the full functionality of his diction to signify in direct and indirect ways.

With this in mind, it will be helpful to review quickly some historical and biographical foundations upon which the discussion to come must be built. That Edmund Spenser was familiar with the legal profession and the language of law, there can be no doubt. A general intellectual, court, and civic culture emphasizing knowledge of law and legal process flourished under the Tudor monarchs, and reached a crescendo in Elizabeth's reign; Lawrence Stone has noted that the later decades of the sixteenth century coincided with a peak in the number of entrants to the Inns, and consequently, we may surmise, in the 'culture' of law in the country as a whole – whether as cause or effect of the data Stone presents.[9] Certainly, as J. H. Baker notes, it was a time of rapid legal

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9 Lawrence Stone notes in *The Crisis of the Aristocracy, 1558–1641* (Oxford: Clarendon Press, 1965), pp. 690–91, that 'in the late sixteenth and early seventeenth centuries more nobles and landed gentlemen acquired a smattering of a legal education than at any time before or possibly since'. He goes on to refine this point by adding, 'it is noticeable that the high peak of

innovation and activity, born at least in part of the relentless growth of Tudor bureaucracy through the century: in this century the great conciliar courts of Star Chamber and Chancery first blossomed, and pleas in the royal courts of the King's Bench and Common Pleas rose steadily throughout the Tudor period.[10] Spenser seems not to have studied civil law during his six years at Pembroke College, Cambridge, but it is well known that Gabriel Harvey was, during the last years of his intimate friendship with Spenser, toiling in the 'court of Justinian'. Others of Spenser's early superiors and associates were likewise either law-trained or law-savvy: John Young, Sir Philip Sidney, Edward Dyer, Lodowick Bryskett, and Arthur, Lord Grey, for example, all have documented connections with the Inns of Court or with legal activity of some kind (including canon law). From 1580 to his death, too, Spenser was employed in civil service positions dealing intimately with law and government. As secretary to Lord Deputy Grey and the Irish Privy Council from 1580 to 1582, Spenser drafted and copied letters relating to political, military, and legal affairs.[11] The appointment to Bryskett's post of Clerk for Faculties in the Irish Chancery in 1582 would necessarily have brought Spenser into contact with the workings of that court, whether or not the appointment was merely a sinecure. His further involvement in government is indicated by his designation in two consecutive years, 1583 and 1584, as one of the commissioners of the muster in County Kildare. Settling soon after near Cork, Spenser appears to have taken on the post of Clerk to the Council of Munster at latest by the end of 1584.[12] In 1594 Spenser sat twice at Mallow as one of the Queen's Justices for Cork, again suggesting not only acquaintance with law, but practice of it, and he was nominated in 1598 on the strength of such service as

aristocratic attendance at the Inns is the 1570's and 1580's, and that thereafter the numbers fall off considerably'.

[10] See Baker, *IELH*, pp. 41–47, 104–05, 117–34. For discussion of the important changes in the common law during the Tudor period, see S. E. Thorne, 'Tudor Social Transformation and Legal Change', *New York University Law Review*, 26 (1951), 10–23; and Baker, 'English Law and the Renaissance', in *LPCL*, pp. 461–76. On the establishment and growth of the court of Chancery during the sixteenth century, see W. J. Jones, *The Elizabethan Court of Chancery* (Oxford: Clarendon Press, 1967).

[11] The surviving letters are now primarily held by the National Archives (formerly the Public Record Office). Many of them have recently been transcribed and published; see Christopher Burlinson and Andrew Zurcher, eds, 'Spenser Letters', Hap Hazard: a Manuscript Resource for Spenser Studies, http://www.english.cam.ac.uk/ceres/haphazard/. For more on Spenser's secretarial career in Ireland after 1580, see Burlinson and Zurcher, ' "Secretary to the Lord Grey Lord Deputie here": Edmund Spenser's Irish Papers', *The Library*, 6 (2005), 30–75.

[12] That this appointment, at least, was not a sinecure is strongly suggested by several surviving manuscript sources. For example, a run of letters in Spenser's hand from Sir John Norris to councillors in London suggests that Spenser, like his successor in the post, Richard Boyle, was attending the Lord President of Munster 'at all times'. See NA (PRO) SP 63/115/13–16, 63/115/41–42.

sheriff for the same county.[13] Beyond such regular posts and appointments, though, Spenser must have acquired a detailed knowledge of certain types of law through his legal battles with his Munster neighbour, Lord Roche,[14] and through his successive efforts to acquire lands and sinecures on his own behalf and for the use of his sons.[15] That Spenser was fairly successful at these efforts may indicate the depth and accuracy of his specialist knowledge.

However, the most direct evidence of the poet's understanding of the law, and of its terms, appears in *A view of the present state of Ireland*. The extent of Spenser's engagement in this treatise with technical legal ideas has rarely been noted – and even more rarely questioned – partly because it is overshadowed by other more salient features and partly because the study of this text has, for one reason or another, been appropriated by those readers more interested in literary theory than in the history of government. Spenser shows in this work a detailed understanding of common law tenures, of legal administration and government, of various aspects of legal process, and of customary law and even native Irish law. As we will see in later chapters, his use in *A view* of technical diction relating to these issues is hardly cosmetic or sporadic.

The intertextual dialogue between *A view of the present state of Ireland* and *The Faerie Queene* raises a final preparatory point over which I must momentarily pause: the inevitable engagement of this study with the historical details of Spenser's secretarial and colonial career in Ireland. The twentieth century began and ended with a strong historicist focus in Spenser criticism. While the 'pure' literary readings of influential Spenserians like C. S. Lewis attempted to shield Spenser's poetry from the contamination of his Irish experience, it hardly seems necessary now – after the work of historians and critics like Stephen Greenblatt, Andrew Hadfield, Nicholas Canny, Willy Maley, Patricia

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[13] For Spenser's two sittings at Mallow, see Alexander C. Judson, *The Life of Edmund Spenser, Variorum*, xi, 162. Spenser was apparently appointed Sheriff of Cork on the strength of Essex's recommendation; see BL Harleian MS 286, p. 272.

[14] Spenser's frequent suits against Lord Roche, and Lord Roche's constant complaints about Spenser (whom he called his 'heavy adversary'), have long been documented. See Pauline Henley, *Spenser in Ireland* (Cork: Cork University Press, 1928); Jean Brink, 'Documenting Edmund Spenser: A New Life Record', *ANQ*, 7 (1994), 200–08; Patricia Coughlan, 'The Local Context of Mutabilite's Plea', *Irish University Review*, 26 (1996), 320–41; and Nicholas Browne, 'Munster in A.D. 1597', ed. James Buckley, *Journal of the Cork Historical and Archaeological Society*, 2nd ser., 12 (1906), 52–68. It should be noted that the pernicious rumours of Spenser's brutality and heavy-handedness in his dealings with Roche (see *CSPI* 63/147/14–15) may be an artefact of the legal customs of the day; in order to secure a hearing in the court of Castle Chamber (or Star Chamber, in England), a plaintiff had to allege a crime, however fictitious, of 'riot' or at least 'battery': trial of title was the customary, but not the technical, jurisdiction of these prerogative courts.

[15] Spenser's efforts to acquire property and office in Ireland can be traced in Nicholls, *Fiants*, nos 3694, 3969, 4150, 4464, and 5473. For a summary, see Willy Maley, *A Spenser Chronology* (Basingstoke: Macmillan, 1994), pp. 38, 46.

Coughlan, Richard McCabe, and Patricia Palmer[16] – to defend the importance of *A view* for our study of Spenser's poetry. At the same time, I want to be clear that the historical approach to language and allegory that leads this book to Elizabethan Irish affairs derives from, and does not drive, its interest in Spenser's political philosophy. I will be concerned with Irish readings of Spenser's poetry, and with the connections between *A view* and *The Faerie Queene*, because it is in the historical context of Spenser's work that we find the ground – in many senses of the word – of his practical political thought. On the other hand, it is by no means true that the Irish context pervades all of Spenser's thought on social and political issues, and it will be another of this book's projects to use attention to legal diction and ideas as a way of mapping Spenser's broader interest in political ideas across his works. To date, critics have tended to restrict political readings of *The Faerie Queene*, for example, to Book V, 'Of Justice'; but the following chapters will demonstrate that this focus seriously short-changes Spenser's attention to social and political philosophy in other books.[17] To some degree, as humanist political theorists like

16 See Stephen Greenblatt, *Renaissance Self-Fashioning From More to Shakespeare* (Chicago: University of Chicago Press, 1980); Andrew Hadfield, *Spenser's Irish Experience: Wilde Fruit and Salvage Soyl* (Cambridge: Cambridge University Press, 1997); Nicholas Canny, *Making Ireland British, 1580–1650* (Oxford: Oxford University Press, 2001); Willy Maley, *Salvaging Spenser* (Basingstoke: Macmillan, 1997); Willy Maley, *A Spenser Chronology*; Brendan Bradshaw, Andrew Hadfield, and Willy Maley, eds, *Representing Ireland: Literature and the origins of conflict, 1534–1660* (Cambridge: Cambridge University Press, 1993); Patricia Coughlan, ed., *Spenser and Ireland: an Interdisciplinary Perspective* (Cork: Cork University Press, 1989); Patricia Palmer, *Language and Conquest in Early Modern Ireland: English Renaissance Literature and Elizabethan Imperial Expansion* (Cambridge: Cambridge University Press, 2001); and Richard McCabe, *Spenser's Monstrous Regiment: Elizabethan Ireland and the Poetics of Difference* (Oxford: Oxford University Press, 2002). See also articles by Hadfield, Maley, Coughlan, Clare Carroll, Anne Fogarty, and Eiléanin Ní Chuilleanáin in the *Irish University Review*, 26 (1996).

17 See Judith Anderson, ' "Nor man it is": the knight of justice in the *Faerie Queene* V', *PMLA*, 85 (1970), 65–77; René Graziani, 'Elizabeth at Isis Church', *PMLA*, 79 (1964), 376–89; Nicholas W. Knight, 'The narrative unity of the Faerie Queene V: "That part of Justice which is Equity" ', *RES*, 21 (1970), 267–94; James E. Phillips, 'Renaissance concepts of justice and the structure of the Faerie Queene V', *HLQ*, 33 (1970), 103–20; and Frances A. Yates, 'Elizabeth as Astraea', *Journal of the Warburg and Courtauld Institutes*, 10 (1947), 27–82. Of the scarce political readings based on other parts of the poem, see particularly A. M. Buchan, 'The political allegory of the Faerie Queene IV', *ELH*, 11 (1944), 237–48; Frank Kermode, 'The Faerie Queene, I and V', in *Shakespeare, Spenser, Donne: Renaissance Essays* (London: Routledge and Kegan Paul, 1971); Elizabeth Fowler, 'The Failure of Moral Philosophy in the Work of Edmund Spenser', *Representations*, 51 (1995), 47–76; and Julia Reinhard Lupton, 'Mapping mutability: or, Spenser's Irish plot', in *Representing Ireland: Literature and the Origins of Conflict 1534–1660*, pp. 93–115. Two recent studies published while I was revising this work have looked at legal topics in a limited way, but one that begins to suggest the kind of pervasive influence of legal culture and language on Spenser's thought for which I will be arguing here; see Jonathan Gibson, 'The Legal Context of Spenser's *Daphnaïda*', *RES*, 55 (2004), 24–44; and Charles S. Ross, *Elizabethan Literature and the Law of Fraudulent Conveyance: Sidney, Spenser, and Shakespeare* (Aldershot: Ashgate, 2003)

Thomas Starkey observed, any moral enquiry, in the context of a monarchy, will have extensive political ramifications; and as one of the epigraphs to this book recognizes, politics and law fall under the heading of moral philosophy because they deal with behaviour.

What follows, then, should provide a double service to Spenser studies. First, as discussed above, an investigation of legal *language* in the poem will recover important components of Spenser's theory of language and poesis, and will demonstrate not only his poetic skill, but more of the means through which *The Faerie Queene* has so long captivated generations of thinking readers. Second, an investigation of *legal* language in *The Faerie Queene* will help at least to begin the important work of mapping conclusively Spenser's political interventions in the poem, and may go a long way, especially in the later exemplary chapters, towards restoring balance to the conversation between his political philosophy on the one hand and his experience in Ireland on the other.

Chapter 2

'PLEASING ANALYSIS':
RENAISSANCE HERMENEUTICS, POETRY,
AND THE LAW

M Y CLAIMS for the density of Spenser's verbal and rhetorical play, and for our responsibility to situate interpretations of his work historically within early modern habits of reading, depend on a prevailing culture of reading that Spenser might have expected would be receptive to his artifice: for better or worse, a writer writes for readers. In this chapter, I turn to extant evidence both of how sixteenth-century readers read, and of how they thought they read, towards the construction of a historically legitimate set of reading practices for our approach to *The Faerie Queene*. From the rhetorical and pedagogical theorists of antiquity and of Spenser's own century, it is possible to recover a coherent system for literary interpretation, and there is good evidence – in authors' and editors' introductions to their works, in the way poets and prose writers responded intertextually to their models, and in the manuscript annotations, or adversaria, that survive in early modern books – that authors anticipated readerly engagements along the lines that these theorists prescribed. But, too, there are apparent distinctions between theory and practice: not only did individuals depart from convention in the usual idiosyncratic ways, but reading practices varied according to genre, language, and print or manuscript format. By attending to a range of classical and contemporary authorities on pedagogical and hermeneutical practice, and by contextualizing the prescriptions of these authorities in the extant evidence of readers' actual engagements with texts, this chapter will compose a comprehensive portrait of the readers and readings a poet like Spenser might have anticipated for his works in about 1590.

This chapter also makes a more novel and contentious claim about literary reading in late Elizabethan England. Following on the work of Ian Maclean on legal traditions in Renaissance hermeneutical theory, this chapter addresses a 'professional' culture of interpretative practice – that of the Inns of Court – as an important influence on the personal reading practices of individuals in their engagements with literary texts. Like that of the Church, this tradition presents a model of textual interpretation we might recognize as 'exegesis', the

expounding of an authoritative written text, by recourse to the finest tools of verbal analysis, for the purpose of regulating moral and civic life. Both of these traditions, too, should therefore be construed as essentially legal in nature, in that they both require the practices of individual interpreters in their attempts to mediate between the universal and the particular, between *regula* and *actio*. In making this broad claim, I take the 'legal', in the European civic culture inherited from Aristotle and the Roman law, to be defined by exactly this mediation between universal rules and particular practices for the purpose of 'regulating' social behaviour. In this I consciously follow Bracton's summary of the civil legal tradition, summarized in the opening of *De Legibus*:

> Law is a general command [*praeceptum*], the decision of judicious men, the restraint of offences knowingly or unwittingly committed, the general agreement of the *res publica* . . . And though law [*lex*] may in the broadest sense [*largissime*] be said to be everything that is read [*legitur*] its special meaning [*specialiter significat*] is a just sanction, ordering virtue and prohibiting vice.[1]

For an English reader of the sixteenth century, the reconciliation of *largissime* to *specialiter* in textual interpretation, when joined to a prescription [*praeceptum*] for the conduct of moral and/or civic life, defined a practice of regulation that was associated with the idea, and the profession, of law.[2] This chapter will suggest that the kind of reading habits that Spenser expected of, and cultivated in, his audience were profoundly influenced by the culturally conspicuous legal reading practices of sixteenth-century England, and that this is one important reason for attending to legal language and ideas, in particular, in Spenser's work. If *The Faerie Queene* is a text that in good faith expects readers to decode, assimilate, and finally apply its moral, political, and philosophical learning, it must imagine itself, at some level, as a *lex* to be construed and implemented by its readers. Far from reducing or trivializing its literary nature or content, this model of interpretative engagement recognizes the literary work's hermeneutical instability even as it insists on the need to wring from it a set of moral and political practices; in short, a 'legal' reading focuses and fixes one of the most important problems in early modern hermeneutical theory, the relation of the aesthetic (*voluptas*) to the utile (*utilitas*).

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[1] Bracton, *De legibus*, p. 22.

[2] This idea of law as the movement from the general principle (*causa*) to the effect (*finis*) is also invoked by the more metaphysical account of Richard Hooker in the first four books of *Of the Lawes of Ecclesiasticall Politie* (London: John Windet, 1593), p. 49:

> All things that are haue some operation not violent or casuall. Neither doth any thing euer begin to exercise the same without some foreconceaued ende for which it worketh . . . That which doth assigne vnto each thing the kinde, that which doth moderate the force and power, that which doth appoint the forme and measure of working, the same we tearme a *Lawe*.

'PARSING MORE READELIE':
READING FOR THE WORD, QUINTILIAN TO ERASMUS

Humanist education in sixteenth-century England culminated in the study of the works and the style of Cicero's Latin. After years of intensive double-translation between Latin and English, exercises in the generic literary forms (*fabula*, *narratio*, *chreia*, *sententia*, etc.) prescribed by Aphthonius' *Progymnasmata*,[3] and – in the London schools like St Paul's, Merchant Taylors', and Westminster – routine performance in Latin and English plays,[4] boys were encouraged to develop their own skills at writing through applied study of the style of approved Latin authors, and frequent exercises in *imitatio*.[5] While some pedagogical theorists, such as Erasmus, stressed the colloquial verbal storehouse of Terence, and commended expurgated texts of the often lewd Plautus,[6] the letters, orations, and dialogues of Cicero were considered the ultimate focus of study and stylistic imitation for the Renaissance schoolboy – so much so that, in a backlash against an apparently slavish extremity, Erasmus published in his *Ciceronianus* a stinging parody of pedantic Ciceronians.[7] The best introduction to the analytical reception of Cicero – a necessary pro-

[3] The rhetorical exercises, or *Progymnasmata*, set out by the fourth-century Greek sophist Aphthonius circulated widely in sixteenth-century Europe, especially in the Latin translation of Rudolph Agricola, with commentary by Reinhard Lorich. For the popularity of the work throughout Europe in the sixteenth century, see Donald L. Clark, 'The Rise and Fall of Progymnasmata in Sixteenth and Seventeenth Century Grammar Schools', *Speech Monographs*, 19 (1952), 259–63. For a brief consideration of the place of Aphthonius in the early modern curriculum, see Peter Mack, 'Rhetoric, Ethics, and Reading in the Renaissance', *RS*, 19 (2005), 1–21. Thomas Cain has argued for the importance of Aphthonius to Spenser's own compositional practice; see 'The Strategy of Praise in Spenser's "Aprill" ', *SEL*, 8 (1968), 45–58.

[4] For more on the widespread dramatic activity in the London grammar schools of this period, see Philip C. Kolin, 'An Annotated bibliography of scholarship on the children's companies and their theaters', *Research Opportunities in Renaissance Drama*, 19 (1976), 57–82.

[5] On the practice of imitation, see Cicero, *De oratore*, 2. 87–97; Quintilian, *Institutio Oratoria*, 1. 3. 1 and 10. 2; and Erasmus, *De ratione studii*, *passim*. For a critical introduction to the theory and practice of imitation in the Renaissance, and its consequences for reading and interpretation, see Thomas M. Greene, 'Petrarch and the Humanist Hermeneutic', in *Italian Literature: Roots and Branches*, ed. Giose Rimanelli and Kenneth John Atchity (New Haven: Yale University Press, 1976), pp. 201–24; and G. W. Pigman III, 'Versions of Imitation in the Renaissance', *Renaissance Quarterly*, 33 (1980), 1–32.

[6] See Desiderius Erasmus, *De ratione studii* [*On the method of study*], ed. Craig R. Thompson (Toronto: University of Toronto Press, 1978), p. 669.

[7] See Desiderius Erasmus, *Ciceronianus*, ed. A. H. T. Levi (Toronto: University of Toronto Press, 1986). As Bulephorus remarks in *Ciceronianus*, though 'Cicero is the best of all orators', 'it is stupid to try deliberately to write in another man's humour and endeavour to have Marcus Tullius' mind breathing in what you write' (pp. 382, 402). Wayne Rebhorn situates Erasmus's dialogue in the wider controversy over rhetoric and pedagogy in his *Renaissance Debates on Rhetoric* (Ithaca: Cornell University Press, 2000), pp. 68–75.

paedeutic to the development of a Ciceronian style – was the recently rediscovered complete text of Quintilian's *Institutio Oratoria*, a twelve-book treatise on education and rhetoric based on Cicero's writings and oratorical pre-eminence.[8] Here students would be led methodically through the major topics in the study of rhetoric, from diction and grammar to the figures or 'ornaments' of rhetoric, and finally to memory, decorum, and behaviour. The ultimate goal of sixteenth-century English grammar school education – the ability to read fluently and write in an accomplished and elegant style in Latin – was of course supported by a small library of texts and textbooks, but none of these took pride of place before Quintilian, except of course the works of 'Tully' himself.[9]

Quintilian lays out in the first book of the *Institutio* the basic groundwork of elementary education in rhetoric, beginning with the necessary teaching in reading and writing. His approach in these elementary stages of the curriculum, because of its profound influence on Renaissance pedagogues in both theory and practice, is important to my purpose here, the more so because it is distinctive primarily for its relentless insistence on the pupil's attention to individual Latin and Greek words. No sooner has the student learned the basics of reading and writing, Quintilian argues, than he should be exposed to the *grammaticus*, the teacher of language and literature:

> For the art of writing is combined with that of speaking, and correct reading precedes interpretation, while in each of these cases criticism has its work to perform . . . Nor is it sufficient to have read the poets only; every kind of writer must be carefully studied, not merely for the subject matter, but for the vocabulary; for words often acquire authority from their use by a particular author.[10]

Quintilian's contention is that the good orator – a speaker who is to master *recte loquendi scientiam* ('the knowledge of speaking correctly') – must begin by learning to interpret the writings of others, and that this interpretation will depend on a strong foundation in good reading practices. 'No small powers of

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[8]   The pre-eminence of Quintilian in early modern rhetorical study is acknowledged so universally, in the sixteenth century as well as the twenty-first, that it hardly requires justification; Erasmus, for example, notes at the beginning of *De copia* (ed. Thompson, p. 297), and again at the beginning of *De ratione studii* (ed. Thompson, p. 672), that he is merely illustrating and supplementing 'that learned and thorough writer Quintilian'.

[9]   The census of editions of texts, treatises and commentaries on rhetoric compiled by James Murphy gives a good picture of the influence of Quintilian, whose *Institutio Oratoria* went through 130 editions in the sixteenth century; see James J. Murphy, *Renaissance Rhetoric: A Short-Title Catalogue of Works on Rhetorical Theory from the Beginning of Printing to A.D. 1700* (New York: Garland, 1981). For a discussion of the main classical influences on humanist teaching in rhetoric, see Brian Vickers, 'Rhetoric and Poetics', in *CHRP*, pp. 715–45 (pp. 720–22).

[10] Quintilian, *Institutio Oratoria*, 1. 4. 2–4; trans. H. E. Butler (London: Harvard University Press, 1920), p. 63.

eloquence also are required to enable the teacher to speak appropriately and fluently [*proprie et copiose*] on the various points which have just been mentioned', he goes on. 'Unless the foundations of oratory are well and truly laid by the teaching of literature, the superstructure will collapse.'[11] All of the oratorical skills necessary to public life, in Quintilian's formulation, rest upon a foundation of good literary reading.

As it becomes clear what the study of this literary reading comprises, Quintilian's argument becomes increasingly complex. Following the basic issues of pronunciation, orthography, and conjugation and declension, boys are to be schooled in onomastics (the origin of names) and the rudiments of comparative linguistics. These two introductory elements of verbal analysis lead directly into the more intensive and extended preoccupation with word-based study in the next section of Book 1, on style. Here Quintilian introduces the student to the *emendate loquendi regula* ('the rules for the correctness of speech'), which require sustained attention to the origins, customary usage, semantic nature, and grammatical features of individual words. In judging whether the use of an imported word constitutes a *barbarismus*, for example, Quintilian requires the teacher and pupil to consider the word's national origin and its history of usage in approved authors (1. 4. 5–17). Again, in his discussion of how teachers and pupils can recognize and classify a *soloecismus*, Quintilian makes frequent recourse to the authority of writers like Vergil, Antonius Rufus, Livy, and Cicero, and appeals to the authority of *maximi auctores* to justify his examples. Compound words are to be subjected to etymological analysis to disclose their elements (1. 5. 65–70), and all words should be classified as *propria* (used in their original sense) or *translata* (in a metaphorical sense) (1. 5. 71–72). The pupil developing a critical understanding of style must, by Quintilian's method, routinely subject others' and his own speech to the most thorough verbal analysis, element by element.

These preliminary *regulae* are further developed in the following section, where Quintilian, having declared that 'language is based on reason, antiquity, authority and usage' [*sermo constat ratione vel vetustate, auctoritate, consuetudine*], goes on to prescribe *analogia* (1. 6. 1–27) and *etymologia* (1. 6. 28–38) as the chief supports of a reasoned style. Here and in the ensuing discussions of archaism, authority, and usage, as well as in the later sections on orthography, Quintilian regularly stresses the *iudicium* ('judgment') of the *grammaticus* as the ultimate arbiter between good and bad style; the art of speaking and of writing well cannot, in other words, ever be reduced so uncontroversially to a set of simple rules that the individual speaker or writer will not be called upon to weigh conflicting bases or precepts, and make informed decisions appropriate to the context. In short, the Latin speaker or

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[11] Quintilian, *Institutio Oratoria*, 1. 4. 5.

writer ambitious for a good style must develop a faculty for, and a practice of, continuous mediation between the relevant stylistic criteria; each salient word must be judged, in every usage, on its particular merits for inclusion in a given context. Moreover, the good stylist will constantly be applying the same critical verbal analysis to the works of others, in an attempt to build up a hoard of useful diction, with each word individually tagged with 'metadata' concerning its etymological origins, its usage in approved authors, its frequency in popular speech, and any other information that might be useful in determining its appropriateness for deployment in the varied contexts of a writer's or speaker's output.

Modern scholarly accounts of early modern English humanist pedagogy have tended, often by an examination of the pedagogical theories of writers like Erasmus, Roger Ascham, or Richard Mulcaster, to stress the classroom insistence on painstaking exercises in the cultivation, classification, and systematic use of a copious store of Latin vocabulary. It is crucial to recognize, however – before we ourselves turn to the evidence of such pedagogical treatises – that the focus on verbal analysis as the root and foundation of all *grammatica*, itself the basis of all subsequent humanist learning, is set out both explicitly and methodologically in Quintilian's *Institutio Oratoria*. We have become used to thinking of 'style' almost as if it were a component of a person's character, a nebulous and ineffable, slightly chaotic quality that, if ever discovered at all, is realized in performance rather than cultivated by education. In the early modern grammar school, as for Quintilian millennia before, style was no more arbitrary or personal than any other *scientia*: the cultivation of a good style was achieved by systematic application of proven techniques of verbal analysis, based on the four pillars of reason, antiquity, authority, and usage.

The consequences of this conception of style as a skill based on reason are everywhere implicit in early modern pedagogical practice, and (as I will go on to argue) in the actual habits of reading and writing derived from formative classroom experiences. For example, Roger Ascham insists repeatedly in his posthumously published 1570 treatise on education, *The Scholemaster*, that boys should be taught Latin and Greek at all levels by means of double translation – an exercise in which the student turns a passage from Latin to English and then, after an hour's interval, from English back into Latin.[12] Success will be secured in this exercise when the student achieves a result identical to the original. The fidelity for which Ascham argues the student should strive depends on a systematic set of correspondences between individual English and Latin words and phrases; the exercise implicitly fosters an analytical approach to both Latin and English language that fixes the value of words in

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12 See Roger Ascham, *The Scholemaster, Or plaine and perfite way of teachyng children . . . the Latin tong* (London: John Daye, 1570), f. 1v.

both tongues. Stylistic perfection can be achieved, so long as the student understands each word, and its value, fully. This is a point upon which Ascham eventually explicitly insists, when he attributes the defence of double translation to the authority of Pliny the Younger. After extolling Pliny in the most absolute terms, and quoting from him, Ascham continues:

> *Plinie* teacheth, that by this exercise of double translating, is learned, easely, sensiblie, by litle and litle, not onelie all the hard congruities of Grammer, the choice of aptest wordes, the right framing of wordes and sentences, cumlines of figures and formes, fitte for euerie matter, and proper for euerie tong, but that which is greater also, in marking dayly, and folowing diligentlie thus, the steppes of the best Autors, like inuention of Argumentes, like order in disposition, like vtterance in Elocution, is easelie gathered vp: whereby your scholer shall be brought not onelie to like eloquence, but also, to all trewe vnderstanding and right iudgement, both for writing and speaking.[13]

The insistence of the appeal to Pliny's excellence, followed by the positivist way in which Ascham promises the 'aptest', 'right', and 'proper' choices in diction, and then imagines the scholar following 'the steppes of the best Autors' in all points, makes it clear that Ascham conceives of the development of style as a *scientia* every bit as much as Quintilian; and, too, that he imagines double translation to be the best vehicle for the attainment of this *scientia* precisely because it focuses the student's mind on the analytical ('litle by litle') *reading* processes that will in turn produce good writing.

But Ascham's guide to learning Latin stipulates not just a two-, but a three-book method. In the first, the pupil writes his original translation, from Latin to English, of the set text; in the second, after the hour's interval, he copies in turn the reverse translation, from English back into Latin. But in a third book, Ascham prescribes a supplementary series of verbal analyses that the student should perform on every passage:

> But to go forward, as you perceiue, your scholer to goe better and better on awaie, first, with vnderstanding his lesson more quicklie, with parsing more readelie, with translating more spedelie and perfitlie then he was wonte, after, giue him longer lessons to translate: and withall, begin to teach him, both in nownes, and verbes, what is *Proprium*, and what is *Translatum*, what *Synonymum*, what *Diuersum*, which be *Contraria*, and which be most notable *Phrases* in all his lecture . . . Your scholer then, must haue the third paper booke: in the which, after he hath done his double translation, let him write, after this sort foure of these forenamed sixe, diligentlie marked out of euerie lesson.[14]

Ascham's view on double translation is that it encourages the student to recognize and fix the value of key Latin and Greek terms, during the early stages of

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13 Ascham, *The Scholemaster*, f. 34r–34v.
14 Ascham, *The Scholemaster*, f. 3r–3v.

learning either language; here that kind of classification is strengthened not by reference to markers outside the language, but to markers within the language: by locating a given term in relation to its synonyms, antonyms, and alternatives, and by considering its status as literal or metaphorical, the student develops fixed associations between words and their semantic and rhetorical neighbours. The generation of meaning in any act of reading becomes an almost explicitly comparative exercise, at all times, in which each word must be consciously sifted for its various characteristics in relation to cognates in other languages, but also in relation to relevant terms and periphrases in the same language. Indeed, Ascham's reluctant endorsement, in the later years of a boy's education, of *paraphrasis* (restatement) and *metaphrasis* (turning prose into verse, or vice versa), constitutes an extended system of reading that inculcates at every level the same reflexes of verbal analysis; one cannot substitute one word for another without having first performed a full taxonomy of the original term's etymological, semantic, grammatical and other qualities.[15]

In this emphasis, Ascham was following a long tradition of Renaissance humanist educational theory and medieval practice. Isidore of Seville's ubiquitous and encyclopaedic treatise, the *Etymologiae*, for example, introduced many medieval and, with the advent of printing, early modern students to the humane and philosophical learning of antiquity; his method, to begin his analysis of every topic and sub-topic with an etymological enquiry into the terms used to denominate and describe the art or profession under discussion, supposed a fundamental (Platonic) congruity between things and words that made verbal analysis the indispensable first step in any human science or art.[16] Lorenzo Valla furnished in his *Elegantiae linguae Latinae* (1444) a handbook of Latin style studied assiduously by Renaissance schoolboys throughout Europe, particularly after its frequent print publication from the late fifteenth century. Valla had, moreover, developed a controversial and systematic theory of the ultimately philological basis of all philosophical enquiry, which underpinned much of his later work, and particularly the *Dialecticae disputationes* (pub. 1539).[17] Valla's emphasis on a purification of terminology in all branches of philosophy (both secular and divine) represented what was probably the most significant interposition of *grammatica* and *rhetorica* in the 'higher' disciplines of metaphysics and theology in the Renaissance as a whole; the later, in some ways more sensational, revisions of dialectic championed by Peter Ramus in

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[15] *Metaphrasis* was a favoured technique of William Camden's, in which he encouraged the future poet Ben Jonson at Westminster. See *Certain informations and manners of Ben Jonson's to W. Drummond* (*Conversations with William Drummond of Hawthornden*), c. 15.

[16] Isidore's *Etymologiae* circulated widely in the medieval and early modern periods, in both manuscript and, after the 1470s, in print. See L. D. Reynolds, ed., *Texts and Transmission: A survey of the Latin classics* (Oxford: Clarendon Press, 1983), pp. 194–96.

[17] On the influence of the *Elegantiae* and *Dialecticae disputationes* on later humanist logic, see Lisa Jardine, 'Humanist Logic', in *CHRP*, pp. 173–98.

Paris in the 1550s could almost be described as belated recensions of Valla's ground-breaking, neglected work of a century earlier.[18] But both Valla and Ramus, in their slightly different ways, put philological concerns, based on verbal analysis, at the foundation of all philosophical endeavour. The late humanism of England in the sixteenth century was awash with these novel, word-centred reforms of learning.

The pedagogical theory of Erasmus, which many scholars have cited as uniquely and pervasively influential in English grammar-school teaching in the sixteenth century, might seem at first glance not, wholly, to support the emphasis on analytical reading for which I am arguing here. In his study of *Reading in Tudor England*, Eugene Kintgen draws his evidence of pedagogical practice in the period primarily from passages in Erasmus's *De ratione studii*, *De conscribendis epistolis*, and *De copia*. His conclusion, from a survey of Erasmus's emphasis on four-fold interpretation, the construction of commonplace books, and the analysis and creation of rhetorical effects, is that early modern English reading habits foregrounded the 'utility' of texts, and that students were taught to approach texts as instruments whereby they might improve their own ability to make arguments, and to persuade. A given text, according to this argument, was only good insofar as it was useful, and only useful insofar as it provided quotations and models that might at some point serve the reader's turn, when he went to speak or write his 'own' work. But while this *utilitas* of the read text definitely constitutes one of the most important emphases in Erasmus's disparate comments on reading and interpretation, it is not the only emphasis, and may not have been the most lasting. It is curious that, despite Kintgen's conviction about the importance and durability of the idea of *utilitas* in Renaissance pedagogy, when he actually turns to examples of Tudor reading, this emphasis does not loom large in his discussion. In case studies based on Gabriel Harvey, E. K., and John Harington, Kintgen finds many parallels with Erasmian methodology (some of them more exact than others), but few points of direct contact with the idea of instrumentality.

The instrumentality of the student's engagement with his reading goes back to Seneca's discussion of *imitatio* in *Epistulae Morales* 84 (usually titled in English, 'On gathering ideas'), where he compares reading to the activity of a bee gathering pollen: honey can only be made after long and arduous collection. Thus in speaking of the young student's early reading, Erasmus advises him to read voraciously, making sure to digest, rather than merely to consume, his texts:

> One should collect a vast supply of words like this from all sides out of good
> authors, provide oneself with a varied equipment, and, as Quintilian remarks,

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[18] On Ramus's debt to the 'topics-logic' of Rudolph Agricola's 1480 *De inventione dialectica* – essentially a recension of Valla's earlier work – see Jardine, 'Humanist Logic', 181–86.

heap up riches so that we find we have a wealth of words to hand whenever we require it.[19]

Here Erasmus's emphasis is very much one of extraction, as the student goes about to derive words from their sources, compile them into lists, and retain them at close hand for redeployment at the earliest and most fitting need. And yet, as Erasmus continues in this passage, the emphasis turns from utility and industry to analysis and judgment:

> But here we must take special care not to do what some do and use the first thing that presents itself out of the heap in any context without exercising any choice at all. For in the first place you will hardly find two words anywhere so isodynamic that they are not kept apart by some distinction . . . Even if we allow that there is absolutely no distinction in meaning, yet some words are more respectable than others, or more exalted, or more polished and delightful or powerful or sonorous, or more conducive to harmonious arrangement. Accordingly the man who is about to speak should exercise choice and take what is best. Judgment is necessary when bringing out of stock, whereas industry is necessary when storing away. You will learn to exercise judgment by carefully observing elegant and appropriate diction, while the assiduous reading of every type of author will allow you to fill up your store.[20]

Erasmus identifies here two types of reading: a utilitarian mode in which the student collects material for reuse, and what might be called a critical mode, in which he observes and judges the fitness of the language and rhetoric of an elegant author. While scholars like Kintgen are certainly right to identify in Erasmus a strong emphasis on utilitarian reading, it represents only half the story; students must also develop judgment, by observation and analysis, word by word.

Within the performance of this critical reading are merged the two ends of Horatian *poiesis*, profit and pleasure; the student reads critically to develop better judgment for the purpose of arguing more persuasively, but the student also needs to experience the pleasure of the best writing in order to acquire this judgment. It is not clear which of these ends takes priority (or perhaps, posteriority). Erasmus rehearses with penetrating detail the kinds of matters to which the student should attend in the sifting of Latin diction, betraying a strong emphasis on *utilitas*:

> You will need to observe carefully the way usage varies at different periods. The words *beatitudo*, *beatitas*, 'blessedness,' and *mulierosus* 'fond of women,' *mulierositas* 'fondness for women' were bold inventions of Cicero's; and the word *declamare* 'declaim,' meaning 'to do exercises to develop one's powers as a speaker,' was an innovation in his time. In Varro's time *aedituus* 'sacristan' was a

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19 Erasmus, *De copia*, ed. Thompson, p. 307.
20 Erasmus, *De copia*, ed. Thompson, pp. 307–08.

new word, replacing earlier *aeditimus* (*aeditimus* being derived from *aedes* 'temple' as *legitimus* is from lex 'law'). *interdum* 'on occasion' was replaced by *interim* [which originally meant 'meanwhile'], *interea* 'in the meantime' gave way to *obiter* (which developed the sense 'incidentally'), and *identidem* 'often, repeatedly' gave way to *subinde*, all in the time of Quintilian.[21]

The extraordinary historical sensitivity of Erasmus's analysis of usage in this passage illustrates the typical treatment a humanist scholar was expected to give the language of his sources and models. This passage appears in a very practical guide, in *De copia*, on the use of *synonymia* in the avoidance of repetition and the creation of vehemence, and Erasmus explicitly envisions such historical concerns being weighed and judged in direct connection with usage. On the other hand, Erasmus's discussion of the effects created by careful and appropriate use of *synonymia* dwells not on the utility of these effects to the suasory goals of the speaker or writer, but on the aesthetic concerns of decorum and pleasure. 'It is a very trying form of variation if you get into the habit of expressing the same idea over and over again in different words with the same meaning, without any change in the shape of your sentence', he writes; and, again, he speaks sarcastically of the 'splendid achievement' of battological Italian orators – not of their success or failure in moving their audiences, but of the inherent aesthetic qualities (or lack thereof) of their rhetoric.[22] Erasmus often writes, as intellectual historians like Anthony Grafton and Lisa Jardine have stressed, as if *praxis* were all; but, between the lines, it is obvious that Erasmus both valued and promoted a pleasure in critical analysis for its own sake.

It is crucial to recognize this balance between pleasure and utility because it helps to explain why, in Kintgen's formulation, there appears to be such a large gap between Erasmian theory and Tudor pedagogical practice. It seems, as Kintgen has observed, that students were instructed assiduously in the methods of humanist verbal analysis, without an indelible impression of the supposedly indispensable ends to which this analysis was to be put; in short, the emphasis seems to have fallen on method. Thus Gabriel Harvey could write in *Ciceronianus* that:

> I valued words more than content, language more than thought, the one art of speaking more than the thousand subjects of knowledge; I preferred the mere style of Marcus Tully to all the postulates of the philosophers and mathematicians; I believed that the bone and sinew of imitation lay in my ability to choose as many brilliant and elegant words as possible, to reduce them into order, and to connect them together in a rhythmical period. In my judgment – or perhaps I

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[21] Erasmus, *De copia*, ed. Thompson, p. 319.
[22] Erasmus, *De copia*, ed. Thompson, pp. 320–21.

should say opinion rather than judgment – that was what it meant to be a Ciceronian.[23]

The need to develop a Ciceronian style so relentlessly foregrounded in the critical methods of early modern grammar school boys produced this effect, that they were unable, at length, to see the woods, or indeed the wood, for the trees. Much has been made of comments like Harvey's, because they demonstrate that the emphasis in humanist rhetoric was on style rather than content; but these remarks demonstrate, too, that the preoccupation was with a particular mechanics of style: the selection and disposition of words.

Spenser could have expected of his readers, then, the very kind of education that he himself almost certainly had under Mulcaster at the Merchant Taylors' school: a humanist training in Ciceronian rhetoric, based on the teachings of Quintilian and the models of Cicero, and mediated, probably, by the influential Erasmus. This education stressed attention to words, their origins and usage, their comparative semantic situation, and their fixed and recoverable value above all other kinds of analysis – an emphasis that went so far in the influential works of Lorenzo Valla that it eclipsed the history of philosophy and that of the Church. In Quintilian's formulation, as it was taken up by Erasmus and by Ascham, lexical analysis formed the foundation of good reading practice, which in turn formed the foundation of good rhetorical practice; ἐν ἀρχῇ ἦν ὁ λόγος. These were the critical tools by which sixteenth-century English schoolboys were raised to eloquence; but would they use these tools on an English poem, and if so, how?

ARCHAISM AND NEOLOGISM: SPENSER'S NATIONAL LINGUISTICS

The Tudor period was a time of heady development for the English language: pronunciation, orthography, even the word stock itself were all in flux, and English language theorists, like their Continental counterparts, debated strategies for linguistic reformation and the advancement of a vernacular literature.[24] No less than any figure of his time, Spenser was at the very heart of this activity. Richard Mulcaster, for his part, participated energetically in linguistic reformation. As the author of the *Elementarie* (1582), Mulcaster proposed a

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[23] Gabriel Harvey, *Ciceronianus*, ed. Harold S. Wilson, trans. Clarence A. Forbes (Lincoln: University of Nebraska Press, 1945), p. 69.

[24] For an introduction to the rapid changes in English orthography, phonology and morphology, and literary language in this period, see Roger Lass, ed., *The Cambridge History of the English Language, Volume III: 1476–1776* (Cambridge: Cambridge University Press, 1999), esp. chs 2 (Vivian Salmon, 'Orthography and Pronunciation'), 3 (Roger Lass, 'Phonology and Morphology'), and 7 (Sylvia Adamson, 'Literary Language'). For a broader introduction, see Albert C. Baugh and Thomas Cable, *A History of the English Language*, 4th edn (Englewood Cliffs: Prentice Hall, 1993), esp. pp. 195–247.

new standard orthography or 'right writing', adopting a middle line between the customs of tradition and the new philology. His early influence may have played a significant part in directing Spenser's own energies toward philology and, eventually, poetry.[25] Certainly by the time Spenser matriculated at Pembroke College, Cambridge, he was familiar with the works of Joachim du Bellay, whose sonnets he had translated in John van der Noodt's *A Theatre for Worldlings* (1569); Spenser surely read du Bellay's influential *Deffence et Illustration de la Langue Françoyse* (1549), and he may have known similar works by other members of the Pléiade. Before Spenser left Pembroke, he was communicating regularly with Gabriel Harvey and others on linguistic topics, including the regularization of pronunciation, the development of systematic rules for the creation of quantitative verse in English, and strategies for enriching the word stock.[26] Spenser's association with Harvey could only have confirmed his interests in philology; as a scholar of rhetoric himself, Harvey was a cousin and friend of Sir Thomas Smith, whose 1568 *De recta & emendata linguæ Anglicæ scriptione, dialogus* had opened the season on Elizabethan spelling reform treatises.[27] In London by 1579 at the latest, Spenser was again associated with poets and intellectuals, including Thomas Drant, Philip Sidney, and Edward Dyer, discussing in the 'Areopagus', it seems, more of the same philological concerns.[28] Even in his last years in Ireland, it appears Spenser may have had contact with Thomas Harriot, then one of Ralegh's draughtsmen in Munster and an expert on phonetic writing systems.[29] These linguistic preoccupations were to prove the hallmarks of Spenser's poetic

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[25] See *SC*, 'December', ll. 41–42. It is likely that it was Mulcaster, with his connections to the Dutch immigrant community in London, who first connected the seventeen(?)-year-old Spenser with van der Noodt for the translations of du Bellay.

[26] See, for example, the *Three proper, and wittie, familiar Letters: lately passed betvvene tvvo Vniuersitie men* (London: Henry Bynneman, 1580); the *Tvvo other, very commendable Letters, of the same mens vvriting* (London: Henry Bynneman, 1580); and E. K.'s *Epistle* fronting *SC*, *Variorum*, VII, 7–11.

[27] The case for Spenser's association with Sir Thomas Smith through Harvey has been made persuasively by Lisa Jardine in 'Mastering the Uncouth: Gabriel Harvey, Edmund Spenser and the English experience in Ireland' in *New Perspectives in Renaissance Thought: Essays in Honour of Charles B. Schmitt*, ed. J. Henry and S. Hutton (London: Duckworth, 1990), pp. 68–82. Harvey refers to Smith's spelling reform in the third of the *Three proper, and wittie, familiar Letters* (*Variorum*, X, 464), while E. K., for his part, acknowledges in the gloss to *Januarye* of *SC* the possession of a manuscript copy of Smith's *De Republica Anglorum*, lent him 'by his kinsman, and my verye singular good freend, M. Gabriel Haruey' (*Variorum*, VII, 18).

[28] To this period belongs Spenser's *English Poete*, cited by E. K. in the introduction to 'October' of *SC* (*Variorum*, VII, 95) – perhaps never written, certainly never published, and in any case now lost.

[29] Spenser may have been referring to Harriot in the tale of Faunus and Molanna (*FQ* VII.vi); 'Molanna' was the name of Harriot's estate on the Blackwater near Youghal, held of his friend and patron Ralegh. Harriot invented his own phonetic alphabet as a means of recording, and perhaps later teaching, the Algonquin language he observed in Virginia in the 1580s. See W. A.

career, and were to set him apart even from the select group of great Elizabe-
than poets who acknowledged him their 'prince'.

 Unfortunately, Spenser never published a prose treatise on a linguistic or
even a poetic topic. The closest we may come to his explicit views on language
and interpretation is E. K.'s *Epistle* to Harvey fronting *The Shepheardes
Calender*.[30] An important part of this brief introduction to the volume is its
spirited apology for Spenser's diction, acknowledged to be innovatory in its
archaism and rusticity. In this effort, E. K. parades his knowledge of and
perspective on other language theorists of the period. In many ways, his brief
letter provides a manifesto for Spenser's approach to linguistic issues
throughout his poetic career. For example, E. K. is the first to comment on
Spenser's nationalistic project to enrich the English language through
renewing of archaic words and locutions, a project that had been mooted in
Renaissance Italian treatises on poetry, and espoused forcefully by du Bellay.[31]
E. K.'s comments on archaisms and dialect words have been the primary focus
of critical accounts of Spenser's diction throughout the twentieth century;[32]

Wallace, 'John White, Thomas Harriot and Walter Ralegh in Ireland', *The Durham Thomas
Harriot Seminar: Occasional Paper No 2* (1985).

[30] It does not matter to my argument whether 'E. K.' was a pseudonym for Spenser himself, for
Edward Kirke, or for some other friend of Spenser's. If the *Epistle* and glosses *were* written by
Spenser, so much the better; if by someone else, we know from the citation of Spenser's *English
Poete* (Introduction to 'October') that this friend had heard and read Spenser's own views,
which could not have been much different.

[31] The influence on Spenser of fifteenth- and sixteenth-century Italian treatises on poetics and
language was documented by Emma Field Pope in 'Renaissance Criticism and the Diction of
The Faerie Queene'. This article was criticized and amended by Walter Bullock, 'A Comment
on Criticism in the *Cinquecento*', *PMLA*, 42 (1927), 1057–60. W. L. Renwick had already
charted Spenser's debt to du Bellay's *Deffence et Illustration* in 'The Critical Origins of
Spenser's Diction', *MLR*, 17 (1922), 1–16. Spenser may have been echoing du Bellay's *Deffence
et Illustration* as late as 1590; the metaphors of 'wilde fruit' and 'saluage soyl' appearing in the
dedicatory sonnet to the Earl of Ormond (*Variorum*, III, 193) recall the dominant metaphor of
du Bellay's treatise, that of language as a wild plant to be tamed and cultivated by industrious
agriculteurs.

[32] See Bruce McElderry, 'Archaism and Innovation in Spenser's Poetic Diction'; Frederick
Morgan Padelford, 'Aspects of Spenser's Vocabulary', *Philological Quarterly*, 20 (1941),
279–83. and Nathan Gans, 'Archaism and Neologism in Spenser's Diction', *Modern Philology*,
76 (1979), 377–79. Veré Rubel *Poetic Diction in the English Renaissance From Skelton Through
Spenser* (New York: The Modern Language Association of America, 1941) is a similarly
descriptive study, culminating in an assessment of Spenser's diction that notes debts to
Lydgate, Skelton, Gascoigne, and above all Chaucer. The possibility of dialect influences on
Spenser's diction has been the subject of two less convincing interpretations, Paula Blank's
'The Dialect of the *Shepheardes Calender*', *SS*, 10 (1992), 71–94, and Willy Maley's 'Spenser's
Irish English: Language and Identity in Early Modern Ireland', *Modern Philology*, 91 (1994),
417–31. While Maley is right to remind us of the persistence of ancient Saxon (Chaucerian?)
English in Old English communities in Ireland, the possible historical relevance of this influ-
ence on *SC*, at least, is at best dubious. More relevant is the argument, also rehearsed by Maley,
that ancient English recalls the primal English (i.e. pre-Roman) catholic church, a ground for
archaism favoured by antiquarian Protestants.

occasionally, other studies have considered etymological wordplay in Spenser's verse, though mostly from the limited perspective of his onomastics.[33] Such studies have been content to demonstrate the comparatively obvious: Spenser's participation in language renewal, his championing of literary English, and his skill in wordplay.

These studies have failed to address, however, what must have been the most salient feature of E. K.'s preface, its Nashe-like nose-thumbing at authority. For example, in defending Spenser's archaisms, E. K. first suggests that the poet, 'much traueiled and throughly redd' in earlier English poets, adopted their language by 'casualtye and custome'. He then posits that Spenser turned to them 'of set purpose and choyse', observing due 'decorum' and 'seemely simplycitie' in the framing of rustic shepherd speech. But his last suggestion gets to the heart of the matter. Here he pre-empts those who would criticize Spenser for his neologistic archaisms, condemning them:

> . . . that of their owne country and natural speach, which together with their Nources milk they sucked, they haue so base regard and bastard iudgement, that they will not onely themselues not labor to garnish and beautifie it, but also repine, that of other it shold be embellished. Like to the dogge in the maunger, that his selfe can eate no hay, and yet barketh at the hungry bullock, that so faine would feede: whose currish kind though it cannot be kept from barking, yet I conne them thanke that they refrain from byting.[34]

The analogy between enriching the word stock and feeding – whether milk at the breast or hay in the manger – echoes comments elsewhere in Spenser's writings in suggesting that he considered language the product not of natural disposition or innate knowledge, but of custom and usage; as du Bellay had written of language some years before, 'toute leur vertue est née au monde du vouloir, & arbitre des mortelz'.[35] In asserting Spenser's right to feed at this trough, E. K. has to face down a few sacred cows: Lorenzo Valla's famous condemnation, in the *Elegantiae*, of Livy's archaisms, and Roger Ascham's similar censure of Sallust in the *Scholemaster*.[36] Valla, as Spenser's readers

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[33] See Martha Craig, 'The Secret Wit of Spenser's Language', in Paul Alpers, ed., *Elizabethan Poetry: Modern Essays in Criticism* (London: Oxford University Press, 1967), pp. 447–72; and K. K. Ruthven, 'Etymology' in *SE*, pp. 255–56. Examining the place of language in the shared theology of Augustine and Spenser, Åke Bergvall has concluded in two articles that Spenser is preoccupied in *FQ* I with language and the *logos*; see Åke Bergvall, 'The theology of the Sign: St Augustine and Spenser's Legend of Holiness', *SEL*, 33 (1993), 21–42; and 'Formal and Verbal Logocentrism in Augustine and Spenser', *SP*, 93 (1996), 251–66.

[34] E. K., *Epistle, SC, Variorum*, VII, 9.

[35] Joachim du Bellay, *La Deffence et Illustration de la Langue Françoyse* (Paris: pour Arnoul l'Angelier, 1549), sig. Aiiii r–Aiiii v.

[36] 'For albe amongst many other faultes it specially be obiected of Valla against Liuie, and of other against Saluste, that with ouer much studie they affect antiquite, as coueting thereby credence and honor of elder yeeres, yet I am of opinion, and eke the best learned are of the

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would have well known, had written in his *Elegantiae* one of the standard humanist textbooks on Latin style;[37] to contravene him was both to acknowledge his influence and to do him one better (much like Spenser's 'overgoing' of Ariosto in *The Faerie Queene*). The case with Sallust is similar; E. K. manages to trump Ascham and his master Cheke by defending Spenser's own archaisms with solid principles of classical rhetoric: E. K.'s pre-emptive strike, taking its cue from Erasmus's *Ciceronianus*, emphasizes that Spenser's archaising is not only justified on the grounds of *decorum*, but that even in its innovation it is effecting a kind of *imitatio*.[38] This harnessing of classically sanctioned arguments in defence of distinctively unorthodox ideas is precisely what makes E. K.'s *Epistle* so clever.

Registering the insouciant cleverness of E. K.'s *Epistle* is important because, broadening our scope, we may thus appreciate that the defence of archaism and dialect 'neologism' is only one – exemplary – part of his task. Spenser's general 'theory' of language, and the interpretative conventions he would have expected a reader to bring to his poetry, are the central subjects treated at length by E. K. in the *Epistle*, and with a characteristic flair. Similarly, the evidence of early readers of *The Faerie Queene* demonstrates a set of assumptions and attentional schemes substantially different from our own. The need to mark these important differences between contemporary and modern reading practices has rightly led to the rise of the scholarly annotated edition; but in zeroing in, immediately, on the conspicuously emphasized illustrations of Spenser's capacity for wordplay – a canary he has left to sing in the mine of his verse – we

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lyke, that those auncient solemne wordes are a great ornament both in one and in the other; the one labouring to set forth in hys worke an eternall image of antiquitie, and the other carefully discoursing matters of grauitie and importaunce.' (*Variorum*, VII, 8). E. K. is responding to Wilson's famous stricture on 'ynkehorne termes' in *The Art of Rhetorique* (London: George Robinson, 1585), p. 162. Ascham had, following Cheke, objected in *The Scholemaster* to Sallust and Varro for the use of antiquated and dialect words, in a passage that was very obviously, in both form and in matter, E. K.'s original; see Roger Ascham, *The Scholemaster*, ed. John E. B. Mayor (London: G. Bell & Sons, 1934), pp. 225–31.

[37] The prominence of this work among Cambridge readers throughout the sixteenth century, for example, is established by Elisabeth Leedham-Green, *Books in Cambridge Inventories: Book-Lists from Vice-Chancellor's Court Probate Inventories in the Tudor and Stuart Periods*, 2 vols (Cambridge: Cambridge University Press, 1986), II, 770–71.

[38] The curiously negative, and famous, responses of Sidney and Jonson to E. K.'s argument are instructive. Sidney cites in his censure the precedents of Theocritus and Virgil, who, he claims, did not affect rustic or ancient diction in their eclogues. Jonson, too, suggests that Spenser's diction recalls not Virgil, but the rough style of Ennius. However, both Theocritus and Virgil *did* affect a rough and dialect diction in their eclogues, and indeed Theocritus's Doric was cited by many of Spenser's admirers as the English poet's exemplar. It seems strange that Sidney and Jonson should have made such inept comparisons, given that they were both probably familiar with Macrobius's extended remarks, in the *Saturnalia*, on Virgil's verbal debts to Ennius. The inadequacy of Jonson's and Sidney's strictures, and the 'false genealogies' that have plagued criticism of Spenser's diction, are exposed in Sheldon P. Zitner, 'Spenser's Diction and Classical Precedent', *PQ*, 45 (1966), 360–71.

miss the much broader effects they signal. Archaisms, neologisms, and onomastics represent an important part of Spenser's wordplay, but far more important to our reading of Spenser is an understanding of his global *modus significandi*, the theory behind his poetic composition. As we have seen, Valla, Erasmus, and Ascham predicated their pedagogical methods on a meticulous attention to words in the analysis of good usage and the development of a Ciceronian style; the exemplary evidence of Harvey's *Ciceronianus* testifies, in turn, to the enduring legacy of these humanist pedagogical innovations. But it is the example of E. K.'s glossing, and of Spenser's poetry, in *The Shepheardes Calender*, that shows how this humanist emphasis on word-based reading of Latin and Greek could be imported into the interpretation of English texts, and it is here, too, that we recognize Spenser's use of archaism and neologism, dialect forms, allusive names, and conspicuously etymologized terms, as the visible tip of a much larger iceberg. Spenser invites us, by drawing attention to his language in E. K.'s 'Epistle', to perform the pleasing analysis of his diction.

E. K.'s preface to *The Shepheardes Calender* betrays the influence of all of these interpretative strands. The central dialectical methodologies of Aristotelian interpretation, as in his works on logic and natural philosophy, were *analysis* and *synthesis*. The systematic deconstruction of a passage into sentences, then phrases, and finally into words was the first task of the conscientious reader. This can be seen very quickly in the presentation of the *De interpretatione*, where, after the introduction, Aristotle discusses first ideas, then nouns and verbs, then sentences, and only latterly propositions.[39] Nor was the investigation at its finest level with words themselves; as Melanchthon has it, the most basic question facing the good reader is '*quod vocabulum significat*', a question that must be investigated by recourse to grammar, to etymology, and (in the case of Latin and Greek words) to laborious research in approved authors. It is thus unsurprising that E. K. follows in the *Epistle* just such an analytical methodology in explicating *The Shepheardes Calender*. In introducing Spenser's archaic diction, for example, he comments that 'of many thinges which in him be straunge, I know [this] will seeme the straungest, the words them selves being so auncient, the knitting of them so short and intricate, and the whole Periode and compasse of speache so delightsome for the roundnesse, and so grave for the straungenesse'.[40] Thereafter rehandling this analysis more minutely, E. K. follows again the same constructive pattern: 'firste of the wordes to speake', he proceeds then to 'the knitting of sentences, whych they call the joynts and members therof', and only finally to 'the generall dryft and purpose of his Æglogues'.[41]

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[39] Aristotle, *De interpretatione*, chapters 1 to 5. That Spenser knew the *De interpretatione* intimately, there can be no doubt.

[40] E. K., *Epistle*, SC, *Variorum*, VII, 7.

[41] E. K., *Epistle*, SC, *Variorum*, VII, 7–10. This procedural reference to Aristotle is more obvious in light of another, in 'the generall argument of the whole booke'. Here E. K. follows another

If E. K.'s *Epistle* functions as an irreverently appropriative defence of Spenser's diction, it also – by its strong analytical focus on the individual word – guides readers in the interpretation of Spenser's poetry. Other elements of Spenser's style are, if mentioned, only rudimentarily treated; the overall impression is that E. K.'s interpretative framework for *The Shepheardes Calender* is rooted in lexical analysis. In a sense, this methodology is forced upon the reader by Spenser's own decision to use hard, archaic words, an authorial sleight that E. K. merely emphasizes; but, significantly, emphasize it he does, especially when he goes on to announce that he will routinely 'gloss' the harder words of the poetry:

> Hereunto haue I added a certain Glosse or scholion for thexposition of old wordes and harder phrases: which maner of glosing and commenting, well I wote, wil seeme straunge and rare in our tongue: yet for somuch as I knew many excellent and proper deuises both in wordes and matter would passe in the speedy course of reading, either as vnknowen, or as not marked, and that in this kind, as in other we might be equal to the learned of other nations, I thought good to take the paines vpon me, the rather for that by meanes of some familiar acquaintaunce I was made priuie to his counsell and secret meaning in them, as also in sundry other works of his.[42]

E. K.'s gloss to *The Shepheardes Calender* has often been cited as an attempt by Spenser to give his work the air of a Virgilian classic, or perhaps the look of a Geneva bible[43] – but this is not what E. K. himself tells us. It 'wil seeme straunge and rare *in our tongue*', he admits (my emphasis): the comparison drawn is not between the formats of the work of 'the new poet' and his predecessors, but between the languages in which they have composed. English has not before merited such glossing – such meticulous attention to the individual word – but E. K. cherishes a wish that English writers, readers, and speakers 'might be equal to the learned of other nations'. The achievement in which E. K. here imagines the English matching their ancient forebears and continental contemporaries is precisely the established tradition of rigorous textual interpretation characteristic of literature in these tongues. It is no accident that Spenser's generation saw the first application of such rigorous philological study, once reserved for the ancient and biblical Latin, Greek, or Hebrew, to

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traditional logical methodology, *diuisio*, in separating the Eclogues into 'three formes or rannckes': 'and to this division may every thing herein be reasonably applyed'. See *SC, Variorum*, VII, 12.

[42] E. K., *Epistle, SC, Variorum*, VII, 10–11.

[43] See, for example, S. K. Heninger, Jr., 'The Implications of Form for *The Shepheardes Calender*', *Studies in the Renaissance*, 9 (1962), 309–21, and 'The Typographical Layout of Spenser's *Shepheardes Calender* and Sansovino's Sannazzaro', in *The Word and the Visual Imagination: Studies in the Interaction of English Literature and the Visual Arts*, ed. Karl Josef Höltgen et al. (Erlangen: Universitätsbibliothek, 1988), pp. 33–51.

the English vernacular;[44] his own part in this development grows out of these early, and certainly influential, comments on language in *The Shepheardes Calender.*

The dominance of meticulous philology was absolute in Renaissance rhetoric; perhaps at no other period in the history of interpretation have individual words figured so prominently in the construal of textual meaning. As Ann Moss has demonstrated, one of the most fascinating aspects of the survival of the commonplace book into the period of print was its emerging function as a kind of 'interpretive grid' for the Renaissance schoolboy; due to the meticulous arrangement of headings under individual words, students could suddenly leap from one text, through the concordance-like encyclopaedia of the commonplace book, to a string of others.[45] The nexus and vehicle of this intellectual transport system was the word itself, the destination a ripened understanding of its semantic sprawl. The Elizabethan period saw not only the flowering of the commonplace book, but, as Judith Anderson has reminded us, the increasing maturity of other novel word-based aids and treatises.[46] The index, the table, the hard-word list, the gloss, the glossary, the scholion, the dictionary – all these, like the commonplace book, privileged the place of the word in textual analysis and, crucially, allowed texts to be entered and used non-serially, via pointers accessed by an alphabetical listing. The crucial difference from manuscript reading practice is that whereas, in a manuscript context, an index or table compiled by the reader acts as an *aide-memoire*, in a print context the same apparatus is provided to the reader along with the text at purchase. It does not only facilitate rereading, but governs the order of consumption on the first reading.

We have seen how Spenser's archaic diction in both *The Shepheardes Calender* and *The Faerie Queene* – coupled to E. K.'s systematic glossing – privileges the status of the individual word in the interpretative methodology implicitly prescribed by these texts. We have further seen how this type of analysis is consistent with early modern emphases, both prescribed and practised, on logocentric interpretation. But how did Spenser expect his individual words to be studied, how construed? Evidence, again from E. K.'s *Epistle*, suggests that Spenser anticipated, at least in the case of proper nouns, diligent consideration of etymology, in keeping with the prescriptions of Plato's *Cratylus* and those of Quintilian discussed above. E. K. even gives a case lesson in this type of exegesis in his 'generall argument of the whole booke', analysing

[44] For example, Thomas Cooper's *Thesaurus Linguæ Romanæ & Britannicæ* was first published in 1565. It was over thirty years later, in 1598, that Speght appended to his edition of Chaucer, that 'well of English vndefyled', its famous list of 'hard words'.

[45] Ann Moss, *Printed Commonplace-Books and the Structuring of Renaissance Thought* (Oxford: Clarendon Press, 1996), p. 136.

[46] See Judith Anderson's brilliant study, *Words that Matter: Linguistic Perception in Renaissance English* (Stanford: Stanford University Press, 1996).

in detail the etymology and thus inherent 'nature' of the word 'eclogue'.[47] In this passage, E. K. again insists on the 'ἀνάλυσις and interpretation of the word' while demonstrating, for words like 'Æglogue', the kind of research and study a careful reading demands. E. K.'s subsequent practice in the appendices to each month, however, show that he anticipates etymological inquiry for more than just proper names. While he explicates 'Cloris' (*Aprill*), glosses on words such as 'cheuisaunce' (*Maye*), 'paradise' (*Iune*), 'bidde' (*September*), and 'queint' (*October*) also draw on etymology for their exposition.

In addition to etymology, E. K. provides a pattern for another humanist standard, the consideration of good usage in approved authors – a departure from the text-at-hand through the word to its use in other texts, perhaps via a commonplace book or index. Thus Colin's choice of 'siluer song' in *Aprill* (cited by Hobbinol) is glossed by E. K. by reference to 'the lyke in Hesiodus argureon melos'. 'Cheuisaunce' in *Maye*, likewise, is 'sometime of Chaucer vsed for gaine: sometime of other for spoyle, or bootie, or enterprise, and sometime for chiefdome'. The use of 'Philomele' in *Nouember* sends E. K. to Gascoigne, and he cites the authority of Terence for Colin's use of 'musick' for 'poetry' in *December*. Such *exempla*, painting the history of a word's usage by recourse to approved writers, represent the second strand of the lexical interpretation that Spenser and E. K. seem to expect from their readers.

E. K. has similar recourse to the traditional exegetical practices of classical eloquence in providing for the construal of larger 'periods' and 'passages'. Speaking again of Spenser's archaic diction, E. K. admits that 'nether euery where must old words be stuffed in, nor the commen Dialecte and maner of speaking so corrupted therby, that as in old buildings it seme disorderly and ruinous'. Rather, the poet must observe a rule of disposition drawn, perhaps, from the familiar commonplace of *ut pictura poesis*:

> But all as in most exquisite pictures they vse to blaze and portraict not onely the daintie lineaments of beautye, but also rounde about it to shadow the rude thickets and craggy clifts, that by the basenesse of such parts, more excellency may accrew to the principall; for oftimes we fynde ourselues, I knowe not how, singularly delighted with the shewe of such naturall rudenesse, and take great pleasure in that disorderly order. Euen so doe those rough and harsh termes enlumine and make more clearly to appeare the brightnesse of braue and glorious words. So oftentime a dischorde in Musick maketh a comely concordaunce: so great delight tooke the worthy Poete Alceus to behold a blemish in the ioynt of a wel shaped body.[48]

E. K. here posits a method of writing that has serious consequences for our method of reading. He suggests that Spenser has carefully disposed his archaic diction to generate relational effects between words in the larger periods,

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[47] E. K., 'The generall argument of the whole booke', *SC, Variorum*, VII, 12.
[48] E. K., *Epistle, SC, Variorum*, VII, 8.

treading ambiguously between aesthetics and meaning. Not only must the reader establish the ancestry and history of a word, but the word must then be carefully considered in relation to the words appearing around it: *verba* invoke *res*, and the *res* must be researched; but *verba* also function among other *verba*, and the relation of text to context must likewise be considered. The relationship of word to context may be further complicated, as here, by its participation in a distinctive semantic subset (the archaic, the rustic) of the poet's general diction (the poetic). E. K. clearly intends his readers to contrast archaic words with other, more frankly beautiful terms, and in that sense the contrast is an aesthetic one. However, there is also no ignoring that the distinction between these sets of words is semantic; E. K. does not, for example, ask us to compare words from different languages, or words with different forms. In effect, we are being asked to construe the semantic qualities of words by means of their relation to the words around them.

Although intellectual historians have debated the relative prominence of relational versus denotative structures of meaning in early modern linguistic and hermeneutical theory, particularly in relation to Lorenzo Valla,[49] the relational model was a fairly standard part of sixteenth-century rhetorical theory, if in a slightly restricted sense. Philipp Melanchthon, for example, speaks of a similar dispositional strategy in his 1523 oration 'Praise of Eloquence'. Having discussed the importance of *inventio*, he proceeds to *dispositio*:

> Finally, if you know the words and diction well enough, it is nevertheless very difficult to distribute them each in their place, to suppress some and render others conspicuous, to contract some briefly, and extend others more generously, to dissemble and conceal some, and expose others to view, so that they stand out and become conspicuous like lights among shadows. For eloquence is something altogether greater than a noisy mass of words.[50]

Melanchthon equivocates here between rhetorical emphasis and meaning; from an interpretative perspective, of course, the difference is moot: emphasis, or its lack, is only another carrier of meaning. But it seems that E. K. has taken the received wisdom on rhetoric and – as with Valla – has altered it slightly. Rather than emphasis generally, E. K. introduces a semantic criterion: the relations and contrasts he cites will obtain between words differing in their affiliation to distinct semantic categories. E. K. has thus appropriated and modified several traditional arguments of humanist philology: elegance of style justified by attested usage in ancient authors now looks to Chaucer instead of Cicero;

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[49] See, for example, the debate between Richard Waswo, *Language and Meaning in the Renaissance* (Princeton: Princeton University Press, 1987), and Ian Maclean, *Interpretation and Meaning in the Renaissance: The case of law* (Cambridge: Cambridge University Press, 1992).

[50] Philipp Melanchthon, *Praise of Eloquence*, in *Orations on Philosophy and Education*, trans. Christine F. Salazar and ed. Sachiko Kusukawa (Cambridge: Cambridge University Press, 1999), p. 61.

strict interpretational focus on the analysis of the word now applies to the vernacular rather than exclusively to classical languages; and careful construal by attention to the relational effects of *dispositio* now implicates semantic rather than merely emphatic or aesthetic effects.

This program of innovative appropriation is carried a further, decisive step. E. K. announces his intention in the *Epistle* to gloss not only unknown and archaic material, but 'wordes and matter [that] would passe in the speedy course of reading . . . as not marked'. E. K. here underscores the type of diligent, analytic attention he expects from the reader of *The Shepheardes Calender*; much like Erasmus's reader of the bible, this reader is to 'mark' English words with the same care and scholarly acumen as Latin terms. Again like Erasmus's reader, this reader is expected to transcend through this study the gap (what Terence Cave has called an 'opacity') between *verba* and *res*; for his part, E. K. will assist this effort with the gloss, supplying authoritative expositions of the words guaranteed by his having been made 'privie to [Spenser's] counsell and secret meaning in them'. Just as scripture is guaranteed a *sensus germanus* by its ultimate motive source in the influence of God, and texts of the civil law likewise a '*degré zéro*' of interpretation by the authority of the emperor,[51] so Spenser's text is here guaranteed its own *sensus germanus* by the authority of E. K., the poet's intimate friend. Throughout the ensuing glosses, E. K. occasionally admits ignorance of the meaning of particularly dark passages but always affirms that such meaning is available to the 'well sented'. A similar guarantee of authorial intention precedes *The Faerie Queene*.[52] That Spenser should in the prefaces to his two most important works certify and foreground some latent, recoverable 'intention' in his poetry is striking, and suggestive for our grasp of his 'theory' of language. E. K. and Spenser himself seem confident that the reader can use standard techniques of textual analysis (if slightly modified according to E. K.'s suggestions) to arrive at a true understanding of the poet's 'whole intention in the course of this worke'.

Spenser (with/as E. K.) was not alone in prefacing a linguistically distinctive English literary work, in this period, with a hermeneutical challenge to the reader. Ben Jonson's famous first epigram makes the same general point:

> Pray thee, take care, that tak'st my booke in hand,
> To reade it well; that is, to vnderstand.[53]

Insofar as Spenser's invitation to the reader is to move from a position of alienation (reading) to one of control (understanding), he and Jonson make much

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[51] For the *sensus germanus*, see Terence Cave, *The Cornucopian Text: Problems of Writing in the French Renaissance* (Oxford: Oxford University Press, 1979), pp. 78–124; Maclean invokes the '*degré zéro*' in *Interpretation and Meaning in the Renaissance*, pp. 89–95.

[52] Compare the beginning of the *Letter of the Authors expounding his whole intention in the course of this worke . . . to . . . Sir Walter Ralegh* (*Variorum*, I, 167).

[53] Ben Jonson, *The Workes of Beniamin Ionson* (London: William Stansby, 1616), p. 769.

the same entreaty. But other English translators and poets were, like Spenser, more precise about how they expected readers to make this transition. Sir Thomas Hoby, for example, prefaced his English translation of Castiglione's *Il Cortegiano* with a letter from Sir John Cheke, drawing attention through Cheke's censures of linguistic borrowing and 'inkhorn terms' to the nature of his own diction in the ensuing work. The more intellectual and perhaps self-advertising poet, George Chapman, makes more conspicuous this appeal to the reader's linguistic sensitivities, in his 1611 translation of Homer's *Iliad*. Here he speaks of the failures of earlier translations in his verse epistle:

> Custome hath made euen th'ablest Agents erre
> In these translations; all so much apply
> Their paines and cunnings, word for word to render
> Their patient Authors; when they may as well,
> Make fish with fowle, Camels with Whales engender;
> Or their tongues speech, in other mouths compell.[54]

Chapman continues at great length about the different sounds, letters, and 'distinguisht natures' of Greek and English, ultimately resolving that the translator cannot work by rule, but must use 'iudgement to make both consent'. He therefore laughs to see the 'word-for-word traductions' of pedantic translators, and adduces the authority of Valla, among others, to justify his periphrases. So jealous of his good reputation as a translator is Chapman, in the face of detractions from 'a certain enuious Windfucker', that he repeats this argument nearly 'word for word' in prose in the ensuing preface, remarking of his maligners that:

> . . . it will easily appeare how I shunne them: and whether the originall be my rule or not. In which, he shall easily see, I vnderstand the vnderstandings of all other interpreters, and commenters in places of his most depth, importance, and rapture. In whose exposition and illustration, if I abhorre from the sence that others wrest, and racke out of him; let my best detractor examine how the Greeke word warrants me . . . If any taxe me for too much periphrasis or circumlocution in some places, let them read *Laurentius Valla*, and *Eobanus Hessus*, who either vse such shortnesse as cometh nothing home to *Homer*; or where they shun that fault, are ten parts more paraphrastical then I.[55]

Chapman's laborious, even duplicate insistence on 'understanding the understandings' of other interpreters, by close linguistic conference of his own 'conuersion' with those of others, and with the original, speaks not only to his prickly defensiveness, but to the critical climate of analytical reading that defined the early modern reception of English poetry. Lest we should suppose

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[54] George Chapman, 'To the Reader', *The Iliads of Homer* (London: Nathaniel Butter, 1611), sig. *6v–A1v.

[55] Chapman, *The Iliads of Homer*, sig. A3v–A4r.

Chapman's bravado marshalling of 'the Greeke word' in his defence to be the privilege not of the poet, but of the translator only, the testimony of another translator, Sir John Harington, puts Chapman's barking in perspective. Harington writes in the preface to his 1591 *Orlando Furioso* that:

> . . . it is possible that if I would haue employed that time that I haue done vpon this, vpon some inuention of mine owne, I could haue by this made it haue risen to a iust volume, and if I would haue done as many spare not to do, flowne verie high with stolen fethers. But I had rather men should see and know that I borrow all, then that I steale any: and I could wish to be called rather one of the not worst translators, then one of the meaner makers.[56]

Harington, like Spenser and Chapman, imagines the culture of reception of English heroical verse to be one in which readers scrutinize and evaluate imitations, as well as translations, by patient conferral of the work with its sources and originals. The practice of *imitatio* that so pervasively defined English literary production in this period made, in effect, all works translations; and the kinds of comparative linguistic conferral that Chapman cites as necessary to a just critical evaluation of his own efforts were ones that Spenser and Harington, likewise, seem to have taken for granted.

E. K.'s virtuoso account of contemporary language theory and hermeneutics, coupled to his, and to Spenser's, promise of a recoverable, pre-existent meaning guaranteed by the author's Sidneian 'fore-conceit', creates a strong emphasis on interpretation as a kind of game, governed by rules, that the reader has a chance of winning. The sense of an artificial and rational structure of meaning in Spenser's poetry, one which may be decoded and expounded by techniques apprehensible through humanist grammatical and rhetorical training, is a lure that has variously tempted and tortured many modern critics. Recognizing that it is a lure, and an intentionally and artificially baited one at that, should not immediately lead to its dismissal from serious consideration; rather, we should register and attend to the tensions that this lure creates, the dissonance arising between appetite for signification and appetite for significance. This tension represents, again, precisely the rupture between pleasure and utility with which, at the opening of this chapter, I opened: a reader reads a text to take pleasure from its excellence, but also to recover, extract, and apply its meaning. The disjunction between significance (which includes more than can be comprehended in a single and coherent account of its meaning) and signification (which does not) thus marks out the territory between a 'literary' reading and a 'legal' expounding of a poem like *The Faerie Queene.* Insofar as such a poem may be read to its Sidneian 'ending end', it becomes the subject of an exegetical process much like the one that Maclean

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[56] John Harington, *Orlando Furioso in English Heroical Verse* (London: Richard Field, 1591), sig. ¶8r.

describes among early modern civil lawyers; but insofar as such a poem may be read not for any instance of enjoyment but for an ongoing enjoying, its meaning remains recessively potential.

<div align="center">

LEGAL INTERPRETATION:
THE *SENSUS GERMANUS* AND THE LAW REPORT

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The hermeneutical game that Spenser and E. K. invite readers to play in *The Shepheardes Calender*, and to which Spenser again invites us, serially, in *The Faerie Queene*, then, echoes on a large and more diffused scale the same tension subsisting in the use and interpretation of individual words: is reading an *ars*, or a *scientia*? From the author's vantage, too, a similar question hovers over Spenser's work: is writing a gift, conferred by the Graces or taught by the Muse, or a skill, conned by learning and practice? The confounding of hermeneutics and exegesis has a way, in Spenser's poetry, of mediating the psychological, moral, and political questions that perplex his thought, so that the ability of a reader to learn how to be dazzled by Spenser's verse becomes – by a series of conceptual relations involving, say, Aristotle's precepts on ethics – a justification for the suppression of Irish customs and cultural identity. The tendency to analogize systems of human learning and wisdom in the reading of Spenser's poetry and prose is occasioned, or made possible, by the recurrent preoccupation of his writing with the relation between instance and rule, or *sensus* and *sensus germanus*, what one might call a meta-structure inherent to most disciplines and, indeed, human experiences. Whether we construe and identify this relation as Neoplatonic (phenomenon : form), as hermeneutical (*verba* : *res*), as linguistic or allegorical and hence synchronic (signifier : signified), as prophetic and diachronic (omen : event), as moral (action : virtue), as legal (judgment : principle), or in any number of other, locally compelling ways, we find ourselves as readers engaging with a problem that freighted the minds of early modern philosophers and poets, and one that penetrates to the core of how we construe the relation of ourselves : world.

The analogical impulse is perhaps the most conspicuous element of the structure of *The Faerie Queene*, at many levels: a tendency of the narrative, of the figuration, and of the language of the poem to double itself, and so to invite the reader to engage in analogical interpretative play. Whether we ascribe this analogical impulse to the author in his construction, to the text in its performance, or to the reader in her interpretation of the literary artefact or event, is irrelevant to a recognition of the existence, somewhere along the chain of transmission from creation to interpretation, of the impulse. This quality of Spenser's poem is well documented: it forms the basis, for example, of James Nohrnberg's dense and provoking study, *The Analogy of* The Faerie Queene, in which Nohrnberg argues for the poem as a whole that comprises a 'multiplicity of coordinate units, separately articulated and given comparable

importance'; a work where, borrowing terminology from Heinrich Wölfflin, Spenser 'orders his material in parallel strata, and presents it "horizontally" '; or, again, a 'folded' or 'twofold' work, a poem defined by a 'structure of recurrence'.[57] One element of Spenser's analogical ordering that, one might think strangely, Nohrnberg does not discuss is the relation, developed by Aristotle in the ninth chapter of the *Poetics*, between universals (τὰ καθόλου) and particulars (τὰ καθ᾽ ἕκαστον).[58] Poetry's particular excellence, Aristotle argues, arises from its ability to present 'probable' fictions in a way that blends a historical particularity with a philosophical universality, thus constantly mediating between a local instance and a general precept. It is the 'folded' or 'recurrent' structure of Spenser's allegory, figuration, and language that makes this mediatory function particularly effective in *The Faerie Queene*: the repetition and near-repetition of narrative and conceptual structures throughout the poem points insistently to the universal forms lying behind the instances, from which the instances depend or arise; while, at the same time, the small points of difference in these near-repetitions continually focus the reader's attention on the individual characteristics of the instances themselves. In this way the Aristotelian mediation of universal and particular in the poetical fable lies behind Spenser's first-level analogical structure as a kind of meta-analogy, permeating the whole work.

Spenser's inscription of this analogical structure into various levels of his poem could not but have been conditioned, in part, by the influential English reception of Aristotle's theory of the probable, the universal, and the particular, by Philip Sidney in his *Apology for Poetry* (or *Defence of Poesy*, ca. 1582). Sidney had gone one step beyond Aristotle in his claim not only that poetry mediates synthetically between history and philosophy, but that its mediation makes it the principal of the serving sciences advancing that most important or architectonic human project, 'the knowledge of a man's self, in the ethic and politic consideration';[59] and by insisting that real self-knowledge was to be had not in *gnosis* merely, but in *praxis*, not in well knowing only, but in well doing.[60] Aristotle's celebration of poetry's disciplinary hybridity, then, was by Sidney co-opted to serve a functional rather than a merely formal end, making poetry great because of its power to move its readers, and to move them in the best actions. But Spenser's fashioning of a noble person in virtuous and gentle discipline – the authorially avowed project of *The Faerie Queene* – plays a coy

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[57] See James Nohrnberg, *The Analogy of* The Faerie Queene (Princeton: Princeton University Press, 1976), pp. 22, 372, 626.

[58] See Aristotle, *The Poetics*, ed. and trans. Stephen Halliwell (Cambridge: Harvard University Press, 1995), pp. 58–59.

[59] Philip Sidney, *A Defence of Poetry*, ed. Katherine Duncan-Jones and Jan van Dorsten (Oxford: Clarendon Press, 1973), pp. 82–83.

[60] 'And that moving is of a higher degree than teaching, it may by this appear, that it is well nigh both the cause and effect of teaching . . .'. See *A Defence of Poetry*, pp. 82–83, 91.

game with this apparent ideal of Sidney's as set out in *The Apology*: for narratives of transparently historical topicality, by repetition, become hypostasized, and while the particular reference of a tale like that of Timias and Belphoebe (shadowing Ralegh's relation with Elizabeth) pulls the reader toward a historical, and moral, emulation or aversion, the repetitions of this story – in the tales of Britomart and Artegall, of Marinell and Florimell, of Calidore and Pastorella, to name but a few – rather draw the reader back toward a universalizing construction. This is as much as to say that Sidney does not provide, in his theory of poetry's universal moral example, for allegory; and the distinctive combination of romance digression and allegorical hypostasis in *The Faerie Queene* complicates, if it does not cripple, the project of moral instruction.

The kinds of hermeneutical concerns raised by Spenser's recension of Sidney's Elizabethan Protestant account of Aristotle may, at first, seem a world away from the word-oriented humanist interpretation with which this chapter opened. But both verbal and allegorical interpretation in Spenser demand the same habits of conferral, distinction and assimilation, and both are directed toward the recovery of a *sensus germanus*, the 'genuine' or real meaning lying behind the use of a word or of some image or narrative element. Humanist pedagogy and theory, as we have seen, teaches the student to judge the meaning and the aptness of a word in its context by comparison with other examples, of the generic context as of the word, and by enquiry into the term's etymological and semantic value. The appeal to usage is a horizontal movement, that to origin and Platonic 'natural' meaning a vertical interpretative movement. Humanist pedagogues, working on the model of Cicero and Quintilian, taught this sort of verbal analysis as if, were it to be practised scientifically, it might produce a 'true reading', the *sensus germanus*. Allegorical hermeneutics in *The Faerie Queene* demand much the same: enquiry into the allegorical element's nature and composition ('vertical' or 'intrasignal' interpretation), joined to a comparative conferral of that allegorical element with other repetitions of or variations on the same element in other contexts ('horizontal' or 'intersignal' interpretation). The carefully enfolded structure of *The Faerie Queene*, like the artificial and repetitive verbal patterns that define its rhetorical style, seems to warrant the reader's sense of a *sensus germanus* latent in the work at both the rhetorical and allegorical levels, an 'authorial intention' very like the one promised by Spenser in the title of 'A letter of the Authors'. That this kind of convinced reading must be won from the text by the suppression of rhetorical ambiguity and free intellectual play may seem incompatible with modern habits of reading complex literary works like *The Faerie Queene*, but it enacts a tension between intellectual or artistic activity and moral or religious duty typical of Elizabethan, and particularly Protestant, art.[61] A typical

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[61] This was, of course, a tension to which Spenser had by 1590 devoted considerable energy, not only in the poems he translated for Jan van der Noodt's 1569 *A theatre wherein be represented*

account is that of John Donne, whose third satire – roughly contemporaneous with the two-part publication of *The Faerie Queene* – concludes with an uncompromisingly enigmatic and painful account of the tension between intellectual movement and moral or religious fixity:

>   . . . on a huge hill,
> Cragg'd and steep, Truth stands, and hee that will
> Reach her, about must, and about must goe;
> And what the hills suddennes resists, winne so;
> Yet strive so, that before age, deaths twilight,
> Thy Soule rest, for none can worke in that night,
> To will, implyes delay, therefore now doe
> Hard deeds, the bodies paines; hard knowledge to
> The mindes indeavours teach, and mysteries
> Are like the Sunne, dazzling, yet plaine to all eyes . . .[62]

Donne's satire imagines truth – even the truth of the mysteries – as inaccessible upon a 'huge hill / Cragg'd and steep', and as effectively invisible because 'dazzling'; and yet this truth is also something that the soul must 'winne', and which is 'plaine to all eyes'. The process of interpretation that makes possible the leap from inaccessibility and blindness to possession and clarity is not explained, except by an insistent appeal to performance: 'therefore now doe'.

Donne's satire is particularly important to reading Spenser not only because, as a poet enmeshed in the life of law and the Church, Donne had a peculiar insight into, and passion for, contemporary hermeneutical crises; but because, locally in this satire, he makes a crucial link between his general subject, the 'worne maladies' of signs in their relation to true substances, and a set of legal ideas: the subject arbitrating between convention and truth is necessarily engaged in a negotiation of jurisdiction. In the final lines of his poem, Donne addresses the relation of human law to its divine source, preferring the 'calme head' of temporal power in its divine origin to the rough course of temporal power in its subsequent flow to the sea. Law, for Donne, becomes the medium through which to glimpse an answer to the hermeneutical quandary he has set himself in the poem precisely because in the early modern period, it is law, that supposes the existence and the integrity of the *sensus*

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as wel the miseries & calamities that follow the voluptuous worldlings as also the great ioyes and plesures which the faithfull do enioy, but also in the poems that came to be collected in *Complaints* (1591), many of which were probably first composed before the 1590 edition of *The Faerie Queene* was published. The poems in *A Theatre for Worldlings*, for example, are paired with woodcuts depicting two states (pride/destruction) of some iconic monument of earthly vanity; the action of reading any of the poems, then turning the page to the next, simulates the process of engagement, investment, and abnegation that characterizes the Elizabethan Protestant engagement with art. As Donne writes in 'Community', '. . . And when he hath the kernel eat, / Who doth not fling away the shell?'

62 John Donne, 'Satyre III', in *Poems* (London: M. F. for John Marriot, 1633), pp. 335–36.

germanus, as a 'source', behind the apparent course of every human current of power, or significance; but also because it is law that, despite this recognition, insists on a practical judgment about (or reading of) that source in order to produce moral and civic life.

The same is true of Spenser: the joint project of verbal and allegorical interpretation in *The Faerie Queene*, which mediates between 'horizontal' and 'vertical' forms of hermeneutical conferral and analysis in the simultaneous creation of universal play and particular application, works by a hermeneutical model closely akin to the kind of interpretation theorized in the early modern period, and practised, by lawyers. Just as Spenser's literary text differed from Sidney's hypothesized model by its allegorical complexity – requiring the complex superposition of analogical conferral on a hermeneutical structure already mediating vertical analogical relations between universals and particulars – so the early modern English common law mixed the interpretation of authorities like statutes (i.e. *ius scriptum*), customs (*ius non scriptum*), cases (*ius quasi scriptum*), and other intermediate forms like maxims, in an attempt to produce, by individual judgments, a code by which a person might order civic and (ultimately) moral life. The horizontal conferral of cases, operating by the principle of *in casu consimili, consimile debet esse remedium* ('like judgment in cases like'), was put in tension with the vertical analysis of universal and particular in the written (or prescriptive) law, in the attempt to divine from the various bases of the law a single *sensus germanus* robust enough to warrant a pragmatic intervention in the particular lives of a plaintiff and defendant. As in the allegorical and romance fabric of *The Faerie Queene*, analogy in orthogonal planes structured legal hermeneutics, and operated both at the level of the word, and at the level of narrative.

Spenser's interest in and application of the hermeneutical traditions of the common law is evident in the opening cantos of *The Faerie Queene*, where he positions allegorical against legal ideas about interpretation in a way that sheds further light on the several concerns of this chapter. It has often been remarked that the opening stanzas of *The Faerie Queene* set up with vivid and uncompromising directness the hermeneutic of the poem at large: Redcrosse's armour, 'wherein old dints of deepe woundes did remaine', sits uncomfortably on a knight of whom the poet immediately concedes, 'yet armes till that time did he neuer wielde'. (*FQ* I.i.1) The sign of the red cross, like the armour, encloses an agent whose identity remains interpretable, and thus fluid, at least until he is finally identified by Contemplation in the penultimate canto of the book (and probably beyond that, too); the discrepancy between the seasoned armour and the 'younker' knight reinforces this significant fluidity, and presents it as a problem in the opening canto. The contest with Errour proves to be (or to have been) the trial in which Una can discover the true nature of the champion she has been assigned. Here Redcrosse distinguishes himself convincingly enough that Una, who had during the battle encouraged him to

'shew what ye bee, / Add faith vnto your force, and be not faint', can now equate the agent with his signifying shell:

> His Lady, seeing all, that chaunst, from farre
>   Approcht in hast to greet his victorie,
>   And saide, Faire knight, borne vnder happie starre,
>   Who see your vanquisht foes before you lye:
>   Well worthie be you of that Armory,
>   Wherein ye haue great glory wonne this day,
>   And proou'd your strength on a strong enimie,
>   Your first aduenture: many such I pray,
> And henceforth euer wish, that like succeed it may. (*FQ* I.i.27)

Una makes a double appeal to Redcrosse's identity in this passage, echoing her earlier exhortation. Redcrosse has 'shown' what he is in a way that reveals him to be worthy of his armoury, a synchronic or 'vertical' exposition of his significance that, by 'synthesizing' his outward manifestation with his interior identity, has made the analysis of his nature complete. But Una also looks forward, here, to further trials, in which she hopes he will act with 'like' success, a horizontal reading of his identity that prophesies future 'cases' of probation that, conferred with this one, will reveal him for what he is. The trial of combat in *The Faerie Queene* is thus imagined, in the opening episode of the narrative, as an interpretative engagement that must be construed by appeals to both vertical and horizontal modes of analysis. Redcrosse is to be understood in himself, and in relation to other trials.

Spenser's studied echo here of the maxim at the very centre of early modern English common legal practice – *in casu consimili consimile debet esse remedium* – turns on the ambiguous use of the adverb 'like' and the verb 'succeed', which here combine to mean not only that 'like' ('many such') occasions will 'succeed' (i.e. follow after), but that they will 'succeed' (i.e. result in success) in the same way ('like'); the double function of 'like succeed' might be thought directly to imitate the chiastic structure of the maxim. Una essentially blesses Redcrosse's victory with an appeal to this legal principle of judgment by analogy, and for good reason: Redcrosse has been battling the monster 'Errour', an allegorical bugbear that readers and critics from Upton to yesterday have naturally related, via the Latin *errare*, to the cognate 'errant' and thus to the genre of Romance and so back to Spenser's own errant knight himself. But this is but half the significance of Errour (leaving entirely aside the insistence of handbooks and introductions to *The Faerie Queene* on the association of Errour with Catholic propaganda, on no evidence but fancy); 'errour' also loomed in the early modern English imagination as a legal term, representing a fundamental concept in the law. 'Error', reads *Les Termes de la Ley*:

> . . . est un fault en un judgement, ou en le processe, ou proceeding al judgement, ou execution sur ceo en Court de Record, quel fault en le civill Ley est appel un

Nullitie. Et auxy *Error* est le nosme d'un Briefe, & gist lou judgement est done en le common Banke, ou devant Justice in Assise, ou devant Justice de Oyer & Terminer, ou devant le Maior ou Viscount de Londres, ou en auter Court de Record contra le Ley, ou sur undue ou male proces, donques per cel Briefe, le parle grieve vers que le judgment est done avera cel Briefe, & per ceo causera le Recorde & Processe destre remove devant les Justices de Banke le Roy, & la fil error soit trove, il serra reversa.[63]

Error, and the writ of error that addressed it, represented the common law's way of regulating its own judgments, or interpretations; should a party at law be grieved by some misinterpretation of written law, or misapplication of precedent, he might pursue the error by a kind of appeal to the King's Bench, or to Parliament, where the interpretation could be scrutinized and the error in interpretation corrected. The danger attending on the use of the writ of error was obvious: a plaintiff pursuing an action at law was at risk, if there were any error in the judgment, process, proceeding to judgment, or execution of the judgment, of losing the entire action. The possibility of discovering error, then, weakened judgment, in the same way that a less than scientific process of interpretation – whether in humanist rhetorical analysis, or in the conferral of allegorical-romance episodes – might vitiate the actionable *sensus germanus* of a text. 'Error' in the law thus occupies roughly the same conceptual position as ambiguity in hermeneutics; except that, in the law, its existence, as in allegory, is fully materialized in a set of standard processes, the performance of which is taken to constitute the existence of the error.

Spenser's appeal to a legal idea of error here makes particular sense of the way in which Redcrosse ultimately manages to defeat the monster. Throughout the episode, Errour is characterized by a monstrous fertility, and associated with the forms and materials of writing: 'her vomit full of bookes and papers was', (I.i.20) and when her children pour out of her maw to 'encomber' Redcrosse, they swarm about him 'fowle, and blacke as inke'. (I.i.22) This profusion of text and ink – '*Errours* endlesse traine' – threatens to strangle Redcrosse, and it is only by a kind of fierce insensibility to consequence that he is able to subdue her, and her myriad lesser errors:

> Thus ill bestedd, and fearefull more of shame,
>   Then of the certeine perill he stood in,
>   Halfe furious vnto his foe he came,
>   Resolud in minde all suddenly to win,
>   Or soone to lose, before he once would lin;
>   And stroke at her with more than manly force,
>   That from her body full of filthie sin
>   He raft her hatefull heade without remorse;
> A streame of cole black blood forth gushed from her corse. (*FQ* I.i.24)

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63 *Les Termes de la Ley*, f. 142r.

The 'resolue' of the hero to combine all his remaining force into a single stroke will become a defining feature of encounters between knights and their adversaries throughout *The Faerie Queene*, and it is this originary battle between Redcrosse and Errour that suggests why. The 'endlesse traine' (not only 'tail', but 'device' and 'sequence') in which Errour threatens to smother Redcrosse would keep him forever from action; his resolution for action cuts across the doubts and possible complications of his action – here symbolized by the effectless but nonetheless uncontrollable spawn, barking about his legs – to produce $\pi\rho\hat{\alpha}\xi\iota\varsigma$ in spite of the finally insoluble issues of interpretation that Errour's monstrous fertility provokes. In short, the epistemological gap that Redcrosse faces in his encounter with Errour, and which nearly overwhelms him, is closed by 'faith', and action swiftly completes decision. Errour's legal associations are crucial to understanding Redcrosse's decisiveness here because, alone among the hermeneutical traditions, the law faces not only the need for interpretation, but the problem of action upon judgment. Redcrosse's Protestant, humanist push through hermeneutical paralysis to performance makes his encounter with Errour the paradigm to which all the other moral contests of the poem will in some part refer; the common legal terms in which this contest is couched render its outcome both precedent and rule, while doing nothing to mitigate the hermeneutical 'perplexitie' distinctive and native to these two peculiarly English forms, of government and poetics.

The contribution of common law hermeneutics to any reading of this episode reverberates through the rest of *The Faerie Queene*, as does the failure of critics, to date, to recognize it. We have missed for too long in our reading of this poem the way in which Spenser positions utility and moral-political practical reading – with all the consequences for topical historical allusion that many twentieth-century literary critics have so deplored in Spenser, as in his contemporaries – directly against, and athwart, the beauty and universality of his allegorical visions. It is in the tension between these two ways of understanding and experiencing the poem that it achieves its distinctive effect: a continuous current running from (in Elizabeth Bishop's words) the 'mortal / mortal fatigue' of the particular through to the 'endless / endless assent' of the universal.[64] Far from vitiating the beauty of Spenser's visual allegoresis, a 'perplexed reading' that preserves the topical does not even cheapen it. Rather, the perplexed reading that Spenser models in Redcrosse's encounter with Errour, and that lies at the basis of early modern English legal hermeneutics, both assumes interpretation to be an *ars*, and acts as if it is a *scientia*, inciting the reader to play, and yet demanding of the reader, too, a judgment. The analogical relation constructed between the instance and the universal opens up the interpretative relations that will provoke speculation and interpretation, while

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64 Elizabeth Bishop, 'Anaphora', ll. 13–14, 27–28.

the insistence on a 'case' example acts as a constant reminder that all universal *regulae* must be accommodated within the constraints of, and performed in the context of, real action. The *sensus germanus*, or 'the Authors whole intention in the course of this work', lies vanishingly within the act of analysis itself, and as readers of the poem we are given the responsibility to confront every word, every narrative episode and visual-verbal icon of the poem, with the single most important analytical tool offered by the humanists and lawyers alike: a faith in, or assumption of, the existence of this recoverable intention. The relation of universal and sublime suspension, on the one hand, to particular and moral signification, on the other, is probably the most difficult problem facing any reader of *The Faerie Queene*. A moral philosopher, contemplating the world, asks, 'given what I know, how ought I to live?' After taking in Spenser's prefatory remarks to the poem, a reader of *The Faerie Queene*, at any point of the poem, asks, 'given what I have read, what ought I to do?' The only thing dividing this question from desperation is, ultimately, the status of the text, at every level, as a *lex*.

Chapter 3

RESULTS:
A SURVEY OF SPENSER'S LEGAL DICTION

> *Socr.* And you are also not able to say this, who gives us the names we use?
> *Herm.* No indeed.
> *Socr.* Does not the law appeae to you to be the giver of them?
> *Herm.* It seems so.
>
> Plato, *Cratylus*

THE RESULTS of this investigation into the legal diction of Spenser's poetry are surprising in their breadth and extent. In all, over a thousand words of legal or quasi-legal semantic valence can be identified in *The Faerie Queene*, touching on topics as diverse as land tenure, piracy, and debt, and ranging from the earliest cantos of Book I to the final stanzas of the *Cantos of Mutabilitie*. In the shorter poems, Spenser's preoccupation with legal ideas and language is no less marked: from the early translations of *A Theatre for Worldlings*, through the experiments in complaint in *Mother Hubberds Tale*, *The Ruines of Time*, and *Daphnaida*, to the final sonorous lays of *Prothalamion*, Spenser's diction returns almost compulsively to topics of contract, debt, appeal, tenure, and slander. While the mere existence of this diction within the poetry is intriguing enough, it is in the patterns of Spenser's use that we perceive his poet's hand. Spenser deploys this diction in a variety of ways: low-level but sustained semantic innuendo within particular episodes, recurring association of certain technical terms and ideas with particular characters and narrative elements, contained metaphors and similes recruiting legal diction and ideas, and explicitly legal narrative. In the shorter poems – of *Amoretti*, for example – legal terms are often recruited as a kind of language for argument and debate.

This chapter presents an overview of this diction across all of Spenser's poetic texts – though of course it cannot, and does not, ignore the important linguistic context of Spenser's prose writings, and particularly *A view of the present state of Ireland* and the corpus of Spenserian materials still preserved in the State Papers for Ireland. Because the comprehensive cataloguing of this diction is a project too extensive and indigestible for any scholarly study – the stuff of a glossary, rather than a monograph – the present chapter will address

the results according to conceptual categories, coordinating the diction of diverse parts of the poem under various legal topics. This method makes a quick and thorough grasp of Spenser's legal interests feasible, while also drawing together both the diction of a particular topic and its associated episodes, passages, and characters – of obvious practical importance to any interpretative study based on this type of approach. Thus while some words will be fully analysed in what follows, and some of Spenser's rhetorical strategies minutely dissected, these expositions are at best exemplary; the enterprise of this chapter will be more taxonomic than exhaustively descriptive. Further, and I hope provocative, documentation of the linguistic data underpinning this study appears in the summary glossary at the back of this book, and in the illustrative readings of the following chapters.

THE DICTION: ITS NATURE AND CHARACTERISTICS

The words implicated in this study are of a very heterogeneous character. Some may not appear at all remarkable to the modern eye, and certainly not technical, while others will seem decidedly so, even obscure. Most will lie somewhere in between. In scrutinizing this broad spectrum of diction, we must apply both a historical and a semantic lens. Many words that today seem humdrum will have changed dramatically in association or specialization in the last four centuries. I have deliberately included in this study not only the clearly obscure technical terms of Elizabethan law, but the possibly more familiar words forming the bulk of the 'technical vocabulary' – despite the fact that many of these words are not exclusive to legal or political discourse. My argument thus relies on probabilistic judgments of data attesting to a term's usage in various contexts; as later illustrations will demonstrate, such judgments can be as rewarding as they are difficult to make.

The most easily recognizable of the technical words used by Spenser are those now obsolete. This category includes words such as *escheat*,[1] the legal process whereby land reverts to a lord after the decease or forfeiture of a tenant with no legal heir; *capias*, the name of a common writ used to arrest wrong-doers in Tudor times; and *replevy*, the action of restoring those goods upon formal legal intervention by the debtor. As one might expect, relatively few of these technical words appear or recur in Spenser's diction. On the other hand, aphetic forms or alternative spellings/forms of such terms appear much more regularly. For example, *strain* and *distress* were common substitutes for *distrain*, the action of extralegally appropriating a debtor's goods as insurance for the repayment of the debt. These aphetic or alternative forms were current,

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[1] Throughout the rest of the book, words included in the glossary will appear in **bold-faced italics**; this should make it easier to cross-reference discussion with further documentation.

and would have been easily recognized; of a slightly more difficult kind are those words that, because of an idiosyncratic (perhaps even whimsical) Spenserian spelling, attract comparison with, or even slip into identification with, a technical legal term. A good example is *entrold*, a curious and apparently textually corrupt word appearing in Spenser's discussion of Gloriana's court in Book II of *The Faerie Queene* (II.ii.44), one that has excited the confusion and creativity of editors for three centuries.[2] Its situation as a rhyming word at the end of the fourth line of its stanza is significant, because it links 'world' to 'hold' and 'told', which without the interposition of some phonetically hingeing or elastic word cannot be knit successfully together; its function as a phonetic bridge, with the trill moving metasthetically between 'entrold' and 'entorld' (a feat more straightforward in Elizabethan pronunciation than our own), strongly suggests that Spenser intended this exact spelling. But in semantic rather than morphological or phonetic terms, the word itself also combines, in the spirit of a legal portmanteau, *enroll* and *enter* – the Tudor legal senses of which words make semantic sense in a passage where Guyon is swearing a sacred oath to avenge the loss of Ruddymane's parents, Amavia and Verdant. While a modern reader must laboriously research such possibilities, a contemporary reader would probably have recognized and interpreted them unconsciously.

Almost as easy to spot are technical terms that, if not obscure, have retained some sort of specialized status in our own lexicon. Examples of such terms include *abet*, *accuse*, *bailiff*, *bar*, *debar*, *exempt*, *impeach*, *judgement*, *plea*/ *plead*, *sentence*, *testify*, *verdict*, and *warrant*. While many of these words have broadened, narrowed, or shifted their legal usage since Spenser's time, their essential technical quality has remained unchanged. It is nonetheless important here, as elsewhere, to distinguish modern from Elizabethan usage where necessary, and to appreciate that such words may have lost or gained technical specificity.

In some ways the most difficult words are those that still bear a quasi-legal semantic status: although not always technical themselves, these terms are today associated by collocation with legal and political discourse, occupying a second tier behind the more technical diction.[3] While these terms can be fairly straightforward to identify, they can also prove semantically treacherous, as

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2   I am grateful to David Miller for first alerting me to the history of editorial attempts to construe and render this word.

3   The difference between what are here called 'technical legal' terms and what I contrastingly call 'quasi-legal' terms might best be illustrated by a modern analogy. 'Arraignment' and 'verdict' cannot today be parted from their technical usages; at best, these words can be strained to a metaphor. Less technical are 'jury' and 'judgement', words that carry a heavy legal semantic weight but that are used independently in other contexts as well. Less specific still are 'defence' and 'counsel' (though compare 'defence counsel'). For the sake of simplicity I have, with a rough handling, divided into a few groups what is a full spectrum.

their ready modern meanings may obscure important differences from Eliza-
bethan usage. In some cases, these quasi-legal words have evolved from more
technical early modern terms, acquiring non-legal meanings by analogy and
common use and thereby diluting their specialized application. In other cases
these words have descended from earlier quasi-legal terms, retaining their
original semantic space or shifting without affecting their technical status. Of
this kind are words such as *accrue, acknowledge, aggrieve, agree, answer,
attest, blame, breach, case, challenge, clemency, concord, defend, deny/denial,
deprive, elect/election, hearing, instrument, issue, matter, mitigate, offend/
offence, permit, proceed/proceeding, question, rebut, redress, restore, review,
scope, security, summon, violate, void, withdraw*, and *wrong*. These words
have important semantic content unrelated (or only analogically related) to
their legal usages, yet ring with a legal resonance in Spenser's lexicon and in
our own. They form part of the legal vocabulary by dint of repeated association
and collocation with other legal terms. It may not come as a surprise that they
constitute the bulk of Spenser's legal usage.

Of a different sort are words which no longer retain to the modern ear any
ring of specialized import, whatever the degree of their earlier association with
technical discourse. These words are difficult for a modern reader to recognize
and to interpret, often passing unnoticed or, worse, slipping through on the
grease of a sloppy gloss supplied by an undiligent editor. Into this category fall
some words – such as *abandon, aid, benevolence, cess, colour, conquer/
conquest, convey, courtesy, demean, diligence, distress, entail, enter/entry,
heritage, instrument, liberty, mischief, purchase, ravish/ravishment, recover/
recovery, safeguard, seize/seizure, strain, stray, undertake, use, ward, waste*,
and *wreck* – that have lost a specific and very technical association. Many
(though not all) of these terms relate to feudal legal process or to land law now
obsolete. For example, *courtesy* carried the specific legal sense of 'tenant by
courtesy', a form of tenure customarily granted to widowers by crown prerog-
ative.[4] Also into this category fall a greater number of words not so strictly
technical, but bearing in Spenser's time an unmistakable legal colouring, now
generally lost. In this group are words such as *abuse, ally/alliance, assure,
avoid, bind, burden, compass, complain, compound, conclude, construe, decay,
dominion, enclose/enclosure, gift, impair, impugn, intend, league, mollify,
obedience, outrage, pledge, relief, stop, villain, withhold*, and *yield*.

So far I have considered the historical and technical status of these terms:
the degrees of technical specificity, and the ways in which the intensity of that
specificity has sharpened or blurred over time. More important to a reading of
Spenser's poetry, probably, is the properly semantic nature of the diction, and
in this regard, having penetrated through the historical caveats, we may
approach Spenser's legal language in a more synchronic, and in that sense

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[4] 'Tenant by the courtesy' is discussed in greater detail in Chapter 6, *infra*.

more historically faithful, way. Semantically speaking, the diction collected in this study offers a unique perspective on the primary legal and political concerns occupying Spenser, particularly in *The Faerie Queene* (to which the strict analytical focus of this chapter is limited). By grouping subsets of the diction around various topics, it is possible to appreciate Spenser's understanding of legal and political concepts, and to begin to see how this understanding maps onto particular metaphors, characters, episodes, and even whole books – for various legal and political topics do correspond, in some cases surprisingly neatly, with distinguishable elements of the poem. In what follows, I will present and discuss the diction associated with the most important of these topics and offer a brief overview of the *loci* implicated in each. While some of these topics will be pursued more vigorously and at greater depth in ensuing chapters, this overview should give a ready sense of the interpretative power and possibilities of this approach, and outline the ways in which a contemporary reading of Spenser's poetry might have construed Spenser's language.

Feudal Law, Land Tenure, and Real Property

Litigation concerning real property accounted for a large part of English common legal activity in Spenser's day. It was the business of the court of Common Pleas in Westminster to hear civil suits, many of which were concerned with major disputes over land; though in practice the other (and older) court located in Westminster Hall, that of King's Bench, had by Elizabeth's reign contrived various means of escaping its statutory limitation to criminal cases, and also meddled in tenurial disputes. In practice, suits concerning real property were often heard (though not judged) in *nisi prius* trials at the assizes, and the judgments enrolled in Westminster at the end of the circuit. More common legal transactions relating to tenure included the performance of the administrative and ceremonial offices incumbent on title or possession – offering of homage, payment of feudal 'incidents', certification of entry, and so on – by which subjects asserted and realized their title or possession in fact.[5] Given so prominent a place in Tudor civic and legal life, it is hardly surprising that words relating to land tenure and to the feudal laws and customs that governed it account for a substantial chunk of Spenser's legal diction. Under this broad heading fall concepts as diverse as homage and fealty, tenures of all description, feudal or tenurial services and payments ('incidents'), rights of appointment to royal and ecclesiastical offices and

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[5] For an introduction to the law of real property in the early modern period, see chapters 13–17 in the second part of Baker, *IELH*. The division of the Westminster courts is discussed in Baker, *IELH*, chapter 3. Other useful introductions include A. W. B. Simpson, *A History of the Land Law*, 2nd edn (Oxford: Clarendon Press, 1986); and S. F. C. Milsom, *Historical Foundations of the Common Law*, 2nd edn (London: Butterworths, 1981).

lands, transfer of titles and lands, and any wrongs or injuries done by intrusion on, or usurpation of, lands or land-holding rights and customs. Given the importance of land tenure to the basis of dominion or sovereignty, this semantic domain also seeps seamlessly into concepts of political authority and, in particular, rights based on conquest and inheritance; lurking behind this last category, of course, is the succession question, a recurrent legal issue throughout Elizabeth's reign.

Spenser uses words and concepts from this semantic domain in a variety of different ways. The core of this diction is essentially feudal, represented in words like *demesne*, *dominion*, *estate*, *fealty*, *fee*, *hold*, *possess*/*possession*, *seise*, *serve*, and *tenant* – words describing the land itself, the lord's rights to it, the tenant's possession under the lord, and the landed basis of the tenant's service. The predominantly feudal character of much of this diction may seem to suggest that these terms formed part of Spenser's programme of relentless archaizing, symptomatic of his desire to cast himself in the mould of Chaucer or Malory, serving a purely decorative function evocative of an antiquated mood and not of legal particulars. In fact, feudal structure and its language of obligations and relationships survived by a quirk of legal and political necessity well into the seventeenth century. Henry VIII's desire to reinstate his financial prerogatives gave rise to a 'fiscal feudalism' in the first half of the sixteenth century, a revival that failed to return the social structures of feudal practice but that did succeed in revitalizing feudal terminology. Certainly one of the most important legal treatises of the sixteenth and early seventeenth centuries was Sir Thomas Littleton's *Tenores Novelli* (or *New Tenures*, more popularly known as *Littleton's Tenures*). This work, a feudal land law codex, saw between 1482 and 1640 forty-seven Law French editions and thirty-six English editions.[6] It was eventually incorporated in Sir Edward Coke's monumental *First part of the institutes of the lawes of England* (1628), itself reprinted throughout the seventeenth century; as Coke writes on the title page of the *Institutes*, Littleton is 'not the name of a Lawyer onely, but of the Law it selfe'. The publication history of *Littleton's Tenures* indicates the profound effect that Henry's revival of feudal process had on the language of the common law of the Tudor and early Stuart period. Because of it, feudal legal diction was very much alive and current to the ear of the educated reader of Spenser's poetry.[7]

Real property does in fact change hands in *The Faerie Queene*, and it often does so according to the feudal conventions inscribed by Henry VIII in common law process. For instance, in the narration of her history to Arthur in

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6 See *STC* 15719–15783.
7 As discussed in the first chapter, Spenser himself held lands by these tenures, and seems to have pursued a programme of land acquisition in Ireland that required a shrewd understanding of the tenures and their financial and other particulars.

Book I, canto vii, Una frames the eventual battle between Redcrosse and the dragon as a contest for possession of land. The **territories** and **kingdome spoiled** and **wasted** by the dragon have led Una to seek a champion 'that Parents deare from **tyrants** powre **deliuer** might' (I.vii.43–46). Spenser later returns to this real property representation of Redcrosse's quest by noting that, in killing the dragon, Redcrosse has achieved 'his foes **defeasance**' (I.xii.12); this term, meaning the legal quashing of any existing or pretended title, act, or condition, furnishes a suitable political victory for Una's people, 'long **opprest** with **tort**' (I.xii.4), and for her parents, '**expeld**' from their crown and kingdom (I.i.5.8). Prince Arthur later invokes similar tenurial traditions in Book IV when resolving the marriage tetrad of Amyas, Placidas, Aemylia, and Poeana (**lordship**, **land** and **fee**, **seasure**, **accept**, **chief**, **lordship during life**, **yeelded**; see IV.ix.15). Still later, Artegall intervenes in the dispute between the sons of Milesio over their inherited land and property (**bequeath**, **lands in fee**, **dowre**, **dowry free**, **appertained**, **appeare** by **triall**, **remit**, **iudgement**, **assuraunce**, **sentence**, **good right**, **withhold**, **claime**, **seased**; see V.iv.4–20). The political settlement established by Britomart after her defeat of Radigund in Book V again draws heavily on the common law of landholding (**conditions . . . propound**, **prescribed**, **lawes of cheualrie**, **conqueresse**, **execution**, **enquire**, **entred** into all the partes **entire**, **forme** of **common weale**, **liberty**, **repeale**, **vsurpt**, **restoring**, **subiection**, **Iustice deale**, **thraldome**, **magistrates**, **sweare fealty**, great **liuing** and large **fee**, **faithfull**; see V.vii). Artegall's quest to restore Irena to her '**heritage**' and Arthur's parallel supporting effort to '**restore**' Belge by '**inquest**' make further use of this type of legal language (**fee**, **withhold**, **heritage**, **inquest**, **succeed**; see V.i.3, V.i.13), as does Matilde's complaint to Calidore in Book VI, canto iv (**seiz'd**, **fee**, **estate**, **posteritie**, **heires**, **defend**, **heritage**; see VI.iv.30–31). Spenser's last investigation of this topic, and his most extensive, comes in the trial of Mutability's right to the empire of heaven (**pealing**, Natur's **Bar**, **pleades**, Large **Euidence**, **suppliant**, **Right**, **entreat**, **tortious Iniurie**, **challenge** . . . worlds **raign**, by **heritage** in **Fee**, **souerainty**, **arrogate**, **principality**, **vsurpes**, **heritage** . . . **deny**, **deriv'd** by **dew descent**, **possesse**, **inholders**, **tenants**, **iudge** . . . by **verdit**, **subiect**, **disseise**, **attribute**, **confirm'd**, **imperiall see**; see VII.vii.Arg., VII.vii.14–27, VII.vii.47–59). These episodes return again and again to the language and concepts of feudal land law – to issues of holding, certifying, usurping, conquering, inheriting, and preserving title to lands.

Spenser occasionally invokes feudal legal relationships and customs without reference to land or property. For example, an understanding of Scudamour's character and allegorical significance in Book IV must be based on that formative act of his knighthood, the winning of Cupid's shield. The 'shield service' that he afterwards does to his lord, calling himself (as at IV.x.54) '*Cupids* man', shadows a legal relationship, *escuage,* that proves richly suggestive for interpreting his later actions. As Littleton writes, 'Escuage is called in Latine, *Scutagium,* that is, Seruice of the Shield; and that Tenant

which holdeth his Land by Escuage, holdeth by Knights seruice.'[8] The elabo-rate fable of Scudamour's acquisition of the shield of Cupid, then, implicates the knight in a feudal framework that would have been transparently obvious to Spenser's early readers. Spenser continues to make use of this framework by repeatedly casting Amoret's relationship to Scudamour as the feudal bond between tenant and lord, an extended metaphor which he later extends to Amoret's redeemer, Britomart (***conveyed***, ***released***, liues ***Lord***, ***patrone***, ***seruice***; see IV.i.2–8, IV.x). Spenser likewise parodies such feudal legal customs in the actions of some of his more comical characters, particularly Braggadocchio. The initial meeting between Trompart and Braggadocchio in Book II, canto iii, for example, gives a comic version of the kind of fealty cer-emony described in detail by Littleton in the *New Tenures*. Though Braggadocchio rightly requires a kiss (*osculum*) from his new vassal to seal their feudal bond, he mistakenly requires the kiss to be bestowed on his stirrup, rather than on his sword (*per gladium*) or his glove (*per gantum*). In place of the customary gift and counter-gift, Braggadocchio offers to spare Trompart's life (never in danger from the braggart in the first place), in return for which the new '***liege-man***' Trompart offers Braggadocchio not service, but ceaseless flattery (see II.iii.4–11).

Property in Chattels Personal: Owning and Trading

The comparative legal unimportance of chattels in relation to land meant that the law governing personalty was never codified with the same intensity and elegance as that bestowed on realty. On the other hand, fortunes were made and lost in chattels in the guild-dominated London of Spenser's youth, espe-cially during Elizabeth's Spanish war and the expansion in mercantile activity that it sponsored. The young country gentlemen in the circle of Charles Howard, Baron of Effingham and Elizabeth's Lord Admiral, in particular, were heavily involved in merchant adventures – men like Ralegh, Spenser's acquaintance in Ireland, and his friends and relations.[9] Spenser's home in Cork was certainly no commercial backwater at this time: many Elizabethan and continental merchants made good use of the Atlantic ports of Ireland – Cork, Youghal – finding easy and unregulated markets for contraband and untaxed prize cargoes, and taking welcome shelter from the seas in stormy weather. Nor was this the only type of trade passing directly under Spenser's eye; the records of royal fiants from the 1580s and 1590s show, in addition to land grants, a steady stream of royal grants for offices, monopolies, franchises,

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8   Sir Thomas Littleton, *Tenores Novelli*, Book II, Chapter 3, § 95; see also §99. The English trans-lation is Coke's, from *Institutes I*, ff. 68v–69r.
9   For a discussion of the profits accruing to Howard and his circle, see K. R. Andrews, *Elizabe-than Privateering during the Spanish War 1585–1603* (Cambridge: Cambridge University Press, 1964), pp. 23–24 and 124–28.

wardships, military captainships, and other potentially lucrative situations, sinecure posts distributed and traded among the New English officials in Tudor Ireland.[10]

Given Spenser's probable origin in the City community of the Merchant Taylors, and his path of steady economic and social advancement in such lucrative Irish markets, it is not surprising that *The Faerie Queene* betrays as much of an interest in the developing law of chattels and commercial 'goods' as it does in the ancient law of land tenures and feudal relationships. The unsurprising core of the diction for this topic lies in the ordinary words describing property (**commodity, goods, marchandize, property, stock, stuff**) and the basic transactions, licit and illicit, through which it is transferred (**adventure, buy, chaffer, sell, spend, trade, traffic, deprive, dispossess, rape, rob, steal**). Words of a finer distinction describe elements of these transactions (**credit, earn, interest, surcharge, worth**), particularly the associated rewards (**apay, award, benefit, fee, guerdon, hire, prey, profit, return, revenue**) and the attendant risks (**assurance, hazardize, venture**). Some diction relates to the distribution of property (**abundance, affluence, spare, wealth**) and some to its value and price (**(a)bate, dear, embase, free, precious, price, value, worth**). Some seemingly familiar words pun on less familiar technical concepts, especially in aphetic or alternative forms: thus *rest* sometimes invokes *arrest*, a legal seizing of goods, and *distress* and *strain* stand in for *distrain*, the extralegal practice of seizing goods in order to compel return of an outstanding debt or bailment. Beyond this class of common words, Spenser uses many technical words relating to property and its transmission, such as **appertain, attainder** and **attaint, bequeath, conquest, convey, defray, distress, replevy, seize**, and **waif**. He likewise uses English words that regularly translated important Latin and Law French legal terms relating to this topic, such as **perceive** (L *percipere*), **presume** (L *usurpare*), and **withhold** (L *detinet*, LF *detinue*).

Spenser's first treatment of property in chattels comes in Guyon's visit to the cave of Mammon in Book II, canto vii, where Mammon allures the knight of temperance with the temptations of worldly wealth (**mass** of **coyne, threasury**, right **vsaunce**, golden **fee, proffer** . . . **giftes, puruay, couetise, allowaunce, superfluities, compound, wage**, life for gold **engage, surplusage, receaue**, goods **bereaue, rightfull owner, wrong** and **robbery, abuse, emprise, mesprise**; see II.vii). Later treatments include the introduction of Marinell (**threasure, endow, wreckes, forbeare, assurance, security**; see II.iv.20–28) and the fable of Malbecco and Hellenore (**priuitie, spend at libertie, mucky pelfe, masse, wrongs** . . . and **wreckes, restraint, ransack, mesprise, sold, regard of gaine** . . . or **scath, care** of **credite**; see III.ix.3–6, III.x.1–16). Following the forceful yoking of Hellenore to the rest of Malbecco's mucky pelf, the trials of many women in Book IV emerge as further treatments of property

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10 For examples of these types of grants, see *Fiants*.

distribution questions. The successive rapes and abductions endured by Amoret, Florimell, and False Florimell have much to offer to a Spenserian theory of property and exchange (***theft, wandring weft, spoyle, gaine, pray, recompenst, draft***, equally . . . ***shard, render . . . right, prize, victors meede, forestall, yeeld*** . . . due ***fee***; see, for example, IV.ii.4–13, IV.iv.8–9, IV.v.9, IV.v.20–27) – especially after Florimell's rape is supplemented by the virtual auctioning of her girdle, itself both a metaphor for her chastity and a piece of personal property, to the highest bidder (IV.iv–v). This auctioning scenario appears, too, in Spenser's reformulation of Chaucer's *Squire's Tale*, the battle between Cambel and Triamond for the hand of Canacee in Book IV, canto iii. In this transparently economic scenario, a multiplicity of suitors competing for the hand of a single woman is whittled down to a few potential buyers; they, in turn, have to face the seller in a contest whose language betrays the bargaining behind Spenser's formulation of the tale.[11] To some degree, these episodes merely expand a latent commercial background lying behind many of the knight–knight encounters of Books III and IV, and of the poem at large – in challenging one another for the exchange of ladies and of arms, for the right to win the ***guerdon***, the ***prey***, the ***prize***, and the ***hire***, most of the knights, from Paridell to Artegall to Satyrane, raise questions of property ownership and title, distribution, and exchange. In the following book, Spenser again investigates issues of property in chattels in the judgment between Amidas and Bracidas, the sons of Milesio (***recompence, bestowed, portion*** . . . of ***good, appertained, threasure, rendred, wracke, distrest, seased***; see V.iv.4–20).

As has been suggested above, there are also many instances in the poem where illicit property exchanges and distributions take place. The rapes and ravishments of various damsels provide straightforward examples, but far more explicit are the thefts of figures like Kirkrapine (***rapine, stelths, pillage*** seuerall, ***purchase criminall, reliefe, spoild***; see I.iii.16–20), Braggadocchio (II.iii.4, V.iii.29–36), Sir Sanglier (***proper good, claime*** your ***right, deuided, share, remaine, reaued, esteeme, burden***; see V.i.16–29), and the cannibals (***stealth*** and ***spoile***, nightly ***rode***, neighbours ***borders, aduentrous marchandize***, accursed ***order, wreckfull wynde***, monstrous ***cruelty, booty***, sheepe ***astray, encomberment***; see VI.viii.35–51) and Brigants of Book VI (***spoile, booty, inuade, pray, spoile*** of ***theeues, conquest, carried captiue, couert, conuay, detaynd, marchants, bondslaues*** . . . ***buy, commodity, sold, aduantage, forstalled, augment*** . . . ***price, purchase, prize, partake, marchandise, decayd*** and ***mard, prises, esteeme, handsell***; see VI.x.39–44, VI.xi.2–24). And where some figures hoard property, others enjoy monopolistic rights to wealth. Such a one is Marinell, to whom has been granted the right to all the treasure of ships wrecked in the sea (the right of *wreccum maris*), not to mention the opportunity to challenge all those who pass by the *Rich strond* (III.iv.22). Such

[11] The diction of this episode is discussed in detail below.

a one too is Pollente, who in warding a castle by a bridge and ford holds the right to tax (or **poll**) all who need to cross the river; the great wealth of his daughter, Munera, suggests the lucrative nature of his monopoly (**Lordships** got, goodly **farmes**, **oppression**, **powre extort**, **holds**, **passage-penny**, **pols** and **pils**, **custometh**, **threasury**, **purchast**, **revenue**, plenteous **meedes**, **passage money** . . . **require**, **hire**; see V.ii.5–11). The tolls later exacted by Briana and Crudor (the beards of knights and ladies' locks, VI.i.13) and by Turpine (knights' arms and ladies' upper garments, VI.vi.34) mirror this toll of Pollente's, both in their exactions and in the situation of their castles by rocky straits and fords.

Diction relating to the law of property in chattels personal, or 'personalty', pervades every book of *The Faerie Queene* and nearly all the major narratives. Spenser uses the conventions of this legal *topos* as a way of investigating important social concerns such as distribution, commerce, stealth and piracy, and more abstract issues of right and jurisdiction. In particular, the poet appears to balance ideas of personalty against semantic and narrative zones of real property/feudal influence; the tension between these two areas of semantic emphasis may reflect a similar tension in Elizabethan society – and particularly between the commercial and moneyed interests of the Elizabethan New English generation in Ireland on the one hand and, on the other, the more traditional values of the largely feudal Old English status quo.[12] Whatever his motivation, Spenser's interest in personalty extends far beyond its mere use as a metaphor for distributions of moral virtue.

Contract, Covenant, and Assumpsit

The third category addresses perhaps the most common legal topic of Spenser's poetry, the contract.[13] Spenserian contracts proliferate throughout his poetry, but are the particular underpinnings of much of the action of *The Faerie Queene*, especially in Book IV, *Of Friendship*. This topic nestles conceptually very closely with both realty and personalty, as contracts are made and broken in order to establish title or ownership, to exchange lands or chattels, or to facilitate the performance of some action involving real or personal property. While in many ways the common law of contract encompasses various

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[12] The opposition between real and personal property language in *The Faerie Queene* is the subject of the next chapter.

[13] In what follows I will, anachronistically, use the word 'contract' to refer to a legally binding oath-agreement, in place of the early modern term, 'covenant'. 'Contract', originally a Latin borrowing used to describe a very limited form of covenant – that struck by parties engaging in a mercantile buying and selling of chattels or personal property – only came to encompass the entire spectrum of formal agreements during the seventeenth century; see Baker, *IELH*, p. 360. My choice of 'contract' to describe oath-agreements in *The Faerie Queene* stems from my own need for a term that will convey to modern readers the broadly essential qualities common to all oath-agreements; my use of this term does not reflect or argue for Spenserian usage.

aspects of realty and personalty, it must be treated separately because of its particular focus on issues of faithfulness and performance; it is primarily, unlike the laws of realty and personalty, a type of law governing action.

As the words gathered under this topic suggest, Spenser's interest in contractual ideas is not limited to a superficial concern with the making or breaking of vows. In addition to the oath-taking ceremonies themselves (*accord, agreement, alliance, band/bond, covenant, league, marriage, treaty*), Spenser describes the action of making contracts (*agree, avow, combine, commit, conclude, join, knit, plight*), the action of breaking them (*abandon, betray, break, divorce, forsake*), the action of fulfilling them (*acquit, discharge, fulfil*), the various qualities associated with good and bad contract-makers (*false, loyal, true*), various characteristics of the obligation implied in such contracts (*desert, dower, due, duty, owe, pledge*), and a collection of other qualities and circumstances associated with the making, breaking, and fulfilling of contracts. Spenser is interested in many different types of vows, from feudal *allegiance* and *fealty* to the more administrative *duty* and *office*, the *spousal* and sacred *marriage*, and the more commercially disposed *contract* and *covenant* themselves.

Spenser's earliest and perhaps most basic investigations of contractual ideas appear in the bonds established between Arthur and the patron-knights Redcrosse, Guyon, and Britomart in the first three books. The consistent presentation of these troth-plighting ceremonies prompts the reader to inter-pret them together, and suggests the importance of these contractual tableaux to Spenser's social policy. In Book I, Arthur and Redcrosse set a template for the metaphoric 'exchanges' of later covenants by engaging in legal-style gift-giving (*bynd, establish, pledges, ioynd, requite, testament*; see I.ix.18–19). This template is later re-enacted by Arthur and Guyon in Book II (*patron, lord, liege, repay, meed, bond, bind, receiue . . . meed, oath bound, suffise, dewe*; see II.viii.55–56), by Arthur, Guyon and Britomart at the opening of Book III (*reconcilement, knit, vowd, accord, concord, agreed*; see III.i.10–13), and by Arthur and Artegall in Book V (*pardon*, vnweeting . . . *wrong'd, forgiue, yeeld* for *amends, penaunce, errour* so misled, *blames, amends, trespasse, endamadg'd, perswade* to faire *accordaunce, faults* . . . shade, *swearing faith, enmity, cause to maintaine mutually*; see V.viii.11–14).[14] These Arthurian contract-friendships are later parodied by the relationship of Blandamour and Paridell, who misinterpret the fundamental contractual tenets of faithfulness and generosity (friendship . . . *sweare couenant*; see IV.i and IV.ii, particularly IV.ii.13).

Such paradigmatic troth-plightings provide a basis for the interpretation of another type of formal contract-ceremony in the poem, the spousal. Although Spenser generally shies away from describing actual matrimony in *The Faerie*

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14 See also the sworn friendship between Redcrosse and Guyon, II.i.26–34; and Medina's recon-ciliation of Huddibras, Sansloy, and Guyon at II.ii.27–33.

Queene, the poem is nonetheless thick with invocations of marriage and even of weddings: the first book culminates in a betrothal and postponed marriage, the narrative of the second is motivated by revenge for a destroyed marriage, the third foreshadows a dynastic marriage, the fourth looks back upon a bride stolen from her marriage and ends with a procession towards a second and the promise of a third, the fifth presents a tournament after a marriage, and the sixth concludes with a felt absence where the reader might well expect some mention of marriage. Spenser's preference for spousal over solemnization may reflect his interest in the contractual essence of the marriage bond, stripped of ceremony. Thus we participate in the spousals of Una and Redcrosse (*marriage, accomplish, performe, yield*, sacred *rites* and *vowes*, holy *knots . . . knit*; see I.xii.17–20, I.xii.36–40) and those of Britomart and Artegall (*vowes, othes, yeelded . . . consent*, take him for her *Lord, mariage* meet, *finish . . . accord*; see IV.vi.40–41). Although Spenser disdains to give an account of Marinell's marriage to Florimell ('worke fit for an Herauld, not for me'), he does note their spousal (*affide, spous'd*; see V.iii.2–3), and the same diction appears in the bonds drawn between Cambel, Triamond, Canacee, and Cambina (*accorded, allide, bands, couplement*; see IV.iii.52) and Amyas, Placidas, Aemylia, and Poeana (*accept, yeelded*, without *debate, safe assuraunce, compylde*; see IV.ix.15–16).

It is clear even from such a breathless summary that Spenser's concern with social bonding turns repeatedly to the formal diction of legal contract. In adapting the traditional chivalric language of the troth-plight, inherited from Chaucer and Malory, Spenser worked it into a broader pattern of legal diction as a way of further deepening the texture of his multivalent allegory. The association of romance with political contract and ideas of consent may still have been many years off in the 1590s, but Spenser pursues a similar goal in the links he forges between friendships and the decidedly legal and political bonds adumbrated in his diction. The linguistic allegory of Spenser's contract diction, like the language of realty and personalty, adds yet another layer to his complex vision.

The Law of Words: Defamation, Sedition, and Censorship

This topic – touching on defamation, slander and scandal, perjury and deceit, and censorship – proves particularly provoking as a result of the important changes in the common law treatment of words in this period. Two developments, which can be sketched only very briefly here, deserve our attention. First, it was over the course of the sixteenth century that *causae diffamationis* came within the purview of the common law; restricted initially to the consistory courts, these cases were eventually barred to spiritual judges by a stream of prohibitions denying clerics the right to hear cases where the defamation turned on the imputation of a secular crime. Although at first the common law did not itself take up these cases (for many decades there simply was no legal

remedy), by the end of Elizabeth's reign defamation cases based on the impu-
tation of secular crimes, or of crimes touching the plaintiff in his profession
(especially if a lawyer) were actionable.[15] The second important change in the
common law treatment of words was the rise of conciliar, and particularly
equitable jurisdictions such as the Chancery and the Court of Requests. These
two courts, primarily because they were not courts of record, not only
permitted oral evidence, but in their efforts to deliver the justice of conscience
sought it outright. The growth of Star Chamber, the court of the Privy Council
assembled, provided another important forum for oral testimony and for the
punishment of slander and sedition.

The first treatment of verbal crimes in *The Faerie Queene* comes in the
efforts of Archimago and Duessa to separate Redcrosse from Una in Book I.
The tactic that the pair repeatedly employ is easily recognizable as that familiar
Elizabethan spiritual wrong, sexual slander. As social historians have shown,[16]
one of the most common subjects of litigation in Elizabethan spiritual courts
was defamation turning on the legality of a proposed or accomplished
marriage – upon a claim of prior contract or of fornication, the groom or bride
would have to seek acquittal or damages in the spiritual court. Archimago first
tries to turn Redcrosse from Una in Book I, canto ii, where he supplies
conjured visual evidence, but the more telling scene comes in canto xii, where
the king of Eden is about to betroth the knight to his lady. Archimago's
appearance carrying written allegations in this scene partakes of all the trap-
pings of the legal challenge: Duessa alleges prior contract and the exchange of
pledges, and puts the judge on his conscience (**plighted**, **affiaunced**, sacred
pledges, **periury**, **iniury**, **conscience**, **witness**, **disclose**, **crime**, secret **treasons**,
suborned, **attacht**; see I.ii.4–5, I.xii.24–36).

Sexual slander appears again, perhaps even more memorably, in the story
told by the hapless Phedon to Guyon and the Palmer in Book II, canto iv.
While this episode is clearly a retelling of an episode from Ariosto, it differs
crucially from its source in one important respect: Spenser includes a number
of details signalling the close relationship of the narrative to a legal scenario
that was, as Phedon notes, 'commune to that age' (II.iv.20). Phedon recounts
the obtaining of '**accord** of friends' and '**consent** of parents' for his engagement
to Claribell, and notes that the spousal was complete, saving 'few **rites** to be
donne,/ Which **mariage** make'. In this interim between spousal and marriage,
the faithless Philemon enters with his slander, destroying the relationship and
inciting Phedon to Claribell's murder (**priuitie**, withouten **blot** or **blame**,

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15 For a full treatment of this topic, the standard reference is R. H. Helmholz, *Select Cases on Defamation to 1600* (London: Selden Society, 1985).

16 See particularly Martin Ingram, *Church Courts, Sex and Marriage in England, 1570–1640* (Cambridge: Cambridge University Press, 1987), and Ralph Houlbrooke, 'The making of marriage in mid-Tudor England: evidence from the records of matrimonial contract litiga-tion', *Journal of Family History*, 10 (1985), 339–52.

impart, *abuse*, *treason* ill *disposd*, *assynd*, *distaind*, *faith . . . bynd*, *solemn oath*, *plighted* hand, *assur'd*, *approue*, *guile*, *feignd*, outrageous *deede*, *plaine* and *euident*; see II.iv.18–33). Spenser reconsiders and expands the ideas raised in this episode in a number of other treatments of sexual slander, including Ate's misrepresentation of Amoret and Britomart (IV.i.47–54), Britomart's misunderstanding of Artegall's capture by Radigund (V.vi.3–17), and Belphoebe's desertion of Timias after finding him with Amoret (IV.vii.35–36; see also Despetto, Decetto, and Defetto, VI.v.12–22 and VI.vi.1).

More conventional defamation appears, too, throughout the poem. Spenser's most direct treatment comes in the allegorical figure Sclaunder, in whose cottage Arthur, Aemylia, and Amoret spend the night in Book IV, canto viii. Besides returning to the same set of diction already featured in the sexual slander scenarios (*leasings*, *miscall*, *backbite*, *sclaunder*, *abuse*, *frame*, *guiltlesse* persons . . . *accuse*, *forged cause*, *defame*, *blame*, *blot*, *depriue*; see IV.viii.23–36), Sclaunder emphasizes another important aspect of defamation implicit in the other narratives. Spenser's spelling of her name, though a common enough variant of the time, points up the relationship of defamation to another spiritual crime, scandal – the setting of a bad moral example that incites others to misdeed. Just as Phedon had heaped '*crime* on *crime*' after the slander of Claribell, here Spenser again characterizes defamation – the imputation of crime – as the root of wrong in society. Because of it, beauty has been cast as 'the baite of bestiall delight', allowing 'faire' (beauty) to grow 'foule', and 'foule' (i.e. the calumniator of beauty) to grow 'faire in sight'. All this takes place because wicked men dare 'of all sins the secrets to vnfold' (IV.viii.32).[17] In linking slander and scandal in this way, Spenser follows a common legal logic of the day, and the precise argument behind the development of such strict tribunals as Star Chamber.

Sclaunder is reflected by other figures throughout the poem. Ate's defaming of Amoret to Scudamour has already been discussed, but this calumniating hag uses her double and backbiting tongue elsewhere as well (see IV.ii.11–14, and especially V.ix.47, where slander is employed as evidence within the context of Duessa's trial). Her love of discord leads her beyond defamation to other verbal crimes, too, such as treason, sedition, and blasphemy (IV.i.19–31). Despetto, Decetto, and Defetto, the three assailants of Timias in Book VI, canto v, use slander and guile to undermine the good name of their victim (*despight*, *ouerthrow*, *supplant* by *slight*, *deceipts*, *entrap*, *treasons*, *conspiring*, *counsels* . . . *compound*, *conioynd*, *daunger* of *defame*, *safegard*, *incomber*; see VI.v.13–22). Envy and Detraction famously abuse Artegall upon

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[17] As Lindsay Kaplan has noted in her study, *The Culture of Slander in Early Modern England* (Cambridge: Cambridge University Press, 1998), the truth value of an accusation was not necessarily the issue at stake in a defamation trial; defamers, like scandalmongers, were not to be punished for their falsehoods, but for the seditious breach of peace that their disclosures would certainly effect.

his return to Gloriana's court, setting upon him with the Blatant Beast (*depraue*, *slaunderously vpbrayd*, *misconstrue*, *blot* . . . with *blame*, *wrest*, *publish*, *detraction*, *mischief*, *distort*, *combynd*, *rayle*, *guile*, *abusion*, honour *blent*, *treacherie*, *contention*, *sclaunders*; see V.xii.28–43). The most extensive treatment of defamation, of course, appears in Book VI, where the Blatant Beast directly and indirectly heaps infamy on various characters (see, for example, VI.i.6–10, VI.vi.1–15, VI.xii.22–41).

To these anatomies of defamation we may annex the more celebrated passages in which Spenser seems to reflect on his own status as a poet in a censored society and on the status of his text and its interpretation. The figure of Bonfont/Malfont, whose tongue has been nailed to a post for his defamatory and seditious verses (*trespasse*, *reuyle*, *blaspheme*, *forged guyle*, *compyle*, *rayling* rymes, *purport*, *sclaunders*; see V.ix.25–26), serves to focus the other dispersed comments on interpretation and censorship throughout the poem: the comments directed in the proem of Book IV toward Lord Burghley, the fragile vision of Colin Clout's piping to the Graces on Mount Acidale (VI.x.10–30), and the concluding stanzas of Book VI (VI.xii.39–41). In these separate comments, Spenser makes personal his concerns about slander, sedition, blasphemy, and the censorship under which he both chafes and thrives.

Justice, Mercy, Equity, and Jurisdiction

One legal topic in *The Faerie Queene* that has received a fair share of attention is Spenser's interest in the relationships between justice mercy, and equity. Studies of this topic have naturally focused on Spenser's explicit comments in Book V, *Of Justice*, and on the episodes in that book addressing the troubled boundaries between strict justice and justice tempered by mercy. Attention to Spenser's diction, however, emphasizes two elements that are routinely ignored by interpreters of Artegall's justice: the peculiarly native English character of the allegory in Book V, and its relationship to wider jurisdictional concerns, especially as subsequently developed in Book VI, 'Of Courtesy'.

The knotty problem of justice for Spenser, as soon becomes apparent in Artegall's quest, is how to determine the mean between strict legal enforcement (represented by Talus) and the overindulgent mercy that would emasculate justice (symbolized in some ways by Artegall's captivity under Radigund). In his destruction of Pollente and Lady Munera in Book V, canto ii, Artegall shows no remorse or restraint (*entreat*, withouten *pitty*, *course* of *Iustice*, *remorse*, *suppliant*; see V.ii.22–28), nor does he spare any pity for the democratic giant with the scales, whose own inquiry into distributive justice attempts to resolve the dilemma over rigour versus mercy (*assembly*, *enquire*, *serquedrie*, *counterpoys*, *surplus*, *restore*, *encroched*, *empaire*, *repaire*, *reduce* vnto *equality*, *benefite*, *limit*, *poyse*, *ouerflow*, *retain*, *estate*, *order*, *increast*, *wrong surceast*, *tyrants subiect*, *suppresse*, *lordings curbe* . . . that *commons* ouer-aw, *souerainty*, *subiects* . . . *obay*, *tride*, *proued*, *mutining*, *ciuill faction*,

expectation, innouation; see V.ii.29–54). In his fight with Radigund, however, Artegall exhibits foolish pity, withholding the killing blow just at his moment of victory and thereby falling captive to his opponent (*pittiful regard, mollifie*; see V.v.6–18). His subsequent bondage exemplifies the fate of those who too much relent the true course of justice.

Spenser investigates, in the figures of Britomart and Mercilla, possible resolutions of this important balance between rigour and mercy. Britomart's vision in Isis Church seems to suggest a balance, even a conjugal union, between rigour and mercy that dissolves the question of which principle should guide the other. Her subsequent rescue and restoration of Artegall, including a civil reformation of Radigund's polity, explores the practical effect of this balance (*conditions* to *propound, termes, lawes of cheualrie, empeach, conqueresse*, fury . . . *slake, execution stayd*, wisely *moderated, comfort* and *reliefe, complaints . . . represse, tempred*; see V.vii.12–45). Mercilla's trial of Duessa, likewise, examines the role that mercy or equity plays in the execution of justice (*compassion . . . allure, appele, pitie, procured, banish* all *remorse, regard* of womanhead, *inclined, relent, abate, repent, piteous ruth, mercie, preserue inuiolated right, depart, reforme, tempred, constraint . . . enforce, remorse, curtesies, clemencies*; see V.ix.37–V.x.5). Both of these episodes suggest the important role that mercy plays within the constraints of law and necessity.

The separation between rigorous justice and merciful equity suggested by the diction of these passages derives at least in part from the jurisdictional realities of legal process in Elizabethan England. Justice by rule was the standard in the royal courts; for justice according to equity, a plaintiff had to seek one of the equity-dealing conciliar courts – the Chancery, presided over by the Chancellor, or the Court of Requests, led by the Master of Requests. These courts offered an alternative physical and legal space for the trial of due right, examining the spirit of the law according to conscience rather than the letter according to custom and statute. Spenser's treatment of the relationship between justice and equity is clearly affected by the stark separation of these courts, and their practices, in Elizabethan society. In effect, the application of justice versus equity, as noted above, becomes a question of jurisdiction. Spenser's broader interest in jurisdictional questions can be seen in the many 'custom of the castle' episodes of the poem, and appears as early as Book III in Britomart's visit to Malecasta's Castle Ioyeous (*enforce, chaunge* my *liefe, wrested right, by force* to *justifie, soueraine, ordaind* this *law, approue, seruice, remoue, wreake . . . wrongs, prove . . . cause*, by her owne *law, liege men, faith . . . plight*; see III.i.20–67). A parallel episode is Britomart's reconcilement of local custom with chivalric courtesy in the Castle of Couples in Book IV, canto i (*custome* of that place, *iustifie, chalenge, vnlawfull, courteous, custome* showne were *kept, accord, seneschall, requir'd*, former *strife accord*; see IV.i.9–15). Spenser's treatment of such situations – where a wandering knight with his or her own notions of legal or customary right comes into conflict

with the local customs or ordinances of a castle community or other group – accelerates in Book V. Examples of this type of inquiry include the encounter with Pollente and Munera (*keepes* a bridges *passage, support, oppression* of . . . *powre extort, subiect, custometh, practise vsuall, require, according* to the *custome* of their *law, euill fashion, wicked customes* . . . *refourmed*; see V.ii.4–28) and, particularly, Artegall's contest with Radigund (*obseruaunce, condition,* direfull *doom acquit, contempt, iudg'ment breake, pleading* . . . *plaintiff cause, redresse, rebuke* . . . *sustain'd, conditions* . . . *propound, obay* my *law, withstand, purchase* a *licentious libertie, lawfull soueraintie, subiection, obay* . . . *direction*; see V.iv.29–V.v.26) and his subsequent rescue by Britomart (*conditions to propound, disdaine* of . . . *indignity, termes, prescribed, lawes of cheualrie, changing* all that *forme* of *common weale, liberty* . . . *repeale, vsurpt, restoring* to . . . *subiections, iustice deale*; see V.vii.24–43).

It is in Book VI, however, that these issues come to the centre of the poet's attention. The word *courtesy* itself, as readers of the poem are beginning to recognize, has important legal resonance as a synonym for 'comity', the practice of reconciling the prescriptions of conflicting systems of legal or customary practice. In a section of the poem dedicated to courtesy, we naturally see Spenser continuing to probe such 'custom of the castle' scenarios, exploring the friction between local and institutional codes of conduct; such episodes include Calidore's reformation of Crudor and Briana (obserue a *custome, mayntaind, toll,* shamefull *vse* . . . to be *ouerthrowne, reare, seneschall assynd, executes, execution* of . . . *lawlesse doome, reft* . . . *spoile* by so *iniurious theft, iustifyde, defyde, party* . . . *take, bands* of *ciuilitie,* wicked *customes make,* euill *manner* . . . *maintaine, liberty, conditions* . . . *propound, performe* . . . *precept, acknowledg'd bound, accord, restord*; see VI.i.11–47) and the various encounters between Calepine, Arthur, and Turpine and Blandina (*reproue, restrayne, defie, challenge make, remedy,* present *mischiefe* to *redresse, erect* this wicked *custome, reare,* euill *vse*; see VI.iii.30–44, VI.vi.18–44). The punishment of Mirabella, ordained by Cupid for her offences against love, resists the courteous intervention of Arthur and Timias in Book VI, cantos vii and viii (proud and *insolent, free* . . . not *bound,* want of *remedie,* Ladie of her *libertie, soueraine might, abusde* . . . against all *reason* and all *law,* without *regard* of *pitty* or of *awe, acquite, abstaine, suppressing, redresse, deliuer,* leaue my loued *libertie, called* to *accompt, addeem'd* . . . *penaunce* sore; see VI.vii.28–VI.viii.30, VI.viii.1–30). Beyond these more explicit inquiries, Spenser pits various types of codes and laws against one another throughout the book. Young Tristram puts natural law before the law of arms in Book VI, canto ii (hand too bold, *armes impugneth* plaine, *broken* the *law of armes, witnesse,* to *armes* . . . [be]*long, vsage, fault, in lieu* thereof, chastize . . . as doth t'a chyld *pertaine, clear'd* . . . of *th'imputed blame, charge* with *guilt, quite clame, by nature* haue, *presumpteous powre, termes aby, outrage*; see VI.ii.3–39, especially VI.ii.14, VI.ii.23); the Salvage Man, acting on precepts of natural law, overcomes Turpine and serves Serena (*encombrance,*

perill . . . pretended, *defended*, *obaying natures* first *beheast*, *stayd*, *asswage*, *obayd . . .* as to his *Lord*, *appeaze*, *commaundement*; see VI.iv.1–16, VI.vi.39–40); and Calidore exchanges his epic pursuit of the Blatant Beast for the pastoral, shepherd life (further *. . . inquire*, *roiall court*, *excluded*, *plot* of *. . . dominion*, loath *. . . Lordship* and *ambition*, *graunt* me *. . .* like *condition*, *vow*, *high beheast*; see VI.ix.17–33, VI.x.1–4). These concerns receive final treatment in Mutability's appeal to Nature in the *Cantos of Mutabilitie*; the questions she raises there about appropriate jurisdiction and the legitimacy of title provide a kind of coda to the jurisdictional inquiries of Book VI (*esteemed* nought, bold *presumption*, *aspire*, *challenge . . .* Heauens *interesse*, *title* of *. . . right*, no *equall iudge*, *in behalfe . . . partiall*, *appeale*, *appellation*; see VII.vi.1–35). Throughout all these episodes, Spenser tests the limits of one code or system against another, exploring the resulting friction with the legal language of jurisdictional theory and practice.

Other Topics

A number of other less specific, important, or prominent topics emerge from a study of Spenser's legal diction in *The Faerie Queene*. A concern with general legal process, and particularly with trial process, can be seen in the trial of Duessa (V.ix), the trial and punishment of Mirabella (VI.vii–viii), and the appeal trial brought by Mutability against the gods of heaven (VII.vi–vii). Some of the diction in these episodes betrays a more thorough understanding of the law than mere general familiarity (e.g. *capias*, VI.vii.35). The *challenges* often offered by one knight to another, particularly in Books III and IV, are very often coloured by legal associations – especially when the challenge is made with the explicit intention of asserting claim of property to a lady or some object (such as Guyon's horse, Florimell's girdle). Other aspects of legal process incorporated in the poem include the idea of the legal fiction, by which sixteenth-century lawyers knowingly misrepresented the nature or facts of a case in order to expedite its prosecution in a more desirable court, or in order to apply a more efficient remedy in the same court. Such a fiction, or *colour*, is used by Cymoent in her attempt to bring Proteus's wrongful seizure of Florimell into Neptune's royal jurisdiction (the word Spenser recruits here in place of *colour* is, for various reasons relating to Cymoent's desire to ensure the progeny of Marinell, *devise*; see IV.xii.28–33); by casting the seizure as a usurpation of Neptune's imperial prerogative, she gives him the opportunity to take cognizance of the case and restore Florimell to Marinell. The errant justice dispensed by Artegall in Book V (to Sanglier, Bracidas and Amidas, the Giant with the scales) and by Calidore in Book VI (to Crudor and Briana, and to Tristram, Aladine, and Priscilla) mimics the errant administrative justice supplied by royal judges (assize or under special commission) in local areas.

Spenser shows particular if fleeting interest in a number of other legal subtopics. His disdain of assemblies of common people – evidenced in

recurring use of words like rascal *rout* and *crew* – is reminiscent of a string of Elizabethan royal proclamations aimed at suppressing unlawful meetings and assemblies, particularly of religious dissenters, discharged soldiers, and unlawful retainers. Spenser's diction also occasionally incorporates specialized Irish legal terms, such as **bodrag** or **bordrage** for Irish *buaidhreadh*, a raid or illegal incursion on private lands. The **engrossed records**, **chronicles**, and ancient **moniments** of Books II and III, along with the heraldic presentations of lineage delivered to and by Britomart, may not seem particularly legal in character to a modern reader, but such material often formed the basis of trials of title to lands – and occasionally even to crowns. Such topics are not addressed with the same energy and focus as the topics discussed above, but in the context of Spenser's broader use of legal material and diction they can prove compelling and illuminating.

THE DICTION: PATTERNS OF USAGE

Spenser uses various strategies in deploying these legal terms. Broadly speaking, there are four such patterns of use. The most simple and straightforward of these comes in contained similes or metaphors drawing on legal or political concepts, where the diction appears naturally as an integral part of the comparison. While most of Spenser's epic similes draw on natural phenomena, legal metaphors run a close second. For example, the poet turns to technical legal diction in such a contained way in the description of Idleness, the leader of the procession of the seven deadly sins in the House of Pride. Idleness is said to be no devoted reader of the scriptures, and yet Spenser notes that he is equally uninvolved in lay affairs:

> From worldly cares he did himself *esloyne*,
>   And greatly shunned manly exercise,
>   From euery worke he *chalenged essoyne*,
>   For contemplation sake: yet otherwise,
>   His life he led in *lawlesse riotise*. (I.iv.20)

Esloyne, the Law French term meaning 'to remove oneself or one's property out of a given jurisdiction', is used here to emphasize Idleness's hypocrisy – he uses legal manoeuvres as fictions or convenient excuses to permit himself a life of lawlessness. This hypocrisy is further underscored by Spenser's use of *challenging essoyne*, the technical process by which a defendant or witness to a case could avoid an appearance in court on the basis of some more important activity, such as the spiritual pursuits of pilgrimage or 'contemplation' – and yet here, as Spenser has just noted, Idleness has no intention of pursuing contemplation. This contained use of technical legal diction allows Spenser to comment on social as well as ethical aspects of idleness, and to link his moral instruction to a pointedly Chaucerian political satire.

A slightly more extended example of such contained use of legal diction occurs in Arthur's intercession between the sleeping Guyon and his two assailants, Cymochles and Pyrochles, in Book II, canto viii. The brothers are about to despoil Guyon of his arms when Arthur arrives and prevents them, saying:

> Not to **debate** the **chalenge** of your **right**,
> But for this carkasse **pardon** I **entreat**,
> Whom fortune hath alreadie laid in lowest seat. (II.viii.27)

Arthur's adoption of a legal idiom for his intercession is answered in Cymochles's reply; he questions why Arthur has appointed himself a '**dayesman**', or arbitrator, to '**prolong**' Guyon's punishment. He goes on to argue that just because Guyon has apparently died does not mean he must not suffer punishment, adducing the ancient legal maxim that 'the **trespasse** still doth liue, albe the person die' (II.viii.28). Arthur concurs with the maxim, even going so far as to cite the original biblical authority, God's Old Testament promise that vengeance will be visited even unto the fourth generation. Having conceded that point, Arthur suggests that, on the other hand, the law of arms meets out dishonour and '**disparagement**' to a knight who despoils the dead; vengeance, he suggests, is thus rightly left to God. This puts Pyrochles in a rage, but before he attacks Arthur he manages one more reply, calling Arthur a '**felon**' and claiming that the prince is '**partaker**' in Guyon's '**crime**'. As he retaliates, Arthur concludes the exchange by noting that Pyrochles has '**broken** . . . the **law of armes**' in striking his 'foe **vndefide**', and by promising to make him 'feele the **law**' that he has '**defast**' (see II.viii.29–31). Spenser's use of legal diction, legal maxims, and legal argument in this episode raises important questions about the trespasses Pyrochles and Cymochles are committing against divine law, common law, and the law of arms, or chivalric custom. The ethical treatment of the good government of temperance, by virtue of the diction of this short exchange, links outward to the social consequence of intemperate excess.

A second way in which Spenser uses legal diction in *The Faerie Queene* is by associating particular words or language from a given legal domain with specific narrative elements or characters. A typical and exemplary usage is the recurrent association of Florimell and False Florimell with diction relating to property in chattels. When Florimell first appears in the opening canto of Book III, for example, Arthur and Guyon chase after her with one thought on their minds:

> The Prince and Guyon equally byliue
> Her selfe pursewd, in hope to **win** thereby
> Most goodly **meede**, the fairest Dame aliue. (III.i.18)

This characterization of Florimell as a prize to be '**won**' finds further expansion in canto iv of the same book, where Spenser terms her a 'goodly **pray**' (III.iv.46), and in canto v, where Arthur claims that he would prefer Florimell

to the '*ransome* of the richest knight', 'or all the *good* that euer yet I *got*' (III.v.7). She is subsequently again described as a '*pray*' upon which the hyena tries 'to *sease*' (III.vii.28), while the False Florimell is termed a '*pray*' '*yielded*' by the witch's son to Braggadocchio (III.viii.13). Braggadocchio, himself in turn yielding False Florimell to Ferraugh several stanzas later, forfeits her as '*excheat*' to Ferraugh's '*peremptory*' '*challenge*' (III.viii.16). Spenser later repeatedly characterizes Florimell as a '*wandering waift*' (IV.ii.4.9, IV.xii.31.3, IV.xii.31.6, V.iii.27.5) and one gone '*astray*' (III.viii.49.8, IV.ii.22.4), words reserved predominantly for Florimell and indicating her status as a piece of property to be traded and exchanged. The competition of many knights for her girdle at Satyrane's tournament in Book IV, canto iv, and the eventual property suit brought by Cymoent before Neptune to redeem Florimell from Proteus (IV.xii) both indicate the strong association Spenser wished to draw between this particular character and technical legal ideas about property in chattels.

A more dispersed and unfocused use of legal diction represents Spenser's third, and probably most common strategy of presentation. In such situations, technical diction functions as a kind of continuo beneath the main melody of the passage or episode, adding a semantic resonance that should inform our understanding and interpretation of the poetry. An analogous kind of innuendo is often employed to comic effect in cases where a poet or dramatist intends a sexual overtone (the bawdy allusiveness of Pompey and Froth in the first scene of the second act of *Measure for Measure* is a good example); Spenser's legal innuendo is perhaps less stimulating, but no less crucial to a proper reading of his poetry. For example, the battle of the brothers Priamond, Diamond, and Triamond with Cambel for the hand of his sister Canacee in Book IV, canto iii uses dispersed technical diction in a programme of innuendo underlying our understanding of the contest. The fay, mother to the three brothers, has just been to see the Fates, suing to know the 'measure' of the 'vtmost *date*' of her sons' lives, and begging the sisters to '*abate*' their '*rigour*', 'that so their liues might be *prolonged* late' (IV.ii.50–51). Spenser comments on her actions at the opening of the next canto:

> O why doe wretched men so much desire
>   To draw their dayes vnto the vtmost *date*,
>   And doe not rather wish them soon *expire*,
>   Knowing the *miserie* of their *estate*,
>   And thousand *perills* which them still awate . .   (IV.iii.1)

Spenser here recapitulates the financial diction[18] of the fay's visit to the Fates, comparing the lives of men to unredeemed loans that should rather be paid

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18 Compare the use of 'vtmost date' here, in the repeated company of so much other debt-related diction, to Spenser's use of the same term in *RT*, ll. 43–56, where it does not enjoy the same semantic company and consequently works to much different effect.

sooner than later; he chastises the fay for seeking to '*prolong*' the life of her sons (IV.iii.2). This diction is followed directly by the narrative of the contest, 'that hardie *chalenge*' which the brothers will '*define*' with Cambel in the field (IV.iii.3). In the ensuing stanzas, Spenser uses words such as *enclos'd, barre, iudges . . . dispos'd, view* and *deeme*, worthie *wage, purchase, aduentur'd gage, conquest, chalenge . . . abet, perill, losse . . . forelent, spare*, and *spent* (IV.iii.4–6). This diction is subsequently picked up in the verbal exchanges of the contestants. Shortly before Cambel makes an end of Priamond at stanza 11, Priamond delivers a boast entirely consistent with the semantic colouring so far:

> Lo faitour there thy *meede* vnto thee take,
>   The *meede* of thy *mischalenge* and *abet*:
> Not for thine owne, but for thy sisters sake,
> Haue I thus long thy life vnto thee *let*:
> But to *forbeare* doth not *forgiue* the *det*. (IV.iii.11)

The soul of Priamond, '*assoyld* from fleshly *band*', is subsequently '*deriued*' through '*traduction*' 'into his other brethren, that *suruiued*'; Diamond thereupon takes up the fight, 'as in *reuersion* of his brothers *right*', '*chalenging* the Virgin as his *dew*' (IV.iii.13–14). Diamond's own death comes about through 'disdeigning long *delay* of doubtfull fortune' – '*resolu'd*' to end the fight, he puts all his force into one stroke, which failing costs him his life. Whereupon Triamond succeeding, finally, he himself is likened to the Shannon overcome by the flowing of the ocean's tide:

> But when the floud is *spent*, then backe againe
> His *borrowed* waters forst to *redisbourse*,
> He sends the sea his *owne with double gaine*,
> And *tribute* eke withall, as to his *Soueraine*. (IV.iii.27)

The battle only ends when both Cambel and Triamond give up their care for conserving and collecting, expressed once again, fittingly, in the same language of financial venturing, debt, and trade:

> Strokes, wounds, wards, weapons, all they did despise,
> Ne either car'd to *ward*, or *perill* shonne,
> Desirous both to haue the battell donne;
> Ne either cared life to *saue* or *spill*,
> Ne which of them did *winne*, or which were *wonne*.
> So wearie both of fighting had their fill,
> That life it selfe seemd loathsome, and long *safetie* ill. (IV.iii.36)

It is at this moment, when both parties have abandoned their attempts to avoid '*perill*' and '*winne*' repayment, that Triamond's sister Cambina (from the Italian *cambiare*, 'to change, to exchange') arrives and gives them the famous drink Nepenthe. Forgetting their enmity and 'from feare of *treason* free',

Triamond and Cambel promise with '***plighted hands*** for euer friends to be'. Each thereupon marrying the other's sister, all four become '***allide*** with bands of ***mutuall couplement***', supplying a fitting formal legal end to an episode underpinned throughout by a recurring pattern of technical innuendo (IV.iii.49–52).

The fourth and final way in which Spenser deploys his legal diction is certainly the most obvious and readily understood. In episodes such as Mercilla's trial of Duessa (V.ix), Cupid's attachment and punishment of Mirabella (VI.vii–viii), and Mutability's appeal to Nature's prerogative court (VII.vi–vii), we naturally find legal diction appearing in scenes of explicit legal narrative. As unsurprising as this may be, what is more interesting – and often unappreciated – is the frequency of Spenser's obsessive return to such passages of explicit legal narrative. In addition to the trial scenes cited above, we may note the contested spousals of Una and Redcrosse (I.xii), Guyon's formal oath to avenge Amavia's death and clear her from blame (II.i–ii), Phedon's account of Philemon's sexual slander (II.iv), Arthur's and Guyon's reading of *Briton moniments* and the *Antiquitie of Faerie* (II.x), the trial by combat of Cambel and Triamond (IV.iii), Cymoent's appeal to Neptune for the restitution of Florimell (IV.xii), Artegall's Solomon-like judgment of Sanglier's theft (V.i), the destruction of Pollente and Munera and the debate with the giant with the scales (V.ii), the uncasing of Braggadocchio (V.iii), Artegall's arbitration between Bracidas and Amidas (V.iv), the rescue of Terpine (V.iv) and the reform of Radigund's commonwealth of women (V.vii), the overcoming of the Souldan and Adicia (V.viii), Arthur's restitution of Belge's right (V.x–xi), Artegall's succour of Sir Burbon and his defeat of Grantorto (V.xii), Calidore's reform of Crudor and Briana (VI.i), Calidore's inquiry into Tristram's quarrel with the discourteous knight (VI.ii), and Arthur's baffling of Turpine (VI.vii). The frequency with which Spenser returns to such explicitly legal material – buttressed by the prominence of the two famous trial episodes – should confirm the importance of this inquiry, and give a full sense of its scope and possibility.

There are, naturally, some legal elements in the narrative and allegorical imagery of *The Faerie Queene* that are not mediated by a conspicuously legal diction: structures of thought, habits of argument, or certain resonant images may create strong links between poetry and the law quite apart from the semantic associations of the language in which they are expressed. A typical example of such an element is the emblematic association of Britomart and Artegall, through the middle books of the poem, with a girdle and a sword – an association that reaches its climax in the third canto of Book V, with the tournament at the wedding of Marinell and Florimell. While the princely association of chastity and power runs deep in the western philosophical tradition, and had particular force under the reign of Elizabeth I, it also has a strong basis in the English common law tradition. Bracton, for example, devotes some of his preliminary remarks on law and kingship, in the *De legibus*, to the importance of the girdle and the sword as symbols of princely power:

> *What belts are.*
> *Ringae* are so called because *renes girant*, because they gird and encircle the loins, hence the phrase, 'Gird thee with thy sword etc.' Belts gird the loins of such that they may guard themselves from the luxury of wantonness, for the wanton and unchaste are abominable before God.

> *What the sword signifies.*
> The sword signifies the defence of the realm and the country.[19]

The legal symbolism of the regalia of office helps to explain why Spenser places the tournament for Florimell's girdle not in Book III, the legend of chastity, but in Book V, the legend of justice; and it also helps to position the union of Britomart and Artegall – which we recognize already to be the historical centre of the epic – at the centre, too, of the allegory. This study will attempt, along the way, to notice and integrate the main examples of these extra-verbal kinds of legal influence on Spenser's poetry, as they support the ways in which Spenser experiments with his language.

THE CONTEXT:
SPENSER'S MINOR POETRY, CONTEMPORARIES, AND
POLITICAL DISCOURSE

Before I proceed to more detailed readings, a number of contextual considerations require attention: was Spenser alone or unique in adapting legal discourse to poetic diction? did other poets of his period use similar kinds of linguistic strategies in metaphors or in larger rhetorical structures? was this diction perhaps unextraordinary in a culture of pervasive legal influence, a sign not of Spenser's intention but rather a reflection of the contemporary rhetorical community? did contemporary readers register this quality of Spenser's diction? did such a putative linguistic strategy have English or continental precedents, perhaps among Spenser's source material? and were the technical vocabularies of other professions or spheres of activity similarly adopted by Spenser or by other poets? This type of contextual discussion will help to cast Spenser's achievement in its proper light, making it possible to gauge the strength and range of the present argument.

To begin our assessment of the legal diction of *The Faerie Queene*, we must first consider the foregoing results in the context of Spenser's other poetry, his prose, and most particularly his professional writings. As discussed earlier, the evidence of E. K.'s gloss on *The Shepheardes Calender* suggests Spenser's particular interest in diction, and of course this special interest is everywhere manifest in his relentless archaizing. While *The Shepheardes Calender* by no

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[19] Bracton, *De legibus*, II, p. 32.

means achieves the breadth and technical specificity of Spenser's legal lexis in *The Faerie Queene*, we do find in these poems some contained and slightly superficial resort to legal scenarios and language – in association, primarily, with complaint. Thus Colin's lament in 'Januarye' recruits the words 'plaine' and 'suit', which have a kind of quasi-legal resonance, to describe his relationship with the forward Hobbinol. In a more sustained example, the briar makes a complaint to the husbandman in Thenot's fable of 'Februarie':

> O my liege Lord, the God of my life,
> Pleaseth you ponder your Suppliants plaint,
> Caused of wrong, and cruell constraint,
> Which I your poor Vassall dayly endure:
> And but yor goodnes the same recure,
> Am like for desperate doole to dye,
> Through felonous force of mine enemie. ('Februarie', *SC*, ll. 150–56)

The briar's crafty exploitation of a legal form – as Thenot notes, he cloakes 'colowred crime with craft' – here dresses a personal grudge in an apparently actionable form. The thrust of Thenot's moral tale is to point to the dangers of the superficial and rhetorical abuse of such technical diction; and indeed Spenser's use of these terms in *The Shepheardes Calender* seems – intentionally – to accomplish little more than 'colowr'. While this diction appears in the inset narrative of 'Februarie', in the greater part of the eclogues, Spenser keeps decorum (as E. K. promised he would) by separating the sheep from the lawyers.

The story is different in *Complaints* and in some of Spenser's other shorter poems published during the 1590s. The thin *Complaints* volume engages social and political targets similar to those of *The Shepheardes Calender*, but this time with a direct recourse to the discourse and language of government, the law, the Church, and the marketplace that animates and extends its reach. Among the political poems of this volume, certainly the most famous is *Mother Hubberds Tale*, a satiric account of the imperfections of Elizabethan government and society on many levels, famously concluded by a lampoon of the Cecil family. We now know that it was primarily this poem that caused *Complaints* to be suppressed by the censor and called in shortly after its publication; the poem's direct language, a component of a more generally forceful style, probably contributed more than anything to Spenser's perceived trespass of the unwritten rules of censorship. The attacks on Lord Burghley, on the duke d'Alençon and his agent Simier, and on Robert Cecil differ from that on Aylmer in *The Shepheardes Calender* not only in choice of victim, but in the rhetorical positioning of the text: where the pastoral and his archaic diction had given Spenser a safe nest from which to shoot at his mark in 1579, the plain-speaking frankness of *Mother Hubberds Tale* made the 1591 lampoon only too overt. Here we find Spenser using such practical and often technical words as **licence**, **pass** and **passport**, **Commissary**, **Prebendary**, **fee**, **gage**,

compound, ordinary, offices, cyted, pollicy, intent of *Counsells, purchase, conveyance, practise, coosenage, credit, dett, fee-simple, broker, pretext, crime, torte, seized, safegard, fiaunt, privy farm, statute, chaffred,* and *suborned.* This is the language of the law court and of the city, the language of government and social control – it is certainly no longer the artificially rustic diction of shepherds. What may be surprising is that this diction, suited to a plain-speaking satirical attack on Elizabethan government and social policy, is as close to the diction of *The Faerie Queene* as it is far from the predominant register of *The Shepheardes Calender*. The same is true of *Daphnaïda*, the short poem on behalf of Arthur Gorges that Spenser composed almost immediately after the publication of *Complaints*; as Helen Sandison showed some time ago, the legal diction of this poem is carefully positioned in relation to a contemporary legal struggle between Gorges and the Howard family over the estates of his dead wife, Douglas Howard, and their infant daughter Ambrosia.[20]

Speaking generally, then, we find in Spenser's shorter poetry the same tendency to participate in legal and political discourse evidenced in the diction of *The Faerie Queene*. Where appropriate, this intervention makes use of technical diction, as in *Mother Hubberds Tale* and in parts of *Daphnaïda*; where not appropriate, as in much of *The Shepheardes Calender*, Spenser makes his political arguments by resort to fable, allegory, and analogy. What these three examples illustrate most clearly is that Spenser remains ever aware of the power of his vocabulary, and alive to the possibilities of altering his diction to suit his purpose. The programmatic archaism of *The Shepheardes Calender*, set in the context of the political bombshells of *Complaints* and the constrained deployment of legal terms in *Daphnaïda*, prepares us for the subtle, sustained, and extensive use of technical terminology in *The Faerie Queene*.

It is tempting but oversimple to suppose that Spenser was unique in adapting technical vocabulary, and even the technical words of the law, to poetic diction. Many of Spenser's legal terms – especially the more common, or quasi-technical – could well have been modelled on the usage of Chaucer, Malory, or Skelton, and even very obscure terms are in some cases attested in some of Spenser's contemporary poets. The legal diction of dramatists like Shakespeare or Marlowe, too, in many cases parallels and often surpasses Spenser's in its frequency and specificity. Still, Spenser's adaptation of technical diction stands apart: in manner, in context, in extent, and in intention, often (in comparison to more copiously legal pens like Shakespeare) for its very restraint and exactness. Although the nature of this unique achievement can probably be best appreciated through illustrative interpretative readings – thus exposing a greatness often better felt than explained – it will nevertheless be helpful to make some general comparisons here.

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[20] See Helen Sandison, 'Arthur Gorges, Spenser's Alcyon and Ralegh's Friend', *PMLA*, 43 (1928), 645–74; and Jonathan Gibson, 'The Legal Context of Spenser's *Daphnaïda*', *RES*, 55 (2004), 24–44.

In what follows, I will consider Spenser's diction in comparison to the legal usage of four other poets in particular: Geoffrey Chaucer, Sir Philip Sidney, Sir John Harington, and Edward Fairfax. Spenser's many debts to Chaucer in narrative and style have often been noted, and Chaucer's language likewise provides an important model both for Spenser's legal diction and for its mode of use. A different type of comparison is afforded by Sidney's *Arcadia*. In tone, in genre, in political purpose, and (most importantly) in legal interest the *Arcadia* and *The Faerie Queene* are uncannily similar; as close cousins, we might expect these two works to share a genetic bias in diction, instructive for our assessment of the originality and likely impact of Spenser's technical language. The translators of Ariosto and Tasso, Harington and Fairfax, followed hard on Spenser's heels with their English versions of *Orlando Furioso* and *Gerusalemme Liberata*, and Fairfax especially has been censured for his slavish imitation of Spenser. As heroic poems very similar to *The Faerie Queene* not only in genre, but in the very narrative elements making up the episodes, we might anticipate that Harington's *Orlando Furioso* and Fairfax's *Godfrey of Bulloigne* would teach us something about Spenser's uniqueness, again, but also about its contemporary reception. We might expect, then, to find in Chaucer some sources for Spenser's diction, in Sidney some parallels, and in Harington and Fairfax both parallel and, especially in Fairfax, imitation.[21]

List 1, at the end of this chapter (see pp. 82–85), provides an overview of the frequency of Spenserian legal diction in the works of these poets. This table has been compiled only very roughly, as the comparison of diction does not, by its nature, admit of great statistical precision. In particular, I have exercised generous discretion in the selection of a representative sample of diction and in the inclusion and exclusion from the count of variant grammatical forms and spellings. The *Arcadia* is a prose romance, where the other comparison texts are poetic. Chaucer's *Works* (a difficult enough idea, in its own right) include a great variety of different types of poem, while Harington's *Orlando Furioso* is substantially longer than both *Godfrey of Bulloigne* and *The Faerie Queene*. It might plausibly be objected, too, that Harington and Fairfax were as translators more limited in their diction, or that they are in any case bad poets. Above all, it should be noted that this table is one-way: it only includes frequencies for words that Spenser uses, and so pays no attention at all to legal terms appearing in the work of other poets, but unattested in Spenser. All of these reservations complicate the comparisons, and suggest the comparative

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[21] Although Shakespeare's legal usage is extensive, and has recently been documented in B. J. and Mary Sokol's reference guide, *Shakespeare's Legal Language: A Dictionary* (London: Athlone, 2000), I have chosen not to include Shakespeare's works among the comparison texts – nor indeed any dramatic works – because of the wide gap between poetic and dramatic diction, and because of the substantial gulf between the style of Spenser's and Shakespeare's exploitation of legal ideas and language.

irrelevance of any specific numbers listed by any given word. The value of this table, however, is not in exact numbers but in trends. Of primary interest, obviously, are the zeros: it is surely significant, for example, that Spenser is unique in this company in the use of *escheat*. On the other end of the scale, it will be important to remember in ensuing chapters that *cause*, *consent*, and *estate*, however legal in overtone in some contexts, are hardly unattested in the poetry of Spenser's sources or contemporaries.

Along these guidelines, several instructive conclusions can be abstracted from the table. Perhaps the most obvious elements in the table are the rows complete, or near-complete, with zeros. These are words that Spenser would generally not have found in Chaucer, or which his contemporaries generally did not choose to use: *abolish*, *achate*, *adjudge*, *affiance*, *appeal*, *arrogate*, *attach*, *attainder*, *attaint*, *bailiff*, *birthright*, *bodgrag*, *capias*, *commerce*, *complot*, *contract*, *daysman*, *defeasance*, *demur*, *disparage*, *dispossess*, *disseise*, *dominion*, *eloin*, *empeach*, *encroach*, *encumber*, *enfelon*, *enfranchise*, *escheat*, *essoin*, *extort*, *farm*, *fealty*, *fee*, *folkmote*, *forestall*, *fosterage*, *frank and free*, *frankpledge*, *hue and cry*, *impanel*, *indict*, *inheritance*, *inquest*, *interest*, *nominate*, *overrule*, *peremptory*, *perjure*, *plaintiff*, *prerogative*, *ravishment*, *remit*, *replevy*, *safeconduct*, *safeguard*, *seizure*, *seneschal*, *spousal*, *suborn*, *tenant*, *testify*, *tort*, *traffic*, *tribunal*, *waif*, and *wreck*. While this is neither an exhaustive nor exhaustively tested list of Spenser's unique legal diction, it does suggest that, at least to some degree, Spenser was unusual in the incorporation of specialized technical vocabulary in his lexicon.

Focusing for a moment more directly on Chaucer, it is clear that, whether or not Spenser derived some of his technical legal diction directly from 'Tityrus his style', certainly many – but certainly not all – of Spenser's legal terms are attested in Chaucer's poetry. Among the obscure or particularly technical words are *appertain*, *chaffer*, *chevisance*, *default*, *demesne*, *essoin*, *felon*, *franchise*, *plaintiff*, *property*, *spousal*, and *suppliant*. Words seeming technical or obscure to Chaucer's Elizabethan readers would have appeared no less technical in Spenser, but we may imagine that Spenser may in this, as in other things, have considered his predecessor a precedent. On the other hand, many of the words implicated in this study do not appear in Chaucer's lexicon; in addition to those already listed above, it may be surprising to find that Chaucer never uses *aid*, *contempt*, *credit*, *debar*, *empire*, *infamy*, *inherit* or *inheritance*, *mitigate*, *permit*, *proclaim*, *restraint*, or *trial* (some of these words, of course, entered the language after Chaucer's time). Finally, there are some words, mostly quasi-legal in Spenser's vocabulary, that are well attested in Chaucer, and can confidently be guessed to have given *The Faerie Queene* not only a legal, but a Chaucerian flavour: *accord*, *adventure*, *alliance*, *cause*, *consent*, *courtesy*, *default*, *estate*, *mischief*, *outrage*, *purchase*, *remedy*, *sentence*, *sovereign*, *trespass*, *yield*. In characterizing the relationship between the legal diction of Spenser and Chaucer, then, we may conjecture that Spenser was aware of Chaucer's fairly substantial technical usage as a model or

precedent, but that he was (as we might expect) not at all restricted by the exact limits of this precedent.

Among contemporary poets, the language of Sidney's *Arcadia* provides the closest match for Spenser's technical diction. Sidney and Spenser seem to have shared many political and religious convictions; certainly they were allied with the same factions and patrons at court during the 1580s. Like *The Faerie Queene*, the *Arcadia* was composed at least in part to galvanize Elizabeth's foreign policy, and Sidney demonstrates the same interest as Spenser in both legal terminology and explicitly legal narrative. The most obvious similarity between the two romances is, of course, that they both conclude with dramatic trial scenes invoking themes of jurisdiction and empire. To a degree far more pronounced than for Harington or Fairfax, Sidney's legal diction appears roughly congruent with Spenser's own; telling similarities include, for example, Sidney's frequent usage of **challenge**, **dominion**, **title**, and **injury.** And yet there are important gaps, despite the fact that, as a prose work, the *Arcadia* enjoys much more freedom in the disposition of rhetorical figures, including diction, than the constrained meters and rhyme schemes of *The Faerie Queene* can permit. Many of Spenser's more technical terms are unmatched in Sidney's romance, including **achate**, **annex**, **appeal**, **appertain**, **attach**, **capias**, **chaffer**, **chevisance**, **commerce**, **demesne**, **demur**, **eloin**, **encumber**, **enfranchise**, **escheat**, **essoin**, **expire**, **fee**, **heritage**, **impeach**, **inquest**, **recovery**, **safeguard**, **seizure**, **tenant**, **tort**, and **wreck.** Sidney does not demonstrate the same multi-level use of legal diction, nor does he betray interest in legal process and theory to the same degree as Spenser; *The Faerie Queene* at different points invokes writ process, legal fictions, judgment by maxim and precedent, and conflict of laws, while Sidney is generally content in the *Arcadia* to resort to legal diction fairly superficially in explicitly legal narrative, and particularly in the concluding trial of Pyrochles and Musidorus.

In contrast to the broad affinities between the legal diction of Sidney and Spenser, the poetic diction of Harington and Fairfax appears much more out of sympathy with Spenser's technical usage – an impression that becomes only more clear when their primarily quasi-legal terms are examined in context. In particular, it is somewhat surprising that the highly derivative *Godfrey of Bulloigne* appears to fall so short of Spenser's prevalent use of technical terms. In comparison with the works of these four poets, then – each in its own way a useful check on Spenser's usage of technical diction – it seems that *The Faerie Queene* may enjoy some special status. Of the technical terms attested in Chaucer, many appear in Spenser's verse but not in that of his contemporaries. A substantial number of words, including some not even clearly very obscure (e.g. **tenant**) do not appear, or do not appear at all frequently, in either Spenser's primary source or in his contemporaries. In succeeding chapters it will, moreover, become clear that Spenser's diction differs substantially from that of other poets not only in its composition, but in its use.

A final point of comparison for Spenser's poetic diction is his own usage in

his prose works – particularly *A view of the present state of Ireland* – and in those state papers associated with Spenser by autograph, signature, or endorsement. List 2 (see pp. 85–86) presents a selection of technical words from *The Faerie Queene* also appearing in *A view*. The length and detail of this list makes it immediately obvious just how much overlap there is between Spenser's technical diction in *The Faerie Queene* and the diction appropriate to political and legal documents like *A view*. It might be objected that such an overlap is only natural when the documents come from the same hand, and are both of such a size, yet the genres of these two texts are indisputably distinct. Certainly the technical diction of *The Faerie Queene*, by this measure, seems to have much more in common with *A view* than it does with the poetic diction of contemporary romance poets. At least part of the cause of this effect must be specific to Spenser, and significant to this study: the recurrence in both works of words like ***abrogate***, ***adjudge***, ***bailiff***, ***covenant***, ***disburse***, ***endamage***, ***equity***, ***escheat***, ***feoffement***, ***franchise***, ***frankpledge***, ***hostage***, ***incroachment***, ***license***, ***nominate***, ***perjure***, ***plaintiff***, ***plead***, ***pledge***, ***possession***, ***prerogative***, ***prohibition***, ***seize***, ***seneschal***, ***sovereignty***, ***submission***, ***surcharge***, ***tenant***, ***testify***, ***trial***, ***void***, and ***warranty*** suggests the preoccupation of *The Faerie Queene* with precisely those legal and political issues and problems at the centre of the often technical discussion of civic and cultural disorder in *A view*; while the wider overlap of other less specifically legal terms shows how both works treat the same kinds of social and political negotiations.

This overlap of about two hundred and fifty words pales, though, in comparison with the much more substantial lexical overlap between the technical legal diction of *The Faerie Queene*, on the one hand, and on the other Spenser's autograph diplomatic letters preserved in the State Papers Irish in the National Archives (formerly the Public Record Office), presented in List 3 (see pp. 86–88). This list of about five hundred words shows remarkable points of contact between the two textual samples, in a way that underscores linguistically the importance of Spenser's secretarial career for a reading of his poetry in this period between 1580 and 1594 (the last date for which we have documentary evidence of actual secretarial activity, though of course his work may have continued) – exactly the period of the composition of *The Faerie Queene*. While Spenser's hand can be shown to have been imbrued much more widely in the diplomatic manuscripts surviving from the New English administration in Ireland during this period – he addressed many letters, subscribed others, annotated others, and almost certainly copied and dispatched still others – I have deliberately restricted this sample of diction to autograph texts, in order to sharpen and weight the points of comparison: all of these words, in both samples, were words he regularly used himself, in his poetic and professional capacities. While some of the words in this list will not seem in the least surprising – no writer of a chivalric romance would get very far without the words ***challenge***, ***claim***, and ***prize*** – if nothing else this looser and less surprising part of the overlap demonstrates, which we might easily forget, that

the lexis of chivalric romance had much in common with daily affairs in Elizabethan colonial administration. The character of the overlap here is slightly different from that of List 2 in that it includes many more terms of this broad kind, a phenomenon that seems natural when we consider that *A view* was probably composed, like *The Faerie Queene*, at least in part to make decisive interventions on specific topics, whereas the textual sample of the diplomatic letters reflects a broader lexical context – the background noise of a poetical career. Having said that, more focused and compelling points of contact, such as *covenant*, *disclaim*, *dominion*, *extortion*, *liberty*, *merchandise*, *redress*, *relief*, *seneschall*, *tenant*, and *undertake*, again indicate how the particular furniture, and the pressing problems, of practical legal and political administration made their impressions on Spenser's thought and argument in his poetry. Even the slightly indirect associations brought out in the list – the puns on *precedent*/*president* and *impressed*/*imprest*, for example – are suggestive for our reading of his verse.

Something that leaps out from both lists is a preoccupation not only with legal and political affairs, but with Irish legal and political affairs. This is only natural, given that one of the lexical samples, in each case, comes from a source primarily concerned with Irish political administration; but the lexical and semantic overlap between *The Faerie Queene* and these two Irish political-historical sources tends to confirm something that readers have long argued about Spenser's poetry, and lately with some vigour: that Spenser turned to his own experience in Ireland as an illustration of the kinds of moral and political problems he wanted to allegorize in *The Faerie Queene*, and complain about in his shorter poetry. The *seneschal* was a fairly common actor in the English political and military government of early modern Ireland; the *pledge* or *hostage* a regular feature of political negotiations and treaties; to *undertake* had an important local meaning in Munster in the late 1580s; and the problems of *liberty* and *sovereignty*, though not by any means restricted to Ireland, had crucial idiosyncratic usages and overtones in Irish colonial government. It will be no surprise to find, as we turn to the exemplary readings of Spenser's poetry in the following chapters, that the legal and political concerns most relentlessly invoked by his artificial use of technical diction return repeatedly to Tudor Irish affairs. While this kind of reading of Spenser's poetry has been deplored by critics who, like C. S. Lewis, think it a distraction from the timeless in his art, the contours of Spenser's technical diction, like the arguments made in the last chapter, show us why more is at stake here than non-literary distraction: for the Elizabethans, the lexis of poetry had to be consistent with the status of a great poem as a *lex*, and the technical, even Irish diction of *The Faerie Queene* points us toward Spenser's legally inflected, allegorical-case method of philosophical and literary composition.

List 1. Frequence comparison of selected legal terms in Spenser, Chaucer, Sidney, Harington, and Fairfax

		Number of occurences in:			
				Harington	Fairfax
	Spenser	Chaucer	Sidney	*Orlando*	*Godfrey of*
	The Faerie Queene	*Works*	*Arcadia*	*Furioso*	*Bulloigne*
abolish	1	0	3	0	0
abridge	4	12	1	4	0
accord	32	> 50	11	21	5
achate	1	3	0	0	0
acquit	9	6	1	2	2
adjudge	5	1	0	1	0
adventure	> 50	> 50	37	10	15
affiance	2	1	0	7	0
agree	58	3	13	32	8
aid	> 50	0	12	> 50	> 50
allegiance	3	1	2	1	0
alliance	1	17	4	6	0
ally	6	13	2	1	0
annex	4	6	0	2	1
appeach	5	0	0	0	0
appeal	5	0	0	1	0
appertain	5	28	0	1	0
arrest	5	15	3	3	0
arrogate	1	0	0	0	0
attach	11	0	0	0	0
attaint	3	0	2	0	0
bailiff	1	5	0	0	0
bequeath	4	5	8	1	0
birthright	1	0	1	0	0
bodrag	1	0	0	0	0
bondage	14	0	15	2	13
capias	1	0	0	0	0
cause	> 100	> 50	> 50	> 50	37
chaffer	1	14	0	0	1
challenge	37	4	32	31	8
chevisance	3	6	0	0	1
claim	21	10	10	12	0
complot	1	0	0	0	0
composition	2	3	3	1	0
compound	4	13	1	6	0
conclude	1	27	34	18	8
concord	5	4	3	5	2
condemn	7	1	> 50	21	11
condition	11	13	15	19	2
conscience	8	36	41	11	3
consent	22	43	> 50	> 50	17
contempt	1	0	18	4	0
contract ('bond')	2	1	1	1	0
convey	25	5	26	7	0

A Survey of Spenser's Legal Diction

	Spenser *The Faerie Queene*	Chaucer *Works*	Sidney *Arcadia*	Harington *Orlando Furioso*	Fairfax *Godfrey of Bulloigne*
courtesy	> 50	46	39	12	3
credit	5	0	20	19	4
cumber	3	3	7	9	1
custom	9	9	12	17	9
damage	4	19	11	21	0
daysman	1	0	0	0	0
debar	5	0	1	2	4
debt	3	15	5	6	0
decree	16	7	5	5	0
defame	16	15	1	4	1
default	5	41	1	0	0
defeasance	1	0	0	0	0
defence	21	21	43	49	21
demesne	1	3	0	0	0
denial	3	0	13	9	0
disinherit	1	3	2	0	0
disparage	3	3	0	0	0
dispossess	2	0	1	0	0
disseise	2	0	0	0	0
distress	48	> 50	6	32	16
dominion	5	0	8	1	0
dower	8	2	1	5	0
eloin	1	0	0	0	0
empeach	13	0	0	2	2
empire	11	0	2	11	26
encroach	3	0	1	1	0
encumber	8	10	0	0	0
enfelon	1	0	0	0	0
entry	2	11	12	7	4
equity	4	5	6	0	1
erect	1	1	7	0	1
escheat	2	0	0	0	0
essoin	1	1	0	0	0
establish	9	19	17	0	1
estate	28	> 50	> 50	28	21
exchange	5	7	1	4	0
expire	12	0	0	6	1
extort	4	0	1	0	0
farm	4	1	1	0	0
fealty	5	0	1	0	0
fee	18	4	0	0	0
felon	11	14	1	0	0
folkmote	1	0	0	0	0
forestall	12	0	0	0	3
franchise	1	17	0	0	0
franchisement	1	0	0	0	0
frank and free	1	0	0	3	0
heritage	11	21	0	0	2
homage	9	7	6	1	0

	Spenser *The Faerie Queene*	Chaucer *Works*	Sidney *Arcadia*	Harington *Orlando Furioso*	Fairfax *Godfrey of Bulloigne*
hue and cry	1	0	0	0	0
impanel	1	0	0	0	0
in lieu	5	0	1	2	0
indict ('accuse')	2	2	4	0	0
infamy	12	0	4	5	0
inherit	1	0	12	5	0
inheritance	1	0	2	1	0
injury	6	4	> 50	8	0
inquest	3	1	0	0	0
inquire	48	21	1	2	0
intend	18	25	24	> 50	4
interest	2	1	7	0	0
issue ('matter')	3	5	15	6	6
liberty	37	28	54	25	5
magistrate	2	1	10	1	1
mischief	39	38	> 50	19	8
mitigate	9	0	6	2	1
mollify	9	1	2	4	1
nominate	2	0	0	0	0
outrage	38	24	2	2	0
overrule	3	0	2	1	0
partake	14	0	1	0	4
partaker	8	0	7	0	1
peremptory	2	0	1	0	0
perjure	1	0	1	3	0
permit	2	0	1	12	2
plaintiff	3	4	1	0	0
plea	2	1	2	1	0
pledge	19	1	5	2	3
possess	30	0	38	26	8
prerogative	1	0	1	0	0
proclaim	8	0	8	4	0
property	2	14	2	1	0
prosecute	2	0	1	0	0
purchase	19	33	22	1	5
ravishment	2	0	1	0	1
recovery	1	5	0	1	2
redress	35	20	10	3	2
relief	21	1	6	25	1
remedy	22	> 50	17	14	0
remit	1	0	0	6	0
repeal	2	2	1	1	0
replevy	1	0	0	0	0
restore	> 50	14	7	16	14
restraint	4	0	6	1	0
revoke	7	2	1	1	0
safeconduct	3	0	1	2	1
safeguard	6	1	0	0	0
seizure	1	0	0	2	0

	Spenser *The Faerie Queene*	Chaucer *Works*	Sidney *Arcadia*	Harington *Orlando Furioso*	Fairfax *Godfrey of Bulloigne*
senseschal	10	0	0	0	0
sentence	5	> 50	17	6	0
slander	5	15	4	5	4
sovereign	> 50	> 50	3	0	0
sovereignty	9	6	3	0	0
spousal	6	2	0	0	0
statute	2	10	6	1	1
suborn	2	0	0	0	0
subvert	3	1	1	2	0
suppliant	6	3	0	0	0
tenant	1	0	0	1	0
testify	2	0	2	0	0
title	9	5	> 50	9	7
tort	4	0	0	0	1
traffic	1	0	2	2	0
trespass	7	> 50	11	0	3
trial	30	0	32	29	1
tribunal	2	0	1	1	0
usury	6	5	2	1	0
verdict	2	3	1	2	0
void	17	33	21	30	13
waif	6	0	0	0	0
warrant	4	5	13	5	1
waste	> 50	27	30	22	27
wreck	10	1	0	19	0
yield	> 100	42	> 50	> 50	> 50

List 2. Legal diction shared by *The Faerie Queene* and *A view of the present state of Ireland*

abandon	afford	booty	composition	debt
abolish	agree	border	compound	default
abridge	alledge	bound	conceal	defeat
abrogate	allegiance	captain	conclude	defend
abuse	ally	cause	condition	deny
accept	amend	chaffry	confess	determine
accompt	answer	challenge	confirm	devise
accord	appoint	charge	conquer	disburse
accrue	approve	chief	conquest	discharge
achieve	argument	civility	conscience	distrain
acknowledge	arrest	clemency	consent	distress
acquit	assure	conveyance	constrain	dominio
act	avouch	color	convey	elect
action	bailiff	combrous	covenant	empire
adjudge	bands	commit	credit	enact
admit	bar	complain	custom	encroach
adventure	bind	complaint	damage	endamage

List 2 (cont.)

engage	grant	moniment	promise	state
enterprise	hazard	nominate	proof	statute
entitle	hearing	notable	prosecute	strain
entrance	hold	oath	protection	subdue
entreat	hostage	obedience	prove	subject
equity	impair	offence	purchase	submission
escheat	impeachment	office	question	submit
establish	incroachment	ordain	ravisher	subvert
estate	indict	outlaw	reckon	succeed
execute	infamous	outrage	recompence	success
exempt	innovation	overthrow	recovery	succession
expel	inquire	pardon	redress	sue
extort	inquiry	partaker	relief	suffer
extortion	intend	pass	remedy	surcharge
faith	intent	peril	repress	swear
falsify	invade	perjure	restore	tenant
farm	inviolable	permit	revoke	term
fault	join	pervert	reward	testify
fealty	judge	plaintiff	right	title
felon	judgment	plead	safeconduct	titles
feoffment	justify	plea	safeguard	trade
folkmote	kingdom	pledge	safety	traffic
forfeit	lewd liberty	plot	satisfy	traitor
forge	license	poll	scatterling	transgress
forsake	liege	possess	seal	treason
forswear	limit	possession	seize	treaty
foster	livery	pray	seneschal	trial
franchise	loyalty	prefer	service	tribute
franciplegium	magistrate	prerogative	settle	undertake
fraud	maintain	pretence	slander	usurp
free pledge	maintenance	principal	sleight	vassal
friendship	market	priviledge	sovereign	verdict
goods	mercy	proceed	sovereignty	villain
govern	mischief	proclamation	spend	void
government	mollify	prohibition	spoil	vouchsafe

List 3. Legal diction shared by Spenser's autograph diplomatic letters and
The Faerie Queene (autograph Spenserian spellings)

abandoned	actes	affected	annexe	approved
absent	actions	afford	annoy	argument
abvses	adioyning	affront	answer	assault
accept	advaunce	agreed	appeare	assent
accion	advauncement	agreement	appease	assigne
accompanied	advauntage	allied	apperteyne	assist
accoumpt	advice	allotted	apply	assistaunce
account	advised	allowaunce	appoint	assuraunce
accustomed	advisement	allowed	appointment	assure
acknowledg	affaires	allyed	approvaunce	attainted

List 3 (cont.)

attempt	complayne	demaundes	enterteynement	heires
attend	composicion	demeanure		holdes
attendaunce	conceive	deny	entrap	holding
authoritie	conclude	depart	entring	impart
avoid	conclusion	depend	entry	importune
ayd	conditions	derived	equity	imprested
band	confesse	descend	escape	imprisoned
banish	confirme	deserve	escheated	inclosed
base	conscience	desperate	eschew	inferreth
benefitt	consent	destitute	established	infirmity
bequeath	consider	device	establishment	inforce
beseech	consideration	devise	estate	informed
bestowed	consisteth	difference	esteeme	inheritaunce
betraying	constrayned	differred	examined	iniuries
bewraied	construed	diligence	excheated	iniuriously
bidde	consumed	directed	excuse	inlarged
billes	contempt	discharge	execucion	inquyring
blame	content	disclame	execute	insolent
blood	contentment	discouered	expectacion	instructions
borderes	conteyne	discourse	expedicion	intent
bought	continuaunce	discrecion	expell	interest
bownd	continue	discreditt	expired	intrapping
breake	convenient	disgrace	expresse	invade
brybes	converted	disloiall	extortions	ioyne
burden	conveyed	disorder	extremity	iudged
buy	cost	disorderly	faith	iudgementes
bynd	councell	dispatch	faithfull	keepe
call	counseled	dispersed	faithlesse	keeper
carriage	countenance	dispose	false	knitt
case	countrey	dispossesse	faultes	land
cast	course	distresse	fee	law
cause	court	disturbe	ferme	leave
cesse	covenant	dividing	filching	lend
chalenge	creditt	division	finde	lett
charge	cryme	dominions	fine	liberty
chief	custody	due	force	license
close	custome	duetie	foster	licentiousnes
coler	date	earnest	frame	loialtie
combined	daunger	effect	free	mainteigne
comfort	deale	eleccion	frendship	maintenance
command	debating	empairing	fynd	malitious
commaundement	debtes	employ	gard	marchandize
commend	decayed	endangered	gayne	marchaunt
committ	deceived	endevour	give	mariage
commodity	declare	enforce	gouerne	matter
common	deeme	enioy	gouernement	maynteyned
compacted	default	enlarged	graunt	measure
company	defence	enlargement	greevaunces	memorialles
compasse	defend	ensue	grief	minister
compell	deliuer	enter	guift	miscarriage
complaint	deliuery	entertayne	guiltie	mischief

List 3 (cont.)

money	preserved	refuse	save	tenantes
motioned	president/cy	regard	scribed	tenour
mutinie	presume	regiment	seale	termes
necessity	pretence	relief	search	testify
neglect	pretended	relieve	security	title
nominate	prevent	remayne	seized	trade
nominated	price	remedy	seneschall	traficque
obedience	principall	remembraunce	serieaunt	traiterous
obeyed	private	remitting	served	traitour
observe	privie	remove	service	treachery
obtayning	proceed	renewing	sever	treason
offence	proclaymed	rent	signe	triall
offended	procure	repaire	solemnity/ze	tried
office	proffitt	reparacion	souereigne	true
oppresse	promise	repayed	spoiled	trust
order	proofe	repeal/able	spoyle	truth
ordinary	prosecute	repent	stand	value
ouerruled	proteccion	report	state	ventered
outrages	prove	reproche	stay	venturing
oweth	provide	request	stealing	villeinous
pardon	provoke	require	stealthes	violence
party	publish	requite	straunge	vndertaken
passe	punished	resist	subieccion	vndertakers
pay	purchase	resolucion	subiect	vnited
perfect	purpose	resolue	submission	vniust
performe	pursued	resort	submitt	vntrue
perill	pursuivaunt	respect	substaunce	vsage
perished	purveyaunce	respitt	succeding	vse
periured	quarrell	respondet/ence	successe	wages
permitted	rate	restrayne	succession	ward
perpetuall	raunsome	reteyned	succored	warrant
person	reason	retired	sufficient	waste
perteyneth	receive	retourne	suitt	watch
pledge	reckoned	revenues	sum	widowhead
pollicie	reckoning	reversion	suppliaunt	withdrawing
polling	recommend	revoke/cacion	supply	withheld
portions	recompence	revolt	surrender	witnes
possession	recorder	reward	survey	worth
posterities	recouer	right	suspected	wrong
practize	recouery	rule	suspicion	wynne
pray	redresse	ruyne	susteyned	yield
preiudice	reducing	safety	sway	yssued
present	referre	satisfy	tempt	

Chapter 4

PROPERTY AND CONTRACT IN
THE QUESTS OF FLORIMELL AND AMORET

> *Vnmarried Men* are best Friends; best Masters; best Seruants; but not
> always best Subiects; For they are light to runne away; And almost all
> Fugitiues are of that Condition . . . Certainly, *Wife* and *Children*, are a
> kinde of Discipline of Humanity: And *single Men*, though they be many
> times more Charitable, because their Meanes are lesse exhaust; yet, on the
> other side, they are more cruell, and hard hearted, (good to make seuere
> Inquisitors) because their Tendernesse, is not so oft called vpon. Graue
> Natures, led by Custome, and therfore constant, are commonly louing
> *Husbands*; As was said of *Vlysses*; *Vetulam suam prætulit Immortalitati.*

> Francis Bacon, 'Of Marriage And Single Life',
> *The Essayes or Counsels, Ciuill and Morall* (1625)

MARRIAGE is one of the foremost narrative elements of *The Faerie Queene*. It recurs as a focal point in every book of the poem, and nearly every episode invokes a marriage promised, performed, or betrayed. The study of marriage themes in Spenser's poetry is almost equally copious, but to date has, curiously, avoided addressing the broader political overtones of this emphasis in Spenser's work. Attention to the poet's use of legal language suggests that marriage figures in *The Faerie Queene* as only one manifestation – though an important one – of a more general preoccupation with social bonds and contract. Spenser's interest in contract appears throughout the poem at the inceptions of marriages, friendships, partnerships, and patron–servant relationships, but it is the particular focus of the middle books of *The Faerie Queene*: *Of Chastity* and *Of Friendship*. The central quest of these books, Britomart's search for Artegall, is ramified through Spenser's characteristic allegorical method into a pageant of subsidiary quests, narratives, and isolated episodes configuring and reconfiguring the conditions and meaning of contract. Common to all these representations of contract is a recurring legal diction, joining disparate episodes into what proves, in the end, a coherent and sustained meditation on social bonding. As the political resonance of Britomart's search for Artegall might well suggest (their preordained union is, after all, the foundation of the Tudor dynasty), Spenser's interest in marriage

and other unions constitutes not merely an ethical exercise, but a serious engagement with some of the most important political and social problems facing Elizabethan government.

MARRIAGE AND CONTRACT: THE LAW AND THE LANGUAGE

The work of social and legal historians suggests that modern and early modern ideas about marriage differ subtly but substantially. Marriage in sixteenth-century England appeared primarily as a species of what we would today call 'contract', exhibiting close parallels with other social and legal bonds; our own tendency to view marriage as a predominantly public or institutional ceremony did not obtain. Two important, if somewhat contradictory, elements of sixteenth-century marriage have, similarly, been lost. First is the conception of marriage as a type of exchange, in which a woman is formally passed from the possession of one man to another in return for lands or money. The second is an ancient belief, persisting into the sixteenth century, that a marriage is constituted necessarily and sufficiently by a simple exchange of promises between lovers, and that the ceremonies and other institutional formalities often accompanying this vow are, in the eyes of God, ornamental.

Medieval law attests very clearly to a traditional view of marriage as a kind of contractual exchange of both properties and promises. Anglo-Saxon and Norman customs bequeathed the traditions of *mund* (medieval L *munda*, guardianship of the bride, or fee paid by the bridegroom to the bride's father) and *wed* or *wedd* (a pledge offered in assurance of the marriage bond or, as in Gower, the promise itself) to medieval law, where they survived in the traditions of the *maritagium*, the dowry, and the ring.[1] '*Maritagium*', or in its more usual form in early modern English, 'mariage', is defined by John Cowell in *The Interpreter* of 1607 as 'not onely the coupling together of man and wife, but also the interest of bestowing a ward or a widow in mariage'.[2] Henry VIII had such financial interests in mind when he created the Court of Wards in 1540; the marriage settlements of his under-age tenants could generate substantial income.[3] As the experience of Spenser's associate Sir Arthur Gorges

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[1] For a discussion of these Anglo-Norman traditions and their influence on medieval and early modern English law see Sir Frederick Pollock and Frederic William Maitland, *The History of the English Law Before the Time of Edward I*, 2nd edn (Cambridge: Cambridge University Press, 1968), II, 364–68.

[2] Cowell, *Interpreter*, sig. Vv1v.

[3] For further information on the history of this court, and the primarily financial causes for which it was established, see H. E. Bell, *An Introduction to the History and Records of the Court of Wards and Liveries* (Cambridge: Cambridge University Press, 1953). Early Tudor monarchs notoriously exploited this and other courts to generate income, an element of Tudor fiscal and

demonstrates, the street value of an orphaned heiress late in Elizabeth's reign could be as high as £10,000.[4] The semantic slippage between these two senses of 'mariage', buttressed by the reality of Tudor crown finances and court fiscal practices, suggests close links between ideas of contract, exchange, and profit. The widespread social customs of the bestowal of the dowry and the ring only emphasized these contractual elements; the dowry represented another (potential) portion for the bride's hand, where the gift of a ring bore striking similarity to the ancient but persevering traditions of granting 'pledge' and 'gage' on contracts, and the act of fitting the ring a corresponding similarity to the iconological handclasp that still provided valid formal conclusion to early modern oral agreements.[5]

The contract of marriage itself fell, in the medieval period, under the jurisdiction of the ecclesiastical courts, and thus was not normally handled in the common law except insofar as it touched on questions of property or inheritance.[6] The Catholic Church had adopted the secular marriage ceremony, in Spenser's English called the 'spousal' (L *sponsalia*), during its assumption of matrimony jurisdiction in the tenth and eleventh centuries. This custom, derived from the Roman *stipulatio*, considered a marriage legitimate on the basis solely of promises exchanged mutually and freely between a man and a woman. The position of the spousal as the foundation of canon law marriage was confirmed in a decretal of Alexander III of the late twelfth century, but reversed for the Catholic world by the Council of Trent in 1573, in favour of a public ceremony held *in facie ecclesiae*. By this time England had broken away from Rome, and, ironically, the ancient Alexandrian decretal consequently remained in a kind of force in the orphaned English canon law. Competing

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political administration that kept medieval incidents like **mariage** not only alive, but very much in the public consciousness.

4   Gorges, who lost the profit on his daughter Ambrosia's intended marriage when she died prematurely in 1600, cites this figure in a complaint to Queen Elizabeth. See Sandison, 'Arthur Gorges, Spenser's Alcyon and Ralegh's Friend'.

5   For a concise account of the origins and development of the 'pledge of faith', see Pollock and Maitland, *The History of the English Law Before the Time of Edward I*, II, 184–203. While the act of fitting a ring obviously echoes the handclasp of the formal contract, the mere handclasp itself was often the formal symbol of a marriage, and still remains an element of the modern Christian ceremony. The handclasp as an icon of marriage must have been familiar enough, given its use by many authors and painters of the early modern period. See, for example, Chaucer's *Knight's Tale*, l. 3094, where Palamon weds Emily by taking her 'by the hond'; or again, Shakespeare's *The Taming of the Shrew*, II.i.318–19, where Baptista remembers not a single element of the formal spousal *except* the handclasp: 'I know not what to say, but give me your hands. God send you joy, Petruchio, 'tis a match.'

6   For a discussion of the jurisdiction of the ecclesiastical courts in matrimonial and related causes, see Martin Ingram, *Church Courts, Sex and Marriage in England, 1570–1640* (Cambridge: Cambridge University Press, 1987), pp. 27–69. Marriage in the medieval period has been treated most extensively by Christopher N. L. Brooke, *The Medieval Idea of Marriage* (Oxford: Oxford University Press, 1989).

traditions of privately contracted spousals and publicly celebrated and solemnized matrimony created a blurred situation in England, reflected in increasingly arbitrary canon law judgments in marriage suits. The English common law only complicated matters by its insistence, for the purpose of settling titles and estates, on the performance of a public, witnessable ceremony at the church door.

Most legal and religious writers of Spenser's time came to view spousals as a binding precontract formalized before a compulsory solemnization; yet this messy solution led inevitably to more confusions. Thus Henry Swinburne, a canon lawyer of York and a contemporary of Spenser's, writes in his *A Treatise of Spousals* (ca 1620) that 'albeit this word *Sponsalia* (Englished *Spousals*) being properly understood, doth only signifie Promises of future Marriage, yet is it not perpetually tied to this only Sense'. In fact, as Swinburne goes on to say, it is interpreted differently by the lawyers of different courts: common lawyers confound the terms 'spousal' and 'marriage', 'using them *promiscuè*, or one for another', but they distinguish carefully between the two in substance, for 'they do not repute the affianced Couple for one Person, nor deem of their Issue as lawful, nor doth he gain any Propriety in her Goods, nor she any dower in his Lands by force of the *Contract of Matrimony* only without *Solemnization*'.[7] The civilians and canonists, on the other hand, do not mix names but rather natures: 'both the Civilians and Canonists in favourable Cases generally, in matters indifferent, often, and sometimes in strict and penal Cases, deem of *Spousals* like as of pure and perfect Matrimony'.[8] In fact, the ecclesiastical courts were more than ready on many occasions to uphold privately contracted marriages, even in the face of subsequent matrimony effected with a third party *in facie ecclesiae.*[9]

It is difficult to distinguish between various acceptable theories of marriage, as they were recorded by lawyers like Swinburne, and the actual practice of the time. Church courts were theoretically willing to accept a spousal contracted *per verba de praesenti* (in the present tense). Many historians have argued that the custom of spousals had given way by the turn of the seventeenth century to the more modern public wedding in church, but while the advantages of the church wedding – public, witnessable, theatrical, and above all legally valid for

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[7] Henry Swinburne, *A Treatise of Spousals, or Matrimonial Contracts: wherein All the Questions relating to that Subject are ingeniously Debated and Resolved* (London: S. Roycroft for Robert Clavell, 1686), p. 2. Swinburne was born in 1551, and educated as a mature student at Broadgates (later Pembroke) Hall, Oxford in the late 1570s. His first published work, *A Briefe Treatise of Testaments and Last Willes*, appeared in 1590. *A Treatise of Spousals* was probably written in the early 1620s, but, unfinished at his death in 1624, was published posthumously. For more information on Swinburne, see J. Duncan M. Derrett, *Henry Swinburne, Civil Lawyer of York* (York: St Anthony's Press, 1973).

[8] Swinburne, *A Treatise of Spousals*, p. 2.

[9] A discussion of exemplary cases of this kind is the backbone of Ingram's study in *Church Courts, Sex and Marriage in England.*

the common law purposes of settling inheritance and property claims – were beginning to render the spousal obsolete, several contemporary writers attest to its continuing practice and its very strong symbolic presence within the church ceremony itself.[10] Clandestine weddings in the Elizabethan period (Ralegh's being the aptest example) took advantage of the custom of spousals and its still widespread popular acceptance to claim legitimacy while avoiding the possible risks of publicity.[11] Furthermore, marriage contract litigation in the consistory courts from this period demonstrates that, although the number of marriage contract suits was declining, there was still a legal forum available for the trial of promised faith.[12] In fact, even the common law courts began to allow toward the end of Elizabeth's reign an *assumpsit* plea for breach of promise in marriage, thus providing damages for jilted women and their families.[13] The popular conception of marriage in sixteenth-century England, then – informed by the traditions of *maritagium* and dowry and the still widespread and legally valid custom of the spousal, actionable in both church and common law courts – privileged its essentially contractual nature.

Spenser's diction in *The Faerie Queene* strongly supports such an assimilation of marriage and contract. For example, the unions between Redcrosse and Una (I.xii), between Phedon and Claribell (II.iv), and between Britomart and Artegall (IV.vi) draw consistently on a legal lexis shared with other instances of troth-plighting and contract in the poem. Having dispatched the dragon, Redcrosse announces at the end of Book I that, as promised, he must return to Gloriana's court to serve another six years in 'warlike wise'. The King of Eden '*yields*' him both daughter and kingdom, the 'dew *desert* of noble *cheualree*', and urges Redcrosse to return quickly to his betrothed Una, 'the marriage to *accomplish vowd* betwixt you twain'. Then 'to the knight his daughter deare he *tyde*, / With sacred *rites* and *vowes* for euer to abyde'. Spenser later characterizes the match as the '*knitting* of loues *band*' (I.xii.18–40). The account of the spousals of Phedon in Book II, canto iv, draws on the same diction (*seru'd, faithfull, cause . . . disagree, accord, consent, affiance, rites*; see II.iv.21). This

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[10] See Martin Ingram, *Church Courts, Sex and Marriage in England*, pp. 131–34. Ingram notes that the 'reign of Elizabeth, and to some extent the early seventeenth century, formed an uneasy transition period' between spousals and church weddings. As he notes, 'the fact that an informal contract could still create a binding union entailed uncertainty, moral ambiguities and opportunities for deceit and fraud' (p. 133). It is instructive to remember that Spenser subtitles his *Prothalamion* with the words 'a Spousall Verse'.

[11] For Swinburne's comments on the validity and persistent tradition of the clandestine wedding, or 'private spousal', see *A Treatise of Spousals*, section XIV, 'Of Publick and Private Spousals', pp. 193–96. For a social history of the practice of clandestine marriage in the period, see R. B. Outhwaite, *Clandestine Marriage in England, 1500–1850* (London: Hambledon, 1995).

[12] See Ingram, *Church Courts, Sex and Marriage in England*, pp. 189–218, and Houlbrooke, 'The making of marriage in mid-Tudor England'.

[13] Baker, *IELH*, p. 480.

same diction appears in the last spousal of the poem, that of Britomart and Artegall in canto vi of Book IV, where it is very explicitly associated with contractual oath-taking. The '*mariage* meet' that will finalize the '*othes*' and '*vowes*' of this spousal between the knights will be itself part of an '*accord*'; Britomart's '*consent*' to the spousal forms the basis of this formal agreement, which Spenser carefully characterizes as a secular treaty, neither religious nor ceremonial. Each of these examples insists through collocation on the recurring psychology of Spenser's conception of marriage as an exchange of vows, or bond-swearing ceremony. It is telling that in none of these instances does Spenser represent marriage in any other way – for example, as the festive celebration familiar from the *Epithalamion.*

   It is significant that, in all of the cases just considered, the spousal between lovers collocates conceptually with some other bond. The spousal of Redcrosse and Una takes place against the backdrop of Redcrosse's commitment to Gloriana, a '*band*' and '*vow*' he cannot '*release*' (I.xii.18–20). Similarly, Phedon's tragic tale centres bifocally on his spousal with Claribell and his betrayed friendship with Philemon, the '*league* of *vowed* loue' '*knit*' between them as boys (II.iv.18). Britomart and Artegall, again, only perfect their destined love in the context of Scudamour's reconciliation with Britomart, predicated on his discovery that she is not, after all, the predatory and faithless despoiler of Amoret. This conflation of spousal with other types of contract is stressed with particular force in the famous 'tetrads' of Book IV. The first of these, the continuation and resolution of Chaucer's *Squire's Tale*, sees Cambel and his sister Canacee joined to Triamond and Cambina in a four-way triple-binding knot, drawing on all three bases of bonding – friendship, amorous love, and blood relationship – in equal measure. These four are '*accorded*' 'in perfect loue, deuoide of hatefull strife, / *Allide* with *bands* of mutuall complement' (IV.iii.51–52). Similarly, the two friends Amyas and Placidas are joined in a four-way knot to Poeana and Aemylia in the ninth canto of Book IV. Prince Arthur, the architect of this 'peace and setled rest', 'perfectly *compyled*' the four and 'shut vp all in friendly loue' (IV.ix.16). The repeated and conspicuous association – both narrative and semantic – of spousals with friendships and other contractual bonds emphasizes the essential similarities between them, and suggests the broader social and political intentions guiding Spenser's representations of such bonds.

   That Spenser should go to such careful lengths to collocate marriage with other kinds of social bonds, and describe all of them in a consistent and legally shaded lexis, should not surprise us. The psychological and conceptual links between married men and friends, fathers, masters, and creditors are developed, for example, by Francis Bacon in his essay 'Of Marriage and Single Life' (a passage from which is the epigraph to this chapter), wherein Bacon supposes not only an analogical relation between the roles of husband, friend, father, and master, but actually sees them as constitutively and mutually causative roles. In a similar vein, the Elizabethan homily on marriage (after it has

done admonishing wives to endless obedience) makes a point of linking the good husband to the good king, the good husbandman, and the good merchant:

> For euen as the kyng appeareth so muche the more noble, the more excellent and noble he maketh his officers and lieutenauntes, whom yf he shoulde dishonour, and despyse the aucthoritie of their dignitie, he shoulde depriue hym selfe of a great part of his owne honor: Euen so, if thou doest despise her that is set in the nexte roume besyde thee, thou doest much derogate and decaye the excellencie and vertue of thyne owne aucthoritie.[14]

The implication of these influential analogical relations is not only that a good husband should strive for excellence in the same way as kings, farmers, and merchants, but that these masculine roles are parallel, requiring the same skills and yielding the same benefits. Perhaps it needed no Elizabethan homily to picture such relations for an allegorical poet like Spenser; but the homilies are not only important because their influence pervaded Elizabethan culture at every social level, but also because they had to be written in a kind of *lingua franca*, using metaphors and arguments that were natural and accessible to everyone already – that is, the homily gauges how deep-seated such relations were to an Elizabethan reader.

What is slightly less characteristic of his period, and significant for our readings of the middle books of *The Faerie Queene*, is the way this conceptual collocation of social bonds returns to a legal language of **accord**, **bind**, **compile**, **league**, **oath**, and **vow**. Spenser's representation of social relationships in *The Faerie Queene* gravitate toward this lexis in the same way that, for example, Shakespearean comedies push relentlessly forward to the culminating transactions of political, social, economic, and gender revelation and, above all, distribution in their final scenes. But because of the spareness of incident and narrative detail of Spenser's poetry, in *The Faerie Queene* this has the effect of focusing the reader's attention on the essence of social bonds as contractual, in the legal sense; at the expense of psychology or humanity, of particular economic or political outcome, of experience – all of which would be natural to a psychologized narrative or drama – we find, in Spenser, a determined attention to structure and pattern. The legal lexis of contract perfectly stabilizes this tendency of his allegorical method.

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14 See *The seconde Tome of Homelyes*, ed. John Jewel (London: Richard Jugge and John Cawood, 1563), sig. Xxxx iv–Xxxx iir, Xxxxi iiir.

SPENSERIAN CONTRACT:
FAITH, EXCHANGE, AND SOCIAL INSTITUTIONS

Spenser's emphasis on elements of exchange, pledge, and oath-taking in his portrayal of spousals also links marriages in *The Faerie Queene* to other types of troth-plighting. For example, Arthur's meeting with Redcrosse in Book I, canto ix sets a template for the metaphoric exchanges of later covenants by engaging in legally inflected gift-giving:

> Then those two knights, fast friendship for to **bynd**,
> And loue **establish** each to other trew,
> Gaue goodly gifts, the signes of gratefull mynd,
> And eke as **pledges** firme, **right hands together ioynd.** (I.ix.18)

Arthur subsequently bestows upon Redcrosse a diamond box, and Redcrosse in return gives Arthur a copy of the New Testament (or New Covenant). Several of the words in this passage contribute to a sense of the legal fastness of this exchange. *Bind* can in this period mean 'to tie . . . up in respect to action; to oblige by a covenant, oath, promise, or vow'.[15] This is the sense in which Chaucer frequently uses the term, as in *The Complaint of Mars* ('he bynt him to perpetuall obeisaunce'; see ll. 47–49) and elsewhere.[16] Likewise, *establish* and *pledge* were often used in the formal language of contract formation.[17] The joining of hands, or 'handfasting' as it was known to Spenser's contemporaries, was recognized as a formal feature of the oral agreement, and as we have seen was often considered the constitutive formal feature of a spousal. The combination of the explicit exchange of gifts and the formal legal language produces a string of adjectives that speak to the effect of this negotiation: 'fast', 'trew', 'firm', and 'sure' signify the longevity and security of this kind of bond, as do the diamond box, the drops of liquor that can heal any wound, and the testament, 'able soules to saue' (I.ix.19.9). This scene of troth-plighting reveals many parallels with spousals elsewhere in *The Faerie Queene*, in both its terms (*bind*, *establish*, *pledges*) and symbolic gestures (handfasting, exchange, vow).

Later Arthurian contracts follow this model, using the same diction to invoke ideas of exchange, faith, and obligation. In the encounter between Arthur and Guyon in canto vii of Book II, Guyon addresses his saviour Arthur with the feudal legal titles of '*patron*', '*lord*', and '*liege*', and bemoans his inability to '*repay*' Arthur's magnanimity with sufficient '*meed*' (II.viii.55–56).

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[15] See *OED*, 'bind', *v*, paragraphs 15–21.

[16] Compare *The Tale of Melibee*, (B) ll. 2935–40 and *Troilus and Criseyde*, Book II, l. 728.

[17] Spenser uses both terms frequently throughout *A view*, particularly in Irenius's exposition of the new legal arrangements needed to stabilize Irish society. See, for example, *A view*, pp. 197–98 and 213–14. For 'pledge', see also *FQ* IV.i.53.5, IV.iii.3.4, IV.vi.8.3, IV.x.55.7, IV.xii.32.9, and Dedicatory Sonnet vii, l. 9.

Guyon's anxiety here stresses the importance of exchange to a troth-plight; worrying that he has nothing suitable to give Arthur in return, he is overcome with his own unworthiness.[18] In soothing Guyon's anxieties, Arthur expands on his earlier bond with Redcrosse:

> . . . Faire Sir, what need
> Good turnes be counted, as a *seruile bond*,
> To *bind* their doers, to receiue their *meed*?
> Are not all knights *by oath bound*, to withstond
> Oppressours powre by armes and puissant hond?
> Suffise, that I haue done my *dewe* in place. (II.viii.56)

This exchange acts to strengthen several of the more important elements of the first scene of contract described between Arthur and Redcrosse. The culture of grace outlined by Arthur in his bond with Guyon, institutionalized in the chivalric code, explicates the meaning of his original symbolic exchange with Redcrosse: one should give first, not in the expectation of gain or return but rather out of generosity. Mutual participation in a culture of grace will knit together the knights in a 'kindly' purpose. This instance is also like its precursor in its language: *patron*, *lord*, *liege*, *aid*, and *bound* contribute to the sense of feudal obligation, one which Arthur's meditation on *meed*, *oath*, *suffise*, and *dew* only extends and deepens.

Following these two paradigmatic expositions of contract, Spenser begins to vary the troth-plightings to accommodate further allegorical expansion of his contractual ideal, but the core language remains the same. Thus we find Britomart and Guyon '*knit*' together in reconcilement in the first canto of Book III after a brief but hostile encounter; the '*treaty*' (III.i.12) secured between them in this scene points to the importance of temperance and

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[18] Guyon's anxiety recalls and reinterprets two earlier examples of a similar kind. In thanking Arthur and Timias for their service against the giant Orgoglio (I.viii.26–27), Una worries that she will not be able to '*quite*' and '*reward*' them amply enough for their '*paines*' and '*perill* past'. She offers instead her '*seruice*' and prays that God will '*requite with vsuree*' their generous sacrifices. Her invocation of feudal '*seruice*' echoes the declaration of a deeper, and real debt, Spenser's gratitude to his early patron Arthur, Lord Grey, declared in a dedicatory sonnet:

> Most Noble Lord the pillor of my life,
>   And *Patrone* of my Muses *pupillage*,
> Through whose large bountie poured on me rife,
> In the first season of my feeble age,
> I now doe liue, *bound* yours by *vassalage*:
> Sith nothing euer may *redeeme*, nor *reaue*
> Out of your endlesse *debt* so sure a *gage*,
> Vouchsafe in worth this small *guift* to *receaue*,
> Which in your noble hands for *pledge* I leaue,
> Of all the rest, that I am tyde t'*account*. (Ded. Sonn. x.1–10)

faithfulness to the success of contract.[19] The uniting of Arthur and Artegall in Book V again emphasizes reconciliation: Artegall, 'all unweeting' of Arthur's identity, carries on a misguided battle against him, while Arthur – 'so misled' by 'errour' into thinking Artegall his enemy on account of the borrowed armour he is wearing – fights back with equally misguided violence (V.viii.14). Their ultimate reconciliation by Samient (compare Greek σῆμα or σημεῖον, 'sign', 'interpretation') emphasizes the importance of delving past appearances to ascertain true knowledge of a given situation, but the most obvious element of the encounter is its reliance on technical contractual terms: Artegall '*prays*' '*pardon*' of Arthur for having '*wrong'd*' him, 'which if ye please *forgiue*, I will therefore / *Yeeld* for *amends* my selfe yours euermore, / Or what so *penaunce* shall by you be red' (V.viii.13). Arthur's response takes up this language and elaborates on it:

> But sith ye please, that both our blames shall die,
>   *Amends* may for the *trespasse* soone be made,
> Since neither is *endamadg'd* much thereby.
> So can they both them selues full eath perswade
> To faire *accordaunce*, and both faults to shade,
> Either embracing other louingly,
> And *swearing faith* to either on his blade
> Neuer thenceforth to nourish *enmity*,
> But either others *cause* to *maintaine* mutually. (V.viii.14)

The '*accourdaunce*' of Arthur and Artegall, couched among so many terms of legal reconciliation, underscores the participation of this late troth-plighting in the tradition of the earlier books. The repetition of '*amends*', as each knight exchanges pardon with the other, the mutual persuading, the embrace, and the vow 'to *maintaine* mutually' one another's interests refer directly back to Arthur's earlier bonds with Redcrosse and Guyon. But the attention, too, to the financial side of the contract – here expressed in terms of cost, by the terms '*amends*', '*forgiue*', and '*endamadg'd*' – also looks back to the exchanges of earlier troth-plights, and insists on a representation of formal bonds not only as legal relations, but legal exchanges; Spenserian contracts, like the medieval traditions of marriage and covenant, require a transaction, even if that transaction is not a giving, but a 'forgiving' of costs.

An important focus for contractual ideas in *The Faerie Queene* is Ate, 'mother of *debate* and all *dissention*', whose malign presence threatens concord and harmony throughout the fourth book, *Of Friendship*. In contrast

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19 Particularly close to this scene of reconciliation is that secured by Medina between Huddibras, Sansloy, and Guyon in Book II, canto ii. Medina seeks an '*accord*' to their '*contentious iarre*' by rehearsing the advantages of '*concord*' over '*discord*'. She further manages to '*procure*' a '*treatie*', 'and *stablish termes* betwixt both their *requests*, / That as a *law* for euer should *endure*; / Which to *obserue* in word of knights they did *assure*' (II.ii.29–33).

to the paradigmatic tetrads of Cambel, Triamond, Cambina, and Canacee and of Amyas, Placidas, Aemylia, and Poeana, Ate represents all the dangers facing successful contract, dangers which by malicious influence she rears in the relationships of those around her. In Ate Spenser links public and private discord, making for the first time an explicit link between the private friendships, agreements, and spousals of the poem and the larger political institutions to which they give rise, using the now-familiar lexis of contractual agreement ('many a **publicke state** / And many a **priuate** oft doth **ouerthrow**', '**sworn** friends . . . their **faith forgoe**', '**witnesse** . . . broken **bandes**'; see IV.i.21, 24).

Ate's destructive work appears mainly in the dealings between Blandamour and Paridell, and like the language of her own introduction, the diction of these encounters shows clear emphases on legal terms. As an example, consider the challenge Paridell – spurred on by Ate – makes to Blandamour at IV.ii.12–13. Reminding him 'of his owne more worth' and the 'former breaches' in their friendship, Ate pushes Paridell to confront his friend:

> Too boastfull *Blandamour*, too long I beare
>   The open **wrongs**, thou doest me day by day;
>   Well know'st thou, when we friendship first did **sweare**,
>   The **couenant** was, that euery **spoyle** or **pray**
>   Should equally be **shard** betwixt vs tway:
>   Where is my part then of this Ladie bright,
>   Whom to thy selfe thou takest quite away?
>   *Render* therefore therin to me my **right**,
> Or **answere** for thy **wrong**, as shall fall out in fight. (IV.ii.13)

The choice of the word '**couenant**' to describe the agreement sworn between Paridell and Blandamour at the foundation of their 'friendship' indicates Spenser's interest here in formal contractual ideas.[20] *Covenant* (Latin *conventio*) was the sixteenth-century word for what we would today know as 'contract', a legally binding agreement in the broadest terms:

> Covenant is an Agreement made by Deed in writing, and sealed between two persons, where every of them is bounden to the other to perform certain covenants for his part, and if the one of them holdeth not his covenant, but breaketh it, then he which thereof holdeth himself grieved, shall have thereupon a Writ of Covenant.[21]

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[20] Note that Spenser's use of *covenant* here furnishes a good example of how, despite the fact that he is using diction well attested in both Chaucer and Malory, he is nonetheless focusing his own usage in a decidedly legal way: when Blandamour says, 'the **couenant** was, that . . .', and goes on to elaborate the terms of the agreement, we cannot suppose this to be a casual use of the term.

[21] *Les Termes de la Ley*, f. 91r. See also Cowell, *Interpreter*, sig. T3r.

The agreement sworn between Blandamour and Paridell is thus meant on some level as a modern 'contract', a solemn and formal exchange of promises, but Spenser's application of the term *covenant* to this faithless and inconstant pair is also slightly tongue-in-cheek. The agreement they have made – to divide any spoil or prey equally between them – is something more like an early modern 'contract' or 'bargain', a *quid pro quo* economic arrangement opposing and even parodying the paradigmatic Arthurian exchange-covenants of the first two books. It represents an economy founded on self-interest and ambition, aptly characterized by a statement made in the previous canto by Paridell. Offering there to act as champion for the injured Blandamour, Paridell assures him: 'my selfe will for you fight, / As ye haue done for me: the left hand rubs the right' (IV.i.40). Erasmus, in his *Adages* (I.i.33), had attributed this saying ('*manus manum fricat*') to Socrates in Plato's *Axiochus*, calling it the motto of the financial profiteer and contrasting it with the free gift of grace. Erasmus's scholarship is suggestive here: a 1592 edition of an English translation of *Axiochus* bore Spenser's name, and many scholars have noted verbal parallels between this translation and Spenser's poetry;[22] the appearance of this adage in Book IV of *The Faerie Queene* only strengthens such associations. The reference to their '*couenant*' and the parody of exchange produced by Paridell indicate that Spenser intends this pair of false friends as a foil for the positive *tableaux* of troth-plighting presented throughout the poem.

The legal element likewise figures large in this passage: Paridell demands that Blandamour '*render*' to him his 'part', or '*answere*' for his '*wrong*' in fight, following – by his invocation of the trial by battle – an ancient tradition sanctioned by the common law for resolving questions of right.[23] In fact, his demand echoes the phrasing of common law writs for recovery of possessions, such as this for debt: '*Precipimus tibi, quod iusticies A. quod iuste et sine dilatione reddat B. xx. solidos quos ei debet vt dicit . . .*' ('We order you, that you instruct A. that justly and without delay he render to B. 20 shillings that he owes him as he says . . .');[24] and if the defendant will not, he must appear

22 The 'lost' Spenser translation of *Axiochus* was rediscovered and published in 1934 by Frederick Padelford, who made a strong case for Spenser's authorship on the basis of verbal parallels between the dialogue and *The Faerie Queene*. Such parallels were further explored and new ones noted by Rudolph Gottfried in *Variorum*, X, and by Harold Weatherby, in '*Axiochus* and the Bower of Bliss: Some Fresh Light on Sources and Authorship', *SS*, 6 (1985), 95–113. The composition of Book IV and the publication of *Axiochus* were probably contemporaneous.

23 See Baker, *IELH*, pp. 73–74. Battle was permitted in cases of right and for appeals of felony, as judgment was thought to be by God; its use in felony cases died out early in the medieval period. See p. 140, n. 41 *infra*.

24 Sir Anthony Fitzherbert, *La Nouuelle Natura Breuium* (London: Richard Tottel, 1553), f. 119v. Fitzherbert is among the first and the greatest of the printed English legal historians. The *Natura Breuium* was intended as a reference work for students and practitioners of the common law, providing the basic forms for all common law writs, both current and extinct; it

'*ostensurus quare non fecerit*' ('. . . to show why he has not done it').[25] The terms of Paridell's challenge are derived directly from the common vocabulary of writs: here we find '*reddat*' (L *reddere*, uniformly translated in the early modern period as '**render**'), while in writs of right patent we read '*Precipimus tibi, quod sine dilatione plenum rectum teneas . . .*' ('We order you that without delay you do full right to . . .')[26] and in the forms for *capias ad respondendum* '. . . *ad respondendum B. de placito*' ('. . . to answer B in the plea').[27] The language and form of Paridell's challenge in this episode, following the self-interested covenant effected between the false knights, clearly illustrate the participation of Spenser's contractual vision in explicitly technical legal and political concerns.

A similar pair of anti-contract bunglers in the middle books are Braggadocchio and Trompart, the false knight and his clowning squire. We have already seen in the previous chapter[28] how the initial meeting of these two characters in Book II parodies the ancient feudal ceremony of pledging homage to the lord in return for the grant of tenure. This parodic '*accord*' is only prelude to the chivalry-for-hire that Braggadocchio offers the jilted Malbecco in canto x of Book III. Seeking a champion to reclaim Hellenore from the embraces of Paridell and the lustful satyrs, Malbecco bids Braggadocchio '**redresse** the **wrong** of miserable wight' in a noble '**defence of right** . . . gainst a faithlesse knight' (III.x.28). But, unlike the encounter between Britomart and Scudamour in the following canto, where Britomart undertakes through selfless generosity to rescue of Amoret from Busirane, here Malbecco offers, and Braggadocchio accepts, a '**guerdon** rich', 'great store of treasure' (III.x.28–29). Although no oath is sworn, the agreement between Braggadocchio and Malbecco is clearly intended to refer back to the covenant of Arthur and Guyon in Book II, where Arthur dismisses Guyon's embarrassment at not being able to repay him with 'seruile' '**meed**'.

In these parodies of troth-plighting *tableaux*, Spenser begins to accentuate his gathering focus on issues of contract and its now-familiar components – exchange, faith, and its institutions – in the middle books. This emphasis reaches its peak in the quests of the three virgins, Britomart, Florimell, and Amoret.

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was reprinted repeatedly throughout the sixteenth century, and was invaluable to county sheriffs. As sheriff-designate of Cork in 1598, Spenser would probably have known the work first-hand.

25 Baker, *IELH*, p. 540.

26 Fitzherbert, *La Nouuelle Natura Breuium*, f. 1v.

27 Baker, *IELH*, p. 548.

28 See above, p. 57. Braggadocchio commands Trompart's '*homage*' as an '*Offall*' at II.iii.8, where the flatterer throws himself at the braggart's feet, vowing to be 'his **liege**, to **hold** of him *in fee*'.

FLORIMELL AND MARINELL:
CONTRACT, CHATTELS, AND MAGNANIMITY

It is typical of Spenser's allegorical method that the representation of Britomart's psychomachia – very much the central narrative core of the middle books of the poem – is projected narratively onto the quests of two other figures, the search of Florimell for Marinell and that of Amoret for Scudamour. That this is so is indicated by precise correspondences in the poem:[29] Britomart ordains the future torture of Amoret in the House of Busirane (III.xii.19–31) when, shortly after viewing Artegall in Merlin's mirror, she complains to Glauce of the 'wound' that Cupid has made in her heart, a 'no no vsuall fire' that 'suckes the blood, which from my hart doth bleed' (III.ii.36–37). Similarly, the Chaucerian love-complaint that Britomart later makes on the 'rocky shore' (III.iv.8–10) spells out Florimell's destined shipwreck and subsequent imprisonment in Proteus's watery cell (III.vii.19–28, III.viii.20–42, IV.xii): here Britomart likens herself to a 'feeble barke' tossed on the 'cruel billowes', at the mercy of 'Loue my lewd Pilot'. These tight allegorical correspondences are strengthened by later parallels between the narratives of Florimell and Amoret, both of which narratives are subsumed into the overarching dynastic and political union of Britomart and Artegall.[30]

To understand fully the relationship between chastity and the beauty allegorized in Florimell, we must return to the ideas of economic exchange suggested in the Arthurian contracts discussed earlier. In these encounters, the first essential component is the magnanimity that opens the exchange, providing the occasion for a return gift and an extension of faith. Florimell's beauty represents precisely this power of awakening, a quickening of the spirit of love that encourages professions of faith and ultimately results in social order. This characterization of beauty is a commonplace theme of lyric love poetry and a central tenet of the Neoplatonic theory of beauty and love.[31] It

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[29] The correspondences I outline here are suggested by Nohrnberg, *The Analogy of* The Faerie Queene, e.g. pp. 588, 626–29, 636–38.

[30] The union of Marin**ell** and Florim**ell** is threatened by Parid**ell**, the standard-bearer of lust throughout Books III and IV, and Duessa, the sorceress creator of False Florimell. Florimell falls into the power of Proteus and is imprisoned by him for seven months (IV.xi.4.6). The union of **Amor**et and Scud**amour** (Scudamoret) is similarly threatened by Bland**amour** (who would insert himself into a hypothetical Blandamoret) and Ate, the defamer of Amoret and Britomart. Amoret is imprisoned by Busirane for seven months (IV.i.4.1) and endures much wandering before being reunited with Scudamour at the end of IV.ix. Britomart plays a crucial part in both these narratives; by defeating Marinell in III.iv, she precipitates Florimell's flight (III.i), and by rescuing Amoret in III.xii she makes it possible for Scudamoret to be reunited at the end of Book IV.

[31] Spenser elaborates this theme in *An Hymne in Honour of Beautie*, where he notes that beauty 'kindleth liuely fyre' and, 'shyning in the face, / Thence to the soule darts amorous desyre, /

becomes in Spenser's hands the basis of a social vision, as the beauty that begets physical and spiritual love acquires in turn a social manifestation, the magnanimity that opens exchange and facilitates contract. Spenser effects this conversation between *philosophia*, *theologia*, and *politica* by means of a repeated reliance on legal diction.

As often in Spenser's poetry, to understand the beginning we must begin at the end. The most striking element of Cymoent's[32] appeal to Neptune for the release of Florimell at the end of Book IV is Spenser's characterization of the imprisoned maid as a kind of moveable property, or chattel. This representation lies squarely within English legal tradition: for the most part, women had no place in Tudor common law, and could not own property, take out a writ or bring a suit, or make a will. It is thus not surprising that Spenser refers to Florimell twice in this passage as a 'waift'. In the 1579 edition of Rastell's *An exposition of certaine difficult and obscure words*, 'waif' is defined as follows:

> Wayfe is when a theefe hath feloniously stolne goods: & beinge neerely followed, wyth hue, and crye, or els ouercharged wyth the burden or trouble of the goodes: for hys ease sake and more speedy trauaylinge, without hue & crye, flyeth away, and leaueth the goodes or any part of them behynd him &c. Then the Queens officer, or the Reeue, or Bailife to the Lorde of the manneur (wythin whose Iurisdictyon or circuit they were left) that by prescriptyon, or graunt from the Queene hath the fraunchyse of wayfe: may seyse the goods so wayued to their Lordes vse, whoe may keepe them as his owne proper goods.[33]

Spenser's use of this legal term features two distinct spellings. The first, *weft*, appears a number of times in the poem, and can be confused with his use of the past participle of the verb *waft* or *waff* (to be blown or carried by wind or water), which he spells in the same way. The other, *waift*, which more closely resembles the legal form *waif*, is used only in this episode and only ever to describe Florimell. It appears that Spenser favoured the *weft* form for its morphological links with *waft*, suggesting a piece of lost property at the mercy of the winds and waves; in this favoured spelling he is joined by many contemporary writers, including Ben Jonson. The insistence in this particular episode on the correct vowel, however, emphasizes Florimell's very legal characterization as a chattel.[34]

And robs the harts of those which it admyre' (*HB*, ll. 50–61). Spenser is here echoing the Neoplatonism of Marsilio Ficino, whose commentary on Plato's *Symposium* was a favourite source; see *Marsilio Ficino's Commentary on Plato's* Symposium, ed. and trans. Sears Jayne, University of Missouri Studies 19 (Columbia: University of Missouri Press, 1944).

32 Although Spenser refers to Cymoent as Cymodoce during this episode, I have preserved the earlier form to reduce confusion.

33 Rastell, *An exposition*, f. 195r–195v.

34 Spenser's choice of vowel here may invoke another technical term of the common law, 'waive', defined thus by Rastell, *An exposition*, f. 196r–196v:

    Waiue is a woman that is vtlawed, & shee is called wayue, as left out or forsaken of the

Spenser further links Florimell, through this word 'waif', to two similar figures, Hellenore and False Florimell – both reflections of Florimell's beauty. Hellenore, the adulterous wife of Malbecco, receives the epithet in Book III, canto x, when Spenser notes that the Satyrs, into whose possession Hellenore devolves after her flight with Paridell, 'handele' her as a 'commune good' (III.x.36.3). Likewise, False Florimell receives the epithet in canto ii of Book IV, where she emerges with Ferraugh into the company of Blandamour and Paridell (IV.ii.4.9). Hellenore, modelled on Helen of Troy, provides a kind of surrogate beauty for Paridell, one that can, unlike Florimell, be possessed and bent to his lust. The lasciviousness she represents, particularly when helping one happy satyr to 'ring his matins bell' for the ninth time in a single night, stands in opposition to the virtuous magnanimity Florimell's beauty is meant to elicit. Similarly, the beauty of the False Florimell, a sprite concocted by a witch to soothe her son's covetous lust, provokes unvirtuous behaviour from Paridell and Blandamour, and later from the whole company of knights assembled at Satyrane's tournament. The acquisitive and covetous behaviour provoked by these false heroines parodies the proper effect (i.e. virtuous love) of the true Florimell's beauty.

Spenser deepens the association of Florimell with this mercantile metaphor by continuing to invoke it in episodes involving Hellenore and False Florimell. When Paridell seizes Hellenore in Book III, canto x, for example, Spenser carefully mixes the adultery of Malbecco's wife with the loss of his material wealth. Figuring the rape repeatedly as 'loue-*stealth*' (III.x.58, III.x.12.1, and III.x.16.6), the poet stresses the analogous relationship between loss of wife and loss of money, a parallel culminating in the indecisive wavering that leaves Malbecco destitute of both. This parallel expands upon Spenser's earlier characterization of Hellenore's adultery, where he writes of the two lovers that:

> . . . through his traines he her intrapped hath,
> That she her loue and hart hath wholy **sold**
> To him, without **regard of gaine**, or **scath**,
> Or **care of credite**, or of **husbande** old,
> Whom she hath **vow'd** to dub a faire Cucquold. (III.x.11)

The semantic commixture of **sold**, **gaine**, **scath**, **credite**, and **husband** here contribute to a sense of Hellenore's 'loue and hart' as a tradeable commodity; the pun on **husband** – meaning both 'spouse' and 'husbandry' – typifies

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law: & not an vtlawe as a man is: For wemen are not sworne in leetes to the Queene, nor to the lawe, as men are, who therefore are within the lawe, whereas wemen are not, and for that cause they cannot be said out of the lawe in so much as they neuer were within it. Although Florimell has certainly not been legally proscribed, Spenser might have intended an allusion to this term to suggest her status as an extra-legal phenomenon – certainly fitting for a piece of property, rather than a person. As always, the argument for Spenser's orthographical intentions must be measured against the 'white noise' of compositorial intervention.

Spenser's mercantile representation of Hellenore's wantonness. He concludes by yoking Hellenore to Florimell at III.x.36, calling her 'forlorne *weft*', and noting that the satyrs took her home as a housewife 'To milk their gotes, and make them cheese and bred, / And euery one as *commune good* her handeled' (III.x.36.8–9).

Spenser similarly implicates False Florimell in exchanges between knights who treat her as a piece of property. The way she is bandied between Braggadocchio, Ferraugh, Blandamour, and Paridell in Book III, canto viii and Book IV, canto ii has already been discussed;[35] in these episodes, False Florimell is repeatedly associated with such words as *escheat*, *prey*, *challenge*, *stray*, *prize*, *ransom*, and *meed*. In canto v of Book IV, False Florimell, with Amoret and many other ladies, is brought to Satyrane's tournament both to compete for 'the prize of beautie' and to be competed for as 'the prize of beautie'. The terms of the tournament stipulate that the fairest lady shall win Florimell's girdle, and whichever knight fights best in the three days' sport shall win for his valour both lady and girdle. The prize going to False Florimell for beauty, she is awarded to Britomart, Artegall, and Triamond in succession, but none of them will have her. From this point on, False Florimell's 'prize' status begins to take on more and more the look of a commodity:

> Tho vnto *Satyran* she was *adiudged*,
>> Who was right glad to gaine so goodly *meed*:
>> But *Blandamour* thereat full greatly grudged,
>> And litle prays'd his labours euill speed,
>> That for to *winne* the saddle, lost the steed.
>> Ne lesse thereat did *Paridell complaine*,
>> And thought *t'appeale* from that, which was *decreed*,
>> To single combat with Sir *Satyrane*.
> Thereto him *Ate* stird, new *discord* to *maintaine*. (IV.v.22)

Many other knights then begin to '*demaund*' and '*chalenge*' False Florimell 'as their *rights*, / *Deserued* for their *perils recompense*' (IV.v.23). To resolve the discord, Satyrane proposes placing False Florimell in the centre of a ring of all the knights, then allowing her to choose her own knight, who would 'without *disturbance* her *possesse*' (IV.v.25). Her choice of Braggadocchio, of course, only further enrages the lustful and faithless knights left at the tournament; the next time we see them, in canto ix, they are still fighting over her. It is significant that, even here, the diction of trade and property follows the subject of the quarrel:

> Four *charged* two, and two *surcharged* one;
>> Yet did those two themselues so brauely beare,
>> That the other litle *gained* by the *lone*,

> But with their owne *repayed* duely weare,
>   And *vsury* withall: such *gaine* was gotten *deare*. (IV.ix.30)

Spenser fulfils the association between Florimell and personal property by linking her, in Book IV, canto xii to the common legal practice of distraint and replevin. Seeking Florimell's release from Proteus's prison, Cymoent sues directly to the court of Neptune, using a legal fiction to induce Neptune to take cognizance of her plea. Claiming that Proteus's imprisonment of Florimell will cause her son to die of grief, she informs Neptune that 'a cruell Tyrant had presumpteouslie / By wicked *doome condemned*' her son 'a wretched death to die' (IV.xii.29). Neptune, smiling at her wit, plays along:

> Daughter, me seemes of double *wrong* ye *plaine*,
> Gainst one that hath both *wronged* you, and vs:
> For death *t'adward* I ween'd did *appertaine*
> To none, but to the seas sole *Soueraine*.
> Read therefore who it is, which this hath wrought,
> And for what *cause*; the truth *discouer* plaine.
> For neuer wight so euill did or thought,
> But would some *rightfull cause pretend*, though rightly nought. (IV.xii.30)

Cymoent, now assured that she has manipulated the legal system to her advantage, plays her next card, again alluding to Neptune's prerogative:

> Then it is by name
> *Proteus*, that hath *ordayn'd* my sonne to die;
> For that a *waift*, the which by fortune came
> Vpon your seas, he *claym'd* as *propertie*:
> And yet nor his, nor his in *equitie*,
> But yours the *waift* by high *prerogatiue*.
> There I humbly craue your Maiestie,
> It to *repleuie*, and my sonne *repriue*:
> So shall you by one *gift* saue all vs three aliue. (IV.xii.31)

The elegant use that Spenser here makes of *repleuie* has to date gone unmarked.[36] Early medieval feudal lords had exercised absolute judicial authority over their own tenants; if a tenant failed to perform services or pay rent, the lord distrained the tenant's goods or lands as a way of compelling him to appear in the lord's court to answer for his conduct. The growth of the common law brought entitlement to services and rent under the purview of the king's justice, with the result that distraint became an extrajudicial

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[36] Spenser characterizes Florimell at IV.xii.32 as the '*pledge*' of Proteus, which James Nohrnberg maintains looks forward to her affiance to Marinell as well as back to her earlier devotion to him; by this reading, the warrant for Florimell's release doubles as a formal precontract for her marriage to Marinell. There is certainly a good deal of sense in this, but it misses the fine print.

procedure, confined to chattels and reviewable by the royal judges. As J. H. Baker notes, 'The usual method of review by the time of Edward I was replevin. This required the lord, through the intervention of the sheriff, to restore the tenant's goods on the tenant giving surety (F *plevine*) to bring an action and return the goods if he lost; the tenant thereupon sued the lord for taking the goods, and the lord 'avowed' (made his claim) for the services'.[37] Spenser was certainly familiar with this common legal process; Irenius directs a long and detailed complaint to Eudoxus in *A view* concerning the Irish abuse of distraint for every kind of debt or obligation.[38]

Thus Cymoent's plaint to Neptune in Book IV, canto xii suggests a complex crime: on the one hand, Proteus has extrajudicially distrained property not belonging to him, 'waif' seized on Neptune's imperial seas. Cymoent rightly notes that this 'waif' is Neptune's 'by high *prerogatiue*' as sovereign of the seas, and yet Proteus's action in distraining it would seem to imply, first, that Marinell has some title to it and, second, that Marinell has some unfulfilled obligation to Proteus – service, perhaps, or payment. An explanation for Marinell's entitlement to Neptune's prerogative of 'waif' can be found in canto iv of Book III, in a passage which also helps to explain the obligation obtaining between Marinell and Proteus. Here, in a digression following Britomart's defeat of Marinell on the *Rich strond*, Spenser recounts Marinell's biography. Early in his life, his mother Cymoent had appealed to Neptune, his grandfather, to '*endow* her sonne with threasure and rich store':

> The God did *graunt* his daughters deare *demaund*,
>   To doen his Nephew in all riches flow;
> Eftsoones his heaped waues he did commaund,
>   Out of their hollow bosome forth to throw
>   All the huge threasure, which the sea below
>   Had in his greedie gulfe deuoured deepe,
>   And him enriched through the ouerthrow
>   And *wreckes* of many wretches, which did weepe,
> And often waile their wealth, which he from them did keepe. (III.iv.21–22)

What would have been obvious to any Elizabethan reader is not so transparent to us: Neptune has conferred upon Marinell a lucrative monopoly, the franchise of 'wreck' on the high seas, or in the Latin *wreccum maris*.[39] Marinell's

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[37] See Baker, *IELH*, p. 237.

[38] *A view*, pp. 76–77. The way Spenser discusses distraint in this passage suggests not only that he knew the practice well, but that he considered such knowledge fairly specialist, even for the audience of administrators and officials for whom *A view* seems to have been intended.

[39] *Wreccum maris* was a prerogative of the crown established by the first Statute of Westminster cap. 4 (1275), and confirmed and extended by 17 Edw. 2 cap. 11 ('Prerogativa Regis'): 'Also the King shall haue wrecke of the Sea throughout the Realme, Whales and great Sturgeons taken in the Sea or elsewhere within the Realme, except in certaine places priuiledged by the King' (*The Statutes at Large*, I, 62). As Rastell, in *An exposition*, f. 271v, defines it, wreck 'is

right to wreck mirrors a privilege enjoyed by many of Elizabeth's nobility; it is also similar to a privilege of the Lord High Admirals under Elizabeth and James, who received a percentage (usually a tenth) of all lawfully processed wrecks, as similarly of prizes and strays on the high seas. Thus any stray weft on the seas is Neptune's by ancient royal prerogative, but the rights to it have been ceded by '*graunt*' to Marinell, which has enriched him 'boue all the sons, that were of earthly wombes ybore'. To get a sense of the financial potential of such a franchise, consider the fortunes of Charles Howard, Earl of Nottingham, Lord High Admiral under Elizabeth, or of George Villiers, Duke of Buckingham, under James, both of whom are estimated to have taken in over £10,000 per annum in prize percentages alone during years of peak privateering activity.[40] In distraining Marinell's property, then, Proteus interferes with a very lucrative grant.

Proteus's distraint implies that Marinell owes him some unpaid duty; in interpreting this suggestion, Spenser's characterization of Florimell as the 'pledge' of Proteus (IV.xii.32) is crucial. As we saw earlier, the giving of 'pledge' or 'gage' was a traditional feature of contract, and gives rise in *The Faerie Queene* to the emphasis on exchange in contractual troth-plightings. In the Tudor period, the granting of a 'pledge' – also known as the 'consideration' (L *consideratio*) – was legally formalized as an indispensable element of the contract. As Cowell writes in the *Interpreter*:

> Consideration (*consideratio*) is that with vs, which the *Grecians* called συναλλαγμα: that is, the materiall cause of a contract, without the which no contract bindeth. This consideration is either expressed, as if a man bargain to giue 20. shillings for a horse: or els implyed, as when the law it selfe inforceth a consideration.[41]

It had long been held in the common law that an agreement of words only was not actionable: this was a naked pact, and the old maxim dictated that *ex nudo pacto non oritur actio* ('no action arises on a bare agreement'). For an agreement to be binding in law, the plaintiff had to be able to show 'consideration', or evidence that something – however insignificant – had been given or pledged 'in consideration' of the action to be fulfilled by the defendant. This often meant some prepayment, but the plaintiff could also submit as consideration some piece of property pawned, or some labour or prejudice sustained on behalf of the defendant. Thus in arguing Slade's case in 1598,

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where a Ship is perished on the Sea, & no man escapeth alive out of the same, & the Ship, or part of the Ship so perishes, or the goods of the Ship come to the Land of any Lord, the Lord shall have that as a Wreck of the Sea. But if a man: or a dog, or a cat, escape alive, so that the party to whom the goods belong, come within a year & a day, & proove the goods to be his, he shall have them again'. Proteus's custody of Florimell, of course, lasts only seven months.

40   Andrews, *Elizabethan Privateering during the Spanish War 1585–1603*, pp. 23–24 and 124–28.
41   Cowell, *Interpreter*, sig. R4v.

Lawrence Tanfield noted that if 'a man, being indebted to another, licenses the debtee to take his gold chain and to retain it until he pays the money . . . although no apt words are there used, the law says that this is a pledge'.[42] Spenser's characterization of Florimell as the 'pledge' of Proteus thus, again, portrays her as a piece of property, here seized by Proteus in consideration of some contractual obligation owed by Marinell. Proteus will only '*restore*' the '*pledge*' upon Marinell's fulfilment of this obligation.

Cymoent subsequently brings a writ of replevin ('*repleuie*' translates the Latin *replegiare*, to re-pledge) in order to enlarge the '*pledge*' and '*repriue*' the sentence of death that it implies for Marinell – but what is Marinell's original obligation? The work of James Nohrnberg on the allegorical meaning of Spenser's Proteus will be helpful here. Proteus as the mythological embodiment of mutability often represents inconstancy in love,[43] in this capacity providing a counterbalance for the many champions of chastity in the middle books (particularly Britomart and Belphoebe); his power as the lord of the fecund seas is one of limitless generation. Marinell's coastal proximity to Proteus's dominion has enriched him immeasurably, and yet in social and economic terms, Marinell is frigid and isolationist, not ready to propagate at all. He recalls the worst qualities of Mammon, Malbecco, and Mirabella, if anyone, and Spenser fittingly calls him at III.iv.26 'loues enimy'. The 'greedie gulfe' funds Marinell's great wealth and lordship, but this wealth is channelled to him via the intermediary lord or 'shepherd' of the seas, Proteus; in return for that wealth, Marinell must, Spenser intimates, pay his dues: he has to fall in love, giving up the economically and socially isolationist stance he has perfected. Until he does so, Proteus will not enlarge his distrained '*pledge*'.

The most masterful part of this passage lies in the way the legal details of the replevin dovetail with the resolving marriage, and in particular how Proteus's 'pledge' becomes one of true love. Consider the form for the actual writ of replevin as it appears in Anthony Fitzherbert's 1553 *Natura Breuium*:

> *Rex &c. Precipimus tibi, quod iuste et sine dilatione replegiari facias B. aueria sua, quod D. cepit & iniuste detinet, vt dicit. Et postea eum inde iuste deduci facias, ne amplius inde clamorem audiamus pro defectu iusticie &c.*[44] [The king [to the sheriff, greeting]. We command you that justly and without delay you cause to be replevied to B. a certain horse of his which D. took and unjustly detains, as it is said, and afterwards cause him to be justly dealt with therein, that we may hear no more complaint about this for want of justice. Witness etc.][45]

The formula of this writ stands up well against Neptune's own response to Cymoent at the end of Book IV:

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42 BL MS Add. 25203, f. 12, cited in Baker and Milsom, *SELH*, p. 429.
43 See Nohrnberg, *The Analogy of The* Faerie Queene, pp. 590–96.
44 Fitzherbert, *La Nouuelle Natura Breuium*, f. 68r.
45 Translation from Baker, *IELH*, p. 539.

> He *graunted* it: and streight his *warrant* made,
>   Vnder the Sea-gods *seale* autenticall,
>   *Commaunding* *Proteus* straight *t'enlarge* the mayd,
>   Which wandring on his seas *imperiall*,
>   He lately tooke, and sithence kept as thrall.
>   Which she receiuing with meete thankefulnesse,
>   Departed straight to *Proteus* therewithall:
>   Who reading it with inward loathfulnesse,
> Was grieued to *restore* the *pledge*, he did *possesse*.
>
> Yet durst he not the *warrant* to *withstand*,
>   But vnto her *deliuered* Florimell . . .   (IV.xii.32–33)

The remit of the writ of replevin is not exhausted by the return of the distrained property; Proteus is commanded to deal justly with Marinell on the subject of the original non-performance of duties, this time without taking his goods hostage. This points to the wedding, turning on the meaning of '*pledge*': by taking Florimell for his bride in Book V, canto iii – and thus giving her his own 'pledge' of love – Marinell pays the owed service to Proteus, who releases his claim to the '*pledge*'. Note too that the central word of the original Latin writ, *replegiari*, speaks specifically to the release of Proteus's 'pledge' and the affirmation of Marinell's. This passage demonstrates a cunning manipulation of distraint, replevin, contract, wreck, and royal grant, sewing up the important earlier references to Marinell's rights to sea-booty and the obligations to Proteus that this right of *wreccum maris* entails.

It is striking that Spenser chose to portray this, the culminating scene in the history of Florimell's flight, captivity, and ultimate deliverance, in such decidedly legal terms. Spenser was hardly short of reasons for such a presentation. For one thing, the fine print of *wreccum maris*, flotsam and jetsam, prize goods, waif, and replevin seems to have been part of the bread and butter of landed English gentlemen in the Munster plantation during the 1580s and 1590s, especially during the years of open conflict with Spain. As the most westward ports of call for many overseas trading and privateering ventures, the ports and harbours of Munster frequently offered haven to ships coming off the main, and a number of the suits flowing through the high court of Admiralty in London make reference to landfall in Ireland, to trading in its southern ports, and to alleged crimes committed against mariners by its inhabitants.[46] In fact, the examination books of the High Court of Admiralty, now preserved at the National Archives (formerly the Public Record Office) in Kew, include several depositions of witnesses relating to various cases testifying to unlawful

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[46] For a concise presentation of sixteenth-century Irish material in the High Court of Admiralty records kept in the National Archives, see *A Calendar of Material Relating to Ireland from the High Court of Admiralty Examinations, 1536–1641*, ed. John C. Appleby (Dublin: Irish Manuscripts Commission, 1992).

seizures of property and even ships by Spenser's neighbour and fellow admin-
istrator in Munster, Sir William Herbert. Herbert, the author of the 1591
Croftus: sive de Hibernia Liber, a tract on Ireland in its genre very similar to
Spenser's own later effort, occupied an estate at Castleisland not far from
Spenser's own Hap Hazard at Kilcolman, and served on the Council of
Munster, of which Spenser was the deputy and later chief clerk. One such
deposition of 1587 implicates Herbert in an affair quite similar to the Florimell
episode at the end of Book IV. The *Thomas Bonaventure*, a ship belonging to
the London merchant Thomas Cordell, left England with letters of reprisal in
early 1587. Her crew captured a Spanish carvel in May of that year, laden with
Canary wines, which they decided to send back to England. Blown off course
by contrary winds, the captain put into harbour on the west coast of Ireland.
The written testimony offered to the High Court of Admiralty on 2 September
1587 by Philip Acton of Ratcliffe, Middlesex, a mariner, makes Herbert's
cunning only too plain:

> . . . and beinge in wante of victuall & allmost starved they putt into harborr
> aboute 7 miles from dingley couche and be that tyme they had stayed there fower
> howers there came a botte from shoure to knowe whate they weare, beinge sente
> from Sir William Harberte to whom the master and company made answer they
> weare Englishe men & that theire Carvell & goodes belonged to marchauntes of
> London, And within a while after the master of the said Carvell whoe named him
> selfe Pursell wente a shore to Sir William . . . And he gave him very good
> entertaynemente and promised him that he & his company shoulde haue any
> thinge he coulde doe for them, And that nighte sente them a sheeppe butter and
> some breade aborde togeather with a barrell for wyn for exchaunge And the
> nexte daye after as he sayethe the said Sir Wiliam sente aborde them a Pinnas
> manned with thirty men wherof one master Conwaye was then by the said
> Company called Captayn, whoe entered the said Carvell and toke from the
> company therof all theire furniture, as 6 Calivers 2 muskettes withe caskes and
> boxes 10 swordes, and 2 dagars, and soe Carryed this Carvell into Dingley
> Couche bye the order of the said Sir William as the said Conwaye toulde the
> master and companye and for that purpose had sente 2 Pilottes on borde withe
> him the said Conwaye, where there was vnladden x or xij buttes of the said
> wynes.[47]

Herbert's unlawful seizure of these privateered wines is consistent with other
reports of his having appropriated goods and indeed entire ships from passing
mariners.[48] Although the legal right to prize goods during this period was held
by the crown, in remote areas like the Dingle peninsula, confident subjects
were often more than ready to violate the crown's prerogative, and usually
(unlike Proteus) got away with it. That a suit was brought in the court of

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47 NA (PRO), HCA 13/26, fol. 335r–336r.
48 See Appleby, *A Calendar of Material Relating to Ireland from the High Court of Admiralty
    Examinations, 1536–1641*, p. 54.

Admiralty against Herbert and his accomplices suggests that the twelve seamen of the Spanish carvel and their merchant masters of London were not content to grin and bear it; however, no judgment was recorded in the case, and it is likely that Herbert and his neighbour Conway, alongside other powerful local allies, outranked and outlasted their London challengers.

The rest of Acton's testimony, though, makes this event perhaps even more relevant to the replevin episode in Book IV of *The Faerie Queene*:

> And 7 of the Carvells Company were dyschardged there out of her and appointed to goe overlande to Corke, the reste of the company beinge fyve were by one Spencer whoe was att dinglye Couche appointed Captayne of the Carvell, appointed to saile in her to Corke. where att the Carvells arrivall the reste of the wynes and the pitche was bye Sir Wiliams order delyvered a shoure, and & the reste of the company dischardged out of her & sente a lande, where they were afterwades detayned in the countrey as prysoners the space of a fortnighte by meanes of Sir William before they coulde gette leave to goe for Englande.[49]

The possibility of identifying the poet Edmund Spenser with 'one Spencer whoe was att dinglye Couche' is tantalizing, but on the strength of this single identification unsafe. Fortunately, the paper trail runs a little further. Herbert seems immediately to have enlisted the support of an accomplice in this dubiously lawful seizure of illicit prize goods, and to have recognized that he might, eventually, need the shield of authority to protect his own part in the spoils. Judging from a letter preserved among the papers of Sir Julius Caesar, at that time judge of the Admiralty Court under Charles Howard, Lord High Admiral, Herbert seems to have written – perhaps even on the night of his first encounter with the carvel – to the vice president of Mounster, Sir Thomas Norris. The merchants of London backing the Cordell voyage quickly recognized that they had been defrauded by the landowners of south-west Ireland, and took their case to the Court of Admiralty. Caesar, as judge, heard in September the depositions of Acton and others, and issued a commission for the restitution of the carvel and its contents. At this point, the court (or perhaps Caesar himself) wrote probably to Herbert, the chief actor named in the mariners' depositions, notifying him of the court order for restitution or compensation; but it seems that, instead of a reply from Herbert, Caesar had a response from Sir Thomas Norris. On 31 October 1587, Norris wrote to the judge of the Admiralty in terms that testify to his involvement in the seizure, and all but confirm Spenser's presence on the scene:

> Sir, may it please you be aduertised certaine of the marchantes servinge vnder Sir Francis Drake in his last voyadge havinge taken at sea abowte the Ilandes a small Carvell laden with Canarie wynes after they had dischardged into theire owne shippes the greatest parte thereof leavinge the carvell in trust with some of their

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49 NA (PRO), HCA 13/26, fol. 335r–336r.

companye who leavinge their Capten and bendinge their corse directelie for England where (by theire owne confession) they ment to make sale of the goodes to their owne vse were by contrarie wyndes driven vppon the westerne partes of this Countrie, and there apprehended by Sir William Harbert, At their apprehencion there was in the Carvell as I harde, xv. or xvj tonne pipe wherof beinge aduertised I sent one thether purposelie who received thereof vj or vij tonne wherof I have reserved for the right honorable the Lord Admirall two tone and one for your self which I wold have sent thether if I had fownde convenient shippinge for it, Since th'apprehencion of the ship I vnderstand the marchantes by complainte vnto you have procured Commission for restitucion of the shipp and goodes, but I have forborne to make satisfaction till by my advertismentes you shold be better instructed in the cause, and for that the marchantes beinge in her maiesties service with Sir Francis Drake, withowt any shew of lisence or particuler Comission, beinge fownd in such sorte to forsake him, were in reason to be apprehended and the arest good, if you thinke it mete that satisfaction be made yett I hope it shalbe so as I may not be chardged with more then I had, with consideracion of my chardges in transportinge it for more securitie from those remote partes to Corke, wherin I pray your good favour and furtherance: The porcion reserved for my Lord and you I will cause to be sent to Bristoll if I may vnderstand whome you will appointe to receive it there, The wynes beinge mvch of it ill condicioned, and to th'end it might not be thought of more vallew then it was, I caused to be praised at Dinglecushe, by verry honest men, according to which praisement (if I mvst) I will willingelie make satisfaction myne owne chardges answered.[50]

Norris's lines of defence here are obvious: he distracts attention from the quality of the wines, which he argues were 'ill condicioned', and offers to submit the evidence of an appraisement made upon them at their unloading in Dinglecush. Instead of the fifteen or sixteen pipe of wine originally on the carvel, Norris admits to possessing six or seven, of which he offers two to Howard and one to Caesar himself as a bribe if they will let the matter drop. In defence of this arrangement, he notes that the sailors on the carvel could not demonstrate any licence for their prize capture, and in any case would have violated that licence by separating from their main party to return, illicitly, to England to sell the cargo independent of the authority of their merchant backers in London.[51] What is of course most interesting about this letter, for

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[50] BL MS Lansdowne 144, f. 360r. The letter appears in a collection of documents that Caesar appears to have preserved as a kind of trophy testament to his powerful connections as judge of the Admiralty: examples survive of personal petitions addressed to him from many leading peers and government officials.

[51] Norris demonstrates in his letter a slightly garbled understanding of the origins of the carvel: he seems to have confused mention of the *Drake*, one of the ships in the original English fleet, with the authority of Sir Francis Drake himself, whom Norris thinks to have been captain of the venture. There is no external evidence to associate Drake with this particular voyage, though the London merchant Cordell was a well-known backer who had financed Drake in the past.

our present purpose, is the connection of two details in Norris's account of his role in the seizure of the wines. He notes that he sent 'honest men' to appraise the wines at Dinglecush, and that, 'beinge aduertised' by Herbert of the cargo 'I sent one thether purposelie who received thereof vj or vij tonne'. We know that, at this time, Spenser was working closely with the Norris brothers; several letters survive in Spenser's hand from John Norris to the Council in Westminster, dated March 1585, indicating that Spenser was working even if informally as Norris's secretary at this time, and a similar letter survives from 22 January 1589, again in Spenser's hand, this time from Thomas Norris to the Privy Council. Acton's testimony puts 'one Spencer' at Dinglecush, who sailed with the carvel to Cork, while Norris claims to have sent a trusted servant to the scene, and caused the spoil to be removed 'from those remote partes to Corke'; the coordination of the evidence points firmly to Spenser's involvement, and suggests that he sailed the prize carvel from Dingle to Cork at the end of summer of 1587. In any case, we can be fairly sure that he was well acquainted with the practice of arrogating privateer and *wreccum maris* spoils. Herbert's consistent practice and that of his neighbours – Sir Edward Denny, among others, was accused of having misappropriated spoils from the wreck of the Armada in 1588 – took place before Spenser's eye and pen; it is very likely that this type of experience lies behind his familiarity with admiralty process and the eventual inscribing of this process into the narrative structure of *The Faerie Queene*.[52]

As part of the general theory of social, economic and legal contract developed in the middle books, the relationship between Florimell and Marinell illustrates the first virtue of social bonding, magnanimity. A defect in this virtue leaves one as an isolationist and miserly Marinell, Mammon, or Malbecco, incapable of forming social ties. An excess turns one into a Paridell, a lustful foster, or a Proteus, capable of forming bonds in such an undiscriminating way that they are rendered meaningless and empty. By associating Florimell, the sign for beauty in the central books, with ideas of personal property, chattels, exchange, and legal process of various kinds, Spenser expands his argument of moral philosophy into a sphere of civil policy: what a civil society needs, like the successful person who lives in it, is the virtue of magnanimity in contract. Spenser's early readers, as familiar with **wreck, prize**, and **replevin** as he, would have known instinctively what Spenser was alluding to in his characterization of Florimell; he might have expected his courtly and City readers, too, to get at least the gist, if not the specific historical reference, of his tale of prize spoil, criminal appropriation, and prerogative or monopoly. The transfer of property, through whatever channel, is a crucial element – the

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[52] The frequent disputes between Herbert and Denny are chronicled in the *CSPI 1586–88* (see pp. 571–72) and *CSPI 1588–92* (see pp. 90–91, 160, 190, 192, 222). Some discussion appears in Michael MacCarthy-Morrogh's *The Munster Plantation: English Migration to Southern Ireland, 1583–1641* (Clarendon Press, 1986), pp. 93–97.

consideratio, pledge, the 'materiall cause' – in bringing together members of a society in trust and cooperation; the wrongful appropriation of prize or spoil violates such cooperative transfers, and undermines the extension of faith basic to magnanimity, and thus to contract: what merchant will invest, if the return is not protected? what lover love, if the pledge is not warranted? *The Faerie Queene* comes the more richly into focus as an allegory the more attentive we are, as readers, not only to the allegory itself, not only to the narrative, but to the individual words that constitute both – in all of their semantic, historical, collocational, and etymological complexity.

AMORET AND SCUDAMOUR:
CONTRACT AND FIDELITY

Where Florimell's quest for the love of Marinell illustrates in strikingly social terms the indispensability of magnanimity to civil order, the quest of Amoret for Scudamour fills a similar function for the exposition of the second element of contract, fidelity. Although in a quite different manner, the narrative of Amoret's love for Scudamour also returns repeatedly to a language distinctly associated with legal and other public affairs. Such a legal bias suggests for fidelity what I have already argued for magnanimity, namely that Spenser intended it to be understood largely, if not primarily, as an indispensable element of a civil society. Elizabeth Fowler has explored the legal elements of the origin of Amoret's quest, her initial 'conquest' by Scudamour in the Temple of Venus in canto x of Book IV.[53] An exposition and examination of the other central events of Amoret's quest – her rescue by Britomart and the original and revised reunions Spenser devised for the 1590 and 1596 versions of the poem – will demonstrate how the poet further expands his contractual thinking through the middle books.

The initial meeting between Britomart and Scudamour is remarkable for the one element it does not include: a legal-style swearing of friendship, or troth-plighting. When Britomart first finds Scudamour (III.xi.7), he is lying on the ground bemoaning his inability to rescue Amoret. Britomart immediately makes an offer that seems to fit the established template of knightly contract. By undertaking to complete the quest on Scudamour's behalf, Britomart extends that magnanimity (or 'consideration') to Scudamour which, in other examples of knightly troth-plighting, results in a return gift and an oath of friendship. Scudamour's reply to Britomart's offer of intercession, though, breaks this mould:

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53 Elizabeth Fowler, 'The Failure of Moral Philosophy in the Work of Edmund Spenser', *Representations*, 51 (1995), 57–86.

> Ah gentlest knight aliue, (said *Scudamore*)
>> What huge heroicke magnanimity
>> Dwels in thy bounteous brest? what couldst thou more,
>> If she were thine, and thou as now am I?
>> O ***spare*** thy happy dayes, and them ***apply***
>> To better ***boot***, but let me dye, that ought;
>> More is more ***losse***: one is enough to dy. (III.xi.19.1–7)

Scudamour rejects Britomart's intercession and stymies the potential covenant by failing to fulfil the expectation of the return gift. This response registers (though as yet obliquely) Scudamour's basic problem, the jealousy that suspects everyone else of wanting to rob him of his love. While he recognizes Britomart's bounteous offer, Scudamour's very acknowledgment of that bounty anxiously, even obsessively, suggests that the other knight is trying to displace him. Where Marinell lacks the ability to extend, or enter into, love, Scudamour lacks the ability, once in love, to maintain it; he is completely incapable of trust.

Scudamour's resistance to the contract model prevents him from befriending Britomart. What is particularly fascinating about this episode is that both knights equate Scudamour's inability to make friends[54] with his more obvious failure, his inability to rescue Amoret. The hortatory speech Britomart delivers in reply could be read as an answer either to Scudamour's desperate abandonment of Amoret's rescue or to his failure to respond to her offer of friendship:

>> Perdy not so; (said she) for shamefull thing
>> It were t'***abandon*** noble ***cheuisaunce***,
>> For shew of ***perill***, without ***venturing***:
>> Rather let try extremities of chaunce,
> Then ***enterprised*** prayse for dread to disauaunce. (III.xi.24.5–9)

Britomart's injunction to Scudamour urges him to risk everything to recover Amoret, but also to accept the friendship of someone who has offered, out of 'huge heroicke magnanimity', to help him. The implication is that, in order to form a friendship, the participants must extend trust to one another, and not look to their own self-promotion or even self-preservation; any proper friendship must involve an element of risk. Risk (or in Spenser's lexis, '*danger*') has in fact already been made an explicit idea in this scene, as Britomart has just urged Scudamour to remember the first rule of risk-assessment: '***Daunger***

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54 The *escu d'amour*, or shield of love, indicates that Scudamour protects Amoret, but the shield also stands between Scudamour and his fellow knights as a very solid social impediment. He is undoubtedly the loneliest figure in the entire poem, save perhaps the withered Malbecco, his foil. The first time he *does* manage to gain the goodwill of a fellow knight is in his friendship with Artegall (IV.vi), achieved just as he learns the truth about Britomart's sex, and thus abandons his wrong-headed jealousy.

without **discretion** to **attempt**, / Inglorious and beastlike is' (III.xi.23). Scudamour's misanthropic unwillingness to accept the risk of trust results in Amoret's imprisonment and subsequent long wandering in Book IV.

This passage also reveals once again Spenser's masterful control of technical vocabulary. By '*cheuisaunce*', Spenser obviously intended 'chivalry' and the gallant deeds expected of Scudamour, not only Amoret's champion but her lover. But *cheuisaunce* had another, technical meaning in Elizabethan England, related to its Latin and Law French antecedents (L *chevisancia*, LF *cheuesaunce*) and like them referring to the buying and reselling of commodities, often as a crafty circumvention of the laws against usury; at least one Elizabethan statute against usury was specifically designed to curb 'chevisancing' also.[55] The Law French term 'cheuesaunce' generally meant a 'scheme for lending money at profit . . . bargaining, trafficking'.[56] As such it was often equated with putting money out at interest, and is used by Spenser here as tantamount to taking a risk. This is, in fact, precisely the sense in which E. K. glosses the word in the notes to *Maye* in *The Shepheardes Calender*.[57] *Peril* and *venturing* were likewise customarily used in commercial language of the period to describe the risks of merchant business.[58]

The importance of the calculated risk, as outlined in this passage by Britomart, reflects directly on Scudamour's main failing, an inability to trust others, and particularly Amoret. Spenser matches this faithlessness to Scudamour's initial ravishment of Amoret as carefully as he matches Marinell's lack of magnanimity to the great miserly monopoly of wreck. Where Marinell, blessed with all the commodities of the sea-trade, could not receive love, Scudamour, blessed with all the faith of an ancient code of fidelity, cannot trust. The code to which I here refer is, of course, the feudal system and its network of homage- and loyalty-based relationships. Scudamour's recurring participation in feudal rhetoric is suggested, as noted in the previous chapter, by the elaborate fable of his acquisition of Cupid's

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55 Compare 37 H. 8 cap. 9 (repealed by Edward VI, but revived by Elizabeth): 'And bee it &c. that no person or persons of what estate &c. by way or meane of any corrupt bargaine, loane, eschange, *cheuisance*, shift or interest of any wares, merchandises, or other thing or things whatsoeuer . . . shall haue, receiue, accept, or take in lucre or gaines, for the forbearing of giuing day of paiment of one whole yeere . . .' (Rastell, *Statutes*, p. 490; my emphasis).

56 Baker, *MLF*, p. 69.

57 'Maye', *SC*, *Variorum*, VII, 56: 'Cheuisaunce) sometime of Chaucer vsed for gaine: sometime of other for spoyle, or bootie, or enterprise, and sometime for chiefdome'.

58 'Venture' and its derivatives 'a(d)venture' and 'venturous' are often used by Spenser's contemporaries to describe the practice of mercantile risk. Compare, for example, the Arch-bishop of Canterbury's speech in Shakespeare's *Henry V*: 'They have a king, and officers of sorts, / Where some, like magistrates, correct at home; / Others, like merchants, venter trade abroad . . .' (I.ii.190–92). As a noun, this word is even more closely tied to merchant trade; consider Mosca's assessment of Voltore in Ben Jonson's *Volpone*: '. . . if you died today, / And gave him all, what he should be tomorrow; / What large return would come of all his ventures . . .' (I.ii.101–03).

shield, the *escu d'amour*.[59] Calling himself '*Cupids* man' (IV.x.54), Scudamour characterizes his feudal relationship to Cupid as *servitium scuti*, the service of the shield, or *escuage*.

Spenser continues to develop these feudal associations throughout Scudamour's search for Amoret. Returning from Busirane's enchanted prison at the end of canto xii, Book III, Britomart leads Amoret back to the place where she had left Scudamour in the preceding canto, lying impotently 'on the gras' (III.xi.27.5). In the 1590 version, Britomart's return finds Scudamour still waiting in the same spot. Her gentle call awakes him, and he rushes to Amoret and embraces her. Spenser's comments on the embrace are as suggestive as they are mysterious:

> But she faire Lady ouercommen quight
> Of huge affection, did in pleasure melt,
> And in sweete ***rauishment*** pourd out her spright. (III.xii.45, *1590*)

Spenser subsequently fulfils this '***rauishment***' by comparing the lovers to a 'faire Hermaphrodite' (III.xii.46, *1590*). 'Growne together quite' into a single flesh, Scudamour and Amoret here achieve a romance reunion worthy, in its emotion and perfection, of the narrative closing to the 1590 version of the poem; and yet, at the same time, the 'melting' of Amoret's identity into Scudamour seems curious and perhaps vaguely sinister. Critical comment on the hermaphroditic union has stressed its sources in the speech of Aristophanes in Plato's *Symposium*, in the myth of Salmacis and Hermaphroditus in Ovid's *Metamorphoses*, and in the Christian doctrine of 'one flesh' in marriage. But this melding union invokes another source, too, in its stress on the ascendancy of Scudamour – the common law tradition of 'unity of person' in marriage. As J. H. Baker explains:

> It was a common saying among canonists and common lawyers alike that in the eyes of the law husband and wife were but one person: they were two souls in one flesh (*erunt animae duae in carne una*). This one person was for practical purposes the husband . . . He looked after her and her property during the 'coverture', whereas she lost the capacity to own separate property or make contracts. She could not sue or be sued at common law without her *baron*, and this prevented her from suing him for any wrong done to her. Like wardship in chivalry, therefore, the guardianship of a wife by her husband was not subject to judicial review.[60]

By the doctrine of 'unity of person', a husband and wife became, under the common law, one flesh – but that one flesh, as in the case of Scudamour and

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59 See above, pp. 56–57.
60 Baker, *IELH*, pp. 483–84 . It is quite suggestive, given the parallels between the legal status of a wife and a ward, that Spenser seems to link them in Amoret.

Amoret, was the husband's. This usually unrecognized source for the Scudamoret embrace provides the crucial link in Spenser's figuration of this marriage scene. The language of their union, treading by innuendo on the verge of ribaldry, suggests the consummation that would, according to medieval canon law, have given final legal force to a previously secured spousal bond.[61] This consummation finds final expression in Amoret's 'sweete *rauishment*'. 'Rauishment', to one of Spenser's sixteenth-century readers, would have called up not only the idea of rape, but of forcible spoil or plunder, and probably would have suggested the common law writ 'ravishment of ward' (LF *ravissement de garde*), brought against the forcible abduction of a ward from the custody of a feudal lord.[62] The *OED* defines 'ward' in its feudal sense as 'the control and use of the lands of a deceased tenant by knight-service, and the guardianship of the infant heir, which belonged to the superior until the heir attained his majority'.[63] In one of only two uses of this word in this sense in *The Faerie Queene*,[64] Scudamour laments to Britomart at III.xi.16 that Amoret is kept 'in *ward*' by the tyrant Busirane. It is to release Amoret from this wardship that Scudamour requires the assistance of Britomart, and his ultimate '*rauishment*' thus acquires even literal legal force. In light of the transfer of allegiance so explicitly described in Scudamour's later account of the Temple of Venus, – where Cupid's man claims his dominion over Venus's own maidservant – this '*rauishment*' achieved through sexual consummation at once 'rapes' Amoret and transfers her allegiance to a new lord, Scudamour.

It is crucial to recognize that, as often in *The Faerie Queene*, matter presented emblematically in one place ultimately receives narrative projection in another; and in the case of Amoret's ravishment, this narrative projection turns on a legal understanding of *ravissement de gard*. The second statute of Westminster (13 Edward I) provides in the thirty-third and thirty-fourth chapters for redress in cases of ravishment, a statutory authority still very much current in the Elizabethan period:[65]

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61 A contract formed *per verba de futuro* (compare Amoret's hand taken in 'pledge' at IV.x.55) was given legal force under canon law by physical consummation.

62 Compare *Les Termes de la Ley*, ff. 173r–175v: 'Gard is when an Infant whose Ancestour held by Knights Service is in the ward or keeping of the Lord of whom those lands were holden . . . Also there by divers Writs of ward . . . A Writ of Ravishment of ward lyeth where the [ward's] body is taken from him onely, & not the [ward's] land'. A celebrated ravishment with which Spenser was definitely familiar was Arthur Gorges's marriage with the underage heiress Douglas Howard, without her (estranged) father's consent. See p. 76, above.

63 *OED*, 'ward', *n*2, paragraphs 2b, 2c, 6a, 6b.

64 Spenser uses this term to describe False Florimell at IV.ii.4.

65 My own copy of William Rastell's *A Collection in English of the Statutes* (London: Deputies of Christopher Barker, 1597) was originally owned and annotated by the lawyer Robert Blundell of Ince Blundell, Lancashire, probably during his student years toward the end of Elizabeth's reign. Blundell has copiously underscored an extract from 13 Edward I cap. 33–34 (including

It is prouided, that if any man from henceforth doe Rauish any woman married, Maide, or other (where shee did not consent neither before nor after) he shall haue Iudgement of life and of member. And likewise where a man Rauisheth a woman married, Ladie, Damosell, or other with force (although shee consent afterward) he shall haue such Iudgement as before is said, if hee be attainted at the Kings suite, for the King shall haue the suite. And for women carried away with the goods of their husbands, the King shall haue the suite for the goods taken away. And in case Action to demande her Dower that she ought to haue of her husbands lands, if shee bee conuict thereupon, except that her husband willingly and without Cohertion of the Church, reconcile her, and suffer her to dwell with him, in which case she shall be restored to her Action. He that carrieth away a Nunne from her house, although shee consent, shall be punished by three yeeres imprisonment, and shall make conuenient satisfaction to the house, from whence shee was taken, and neuerthelesse shall make Fine at the Kings will.[66]

Early modern literary representations of rape and ravishment often seem to show some awareness of this legal tradition of construing the crime as one of abduction, and one therefore committed not against the woman ravished, but against her guardian (father, brother, guardian, convent). The financial penalty stipulated for redress makes sense, then, as a compensation for a benefit lost; in modern terms, we might say that wronged guardians were being compensated for their lost capital. The financial quality of the crime of ravishment is made more explicit in chapter thirty-four of the statute, in which ravishers are warned that, for children male or female 'whose marriage belongeth to another', they face imprisonment even if they subsequently 'pay for the marriage'; those without means 'to satisfie for the marriage' must 'abiure the Realme, or haue perpetuall imprisonment'. The writ available to the plaintiff in such a case, moreover, explicitly references the *maritagium* that 'pertains' to the wronged guardian.[67] By preparing our reading of Book IV, canto x with the (effaced in 1596) description of Amoret's '*rauishment*', Spenser makes us ready to perceive 'the rape of Amoret' from the Temple of Venus as a legal *ravissement de gard*, the illicit abduction of a woman, without right or payment of the *maritagium*, from her guardian (here, effectively, a convent); Amoret's body, at her reunion with Scudamour in 1590, is described as 'late the prison of sad paine', an imprisonment that, by a legal joke in 1596, becomes perpetual. This legal framework is crucial to our reading of the episode because it continues the insistent association of the Scudamoret narrative not only with the contractual issues (*maritagium*, exchange) we have already examined in the case of Florimell, but with the new, slightly different

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the passage on carrying away 'a Nunne from her house'), which appears under the heading 'Rape' on f. 364v, and included in the margin a reference to 'Ellen Lambes case' of 1561.

[66] Rastell, *Statutes at Large*, I, 37.

[67] Rastell, *Statutes at Large*, I, 37.

focus on right, fealty, and fidelity. Scudamour's 'rape' violates not Amoret, but the very system that has given him his identity.

However much the 1590 resolution effaces Amoret's identity, then, Spenser's later revision of this conclusion results in a much more serious and, again, perpetual, effacement. In the 1596 version, Scudamour has already given up the watch by the time Amoret and Britomart escape from Busirane's enchantments, and the reunion of the two lovers is deferred until the end of canto ix in Book IV. The deferral of the reunion gives Scudamour extra space to develop his debilitating jealousy; believing Britomart to be a man, he labours heavily under the mistaken belief that she has corrupted Amoret. In a sense, this is so, for Amoret does recognize, at the opening of Book IV, her duty to requite Britomart's dramatic rescue with a transfer of allegiance in the characteristic feudal style:

> For well she wist, as true it was indeed,
>   That her liues **Lord** and **patrone** of her health
>   Right well **deserued** as his **duefull meed**,
>   Her loue, her **seruice**, and her vtmost wealth.
>   All is his iustly, that all freely dealth. (IV.i.6)

While Amoret shortly learns the truth about Britomart's sex, Scudamour continues to fret anxiously, and openly blames Britomart for her breach of covenant, as at the end of Book IV, canto i:

> Discourteous, disloyall *Britomart*,
>   **Vntrue** to God, and vnto man **vniust**,
>   What **vengeance** due can equall thy **desart**,
>   That hast with shamefull spot of sinfull lust
>   **Defil'd** the **pledge committed** to thy **trust**?
>   Let vgly shame and endlesse **infamy**
>   **Colour** thy name with foule reproaches rust. (IV.i.53)

Scudamour repeats these charges to Arthur in canto vi of Book IV, adding that Britomart has shamed 'knighthood and fidelitie'. He is shortly afterwards disabused of his error, when Glauce pacifies the altercation between him, Artegall, and Britomart in Book IV, canto vi, but by this time Amoret has passed into the '**vassalage**' of Prince Arthur, and, though she is with Arthur when he joins Britomart and Scudamour in Book IV canto ix, Amoret is never mentioned again. Instead, Britomart 'importunes' Scudamour for the story of his original 'achievement' of Amoret, the story of her ravishment from the Temple of Venus taking the place of their once hermaphroditic reunion. The displacement of the reunion of Scudamoret in favour of a reconciliation between Scudamour and Britomart emphasizes the role of Amoret, like that of Florimell, as a '**pledge**' of the more important contracts being effected around her[68] – and it also, aptly, replaces one version of *ravissement de gard* with

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68 Amoret receives this epithet three times. The initial 'pledge of faith' between Amoret and

another. The essence of Amoret's quest is the education of Scudamour in the virtue of 'fidelitie', a trust of which he shows himself incapable throughout his dealings with Britomart. Spenser manipulates the diction of feudal relationships to reinforce the central issues of trust and loyalty at stake, but the legal inflection also indicates, as with the diction of chattels and property in Florimell's quest, the strong political overtones of Spenser's interest in contract. Property in land, with its associated feudal relationships, and property in chattels, with its associated market exchanges, thus represent the two poles of contractual theory in the middle books – poles echoed by the two perfected tetrads of Book IV, that of Cambel, Triamond, Canacee, and Cambina (money, the market; IV.ii–iii) and that of Amyas, Placidas, Aemylia, and Poeana (land and lordship; IV.viii–ix).

The two virtues exemplified in the Arthurian contract – magnanimity in exchange and a constant fidelity – are developed by Spenser in the central books of *The Faerie Queene* in a legal framework embracing many forms of contract both good and bad, most notably the spousal. These contracts and troth-plightings recruit legal concepts from personalty and feudal law not only to foreground the social importance of exchange and fidelity, but to underscore the participation of institutions – the markets, traditional social codes – in the establishment and maintenance of social order. Still, magnanimity and fidelity are primarily private virtues; so Arthur may represent his generosity to Guyon in Book II, canto viii as 'my dew in place'. In Book V of *The Faerie Queene*, Spenser expands his scope to public institutions, and in particular the justice of law, in effecting civility and social order.

Scudamour (IV.x.55) becomes a '*pledge*' of the contract between Scudamour and Britomart (IV.i.53, IV.vi.8).

Chapter 5

JUSTICE, EQUITY AND MERCY IN
THE LEGEND OF ARTEGALL

> Yt was then toulde them that the Irish themselues . . . weare no lawfull
> enemies but Rebells and Traytours and therefore they that Came to
> succour them no better then Roges and Runnagates speciallye Comminge
> with no license nor Comission from theire owne kinge, so as it shoulde be
> dishonorable for him in the name of his Quene to Condicion or make
> anye termes with suche Rascalls . . . whearevppon the saide Coronell did
> absolutely yealde himselfe and the forte with all therein and Craved onelye
> mercye, which it beinge not thoughte good to shewe them . . . theare was
> no other waie but to make that shorte ende of them which was made.
>
> Edmund Spenser, *A view of the present state of Ireland* (ca 1596)

THE CENTRAL terms of Book V, around which turn the many episodes
and themes of the book, are *justice*, *equity*, and *mercy*. These terms are
associated with Artegall, the knight of justice, at important stages of his quest:
he is initially introduced not only as the '*instrument*' of '*iustice*' (V.proem.11),
but as the pupil of the goddess Astraea, who has trained him 'to *weigh* both
right and *wrong* / In equall balance' and '*equitie* to *measure* out along /
According to the line of *conscience*' (V.i.7). He is later known to Guyon as 'our
judge of *equity*', and is rescued from Radigund's captivity by Britomart, who
has herself recently visited the temple of the goddess Isis, 'that part of *Iustice*,
which is *Equity*' (V.vii.3). Artegall's subsequent assistance at Mercilla's trial of
Duessa (V.ix) provides him with an allegorical-historical lesson in that
'heauenly thing . . . to weeten *Mercie*' (V.x.1–3).

This tripartite theory of justice, allegorically represented in the three
goddess-queens Astraea, Isis, and Mercilla, seems seductively straightforward,
but Spenser's understanding of the relationship of these three concepts has
never been adequately formulated. As the example of Elizabeth's trial of Mary
Stuart suggests, the ultimate character of any system of political justice
depends on the disposition of these principles one relative to another. The
debate of Spenser's expositors has centred on the relationship of equity to
justice (is equity part of justice? is it an improvement of justice? is it equivalent
to 'conscience'?) and the relationship of mercy to equity and justice (is mercy a

necessary component of justice? how does mercy differ, if at all, from equity? does Spenser consider mercy a virtue or a vice?). Following Spenser's own suggestion,[1] many readers have sought answers to these questions in the writings of Aristotle; others have adduced the authority of Cicero, Seneca, or Augustine, all of whom wrote extensively, and influentially, on theories of justice.[2] Still others have turned to the emblem tradition, arguing that Spenser's allegory of justice partakes extensively of emblematic conventions on justice and clemency.[3] While all of these sources are important, they do not tell the whole story, and indeed an exclusive reliance on their authority has produced much of the confusion surrounding Spenser's anatomy of justice in Book V of *The Faerie Queene.*[4]

A slightly different approach to Spenser's political philosophy in Book V appears in a study by James Phillips, who situates Spenser's allegory in the context of Renaissance political theorists, including Sir Thomas Elyot, Christopher St German, and Justus Lipsius.[5] Although his structural division of Book V into three consecutive sections dealing separately with *justice, equity*, and *mercy* is probably too simplistic, Phillips makes a bold step by including Christopher St German among his early modern theorists of justice. Unlike Elyot and Lipsius, who primarily parroted their classical sources, St German was an English common lawyer writing in the 1520s not widely about justice, but with a narrow focus about the contemporary English common law status of equity and, even more specifically, about the court of Chancery.[6] As I have argued above, the failure to consider Spenser's native legal and political

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1 See *A letter of the Authors, Variorum*, I, 167–68.

2 See Mark Heberle, 'Aristotle and Spenser's Justice', *Studia Neophilologica*, 63 (1991), 169–73 and Joel B. Altman, 'Justice and Equity', *SE*, pp. 413–15. Rosemond Tuve identifies and explores four important schools of thinking about the virtues and vices in the Medieval and Renaissance periods, including strains derived from Aristotle, Cicero, Macrobius, and Seneca (actually Martin of Braga); see *Allegorical Imagery: Some Mediaeval Books and Their Posterity* (Princeton: Princeton University Press, 1966), pp. 57–143.

3 See Jane Aptekar, *Icons of Justice: Iconography and Thematic Imagery in Book V of 'The Faerie Queene'* (New York: Columbia University Press, 1969); and R. J. Manning, 'Deuicefull Sights: Spenser's Emblematic Practice in *The Faerie Queene*, V.1–3', *SS*, 5 (1985), 65–89.

4 I here consciously echo an argument made by Rosemond Tuve in *Allegorical Imagery*, pp. 127–28, where she opposes an analytical classical understanding of the virtues with the medieval 'experiential' tradition championed by Macrobius.

5 James Phillips, 'Renaissance Concepts of Justice and the Structure of *The Faerie Queene*, Book V', *HLQ*, 33 (1970), 103–20. Phillips's interest in St German has been registered, if not enthusiastically pursued, by James Nohrnberg and Elizabeth Fowler.

6 St German's first dialogue on equity, *De Fundamentis Legum Anglie et De Conscientia*, was originally published in Latin in 1523 (*STC* 21559 is the first extant Latin edition, of 1528), and was translated into English by 1531 (*STC* 21561). The second dialogue, in English, was published in 1530 (*STC* 21565). The two dialogues with their additions and revisions came shortly to be known as *Doctor and Student*, a shorthand I use below. While St German's immediate purpose in these dialogues was to question the place of the church in English law and government – a project he pursued in his pamphlet debate with More in the 1530s – his

context has led to a number of fundamental misapprehensions about *The Faerie Queene*; nowhere is this more true than in Book V. For the Tudor reformation brought with it – beginning with St German in the 1520s and evolving throughout the sixteenth century – a stunning revolution in the provision of equitable justice in England, a shift in legal practice recorded in pamphlets, treatises, and other state papers. Moreover, the language of Spenser's narratives 'Of Iustice' shares a common lexical preoccupation with the positions and debates of these documents, suggesting the relevance of contemporary English legal practice and theory to Spenser's understanding of justice. The present chapter will consider this diction closely, pursuing it through Spenser's contemporary legal and political context and through his poetry; by establishing its semantic legal resonance, we can more fully appreciate the coherence and importance of what is, in fact, one of Spenser's most controversial pieces of political writing.

CLASSICAL MODELS:
ARISTOTLE, CICERO, SENECA

I must begin by considering briefly the famous sentences of ancient authors in which competing early modern theories of justice were rooted. In many respects, the most important classical source for Spenser's theory of justice, as for his understanding of moral virtue more generally, is Aristotle's *Nicomachean Ethics*; this work's exposition of justice is likewise crucial to early modern legal theory, in both civilian and common law traditions. In this work, Aristotle notes a conventional ambiguity and confusion in the use of the word 'justice', or ἡ δικαιοσύνη (L *iustitia*).[7] He goes on to distinguish these as τὸ νόμιμον, 'that which is lawful', and τὸ ἴσον (L *æquum*), 'that which is equal or fair'. Because, he continues, τὸ νόμιμον is coextensive in the ideal polity with that which is good, justice in this sense embraces all of virtue. This type of justice does not afterwards concern Aristotle, whereas τὸ ἴσον, the virtue of fairness and a subset of τὸ νόμιμον, turns out to be the specific type of justice that forms part of the array of virtues; the ensuing treatment of justice in the *Nicomachean Ethics* pursues this 'particular' form. What Aristotle does not consider in this early passage is the possibility that the subject will not be living in the ideal polity. Because, in practical government,[8] laws do not always

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trenchant analysis of equity and careful prescriptions for Chancery jurisdiction quickly made *Doctor and Student* a standard reference. Over fifteen editions had appeared by 1630.

[7] 'The terms Justice and Injustice are used in several senses, but as their equivocal uses [τὴν ὁμωνυμίαν] are closely connected, the equivocation is not detected'. See Aristotle, *The Nicomachean Ethics*, ed. H. Rackham (Cambridge: Harvard University Press, 1926), pp. 254–55.

[8] Spenser's explicit comments on practical versus ideal government may well be pertinent here;

prescribe the good in every particular instance, τὸ νόμιμον will not in this case be coextensive with virtue generally; in fact, τὸ ἴσον will not form a subset of τὸ νόμιμον, but will instead be in conflict with it. In this case, the equivocation between τὸ νόμιμον and τὸ ἴσον becomes of crucial importance, for anyone aspiring to justice must determine which formulation of justice is the true standard.

Aristotle eventually takes up this question toward the end of his treatment of justice in a famous passage on equity, or ἐπιεικεία (L *æquitas*). Here he discusses equity as a principle of rectification (Gr ἐπανόρθωμα) that improves legal justice. Because, as he says, laws must be general where circumstances will always be variable and irregular, a good law that does right in a majority of cases will necessarily become defective in a given special instance. The solution is for the judge in a case to apply ἐπιεικεία, which in recovering the original intention of the lawgiver prescribes judgment not according to the given law, but according to τὸ ἴσον, what is fair. Aristotle concludes with what is perhaps the most famous statement in the entire work, a definition of ἐπιεικεία, the highest form of justice:

> This is the essential nature of the equitable [ἡ φύσις ἡ τοῦ ἐπιεικοῦς]: it is a rectification [ἐπανόρθωμα] of law where law is defective because of its generality [διὰ τὸ καθόλου]. In fact this is the reason why things are not all determined by law: it is because there are some cases for which it is impossible to lay down a law, so that a special ordinance becomes necessary. For what is itself indefinite can only be measured by an indefinite standard, like the leaden rule of the Lesbian builders; just as that rule is not rigid but can be bent to the shape of the stone, so a special ordinance is made to fit the circumstances of the case [τὰ πράγματα].[9]

As far as Aristotle is concerned in the *Nicomachean Ethics*, then, justice as τὸ ἴσον is, in our imperfect world, superior to justice as τὸ νόμιμον; it is the responsibility of the equitable and thus truly just person to effect a rectification (ἐπανόρθωμα) of justice κατὰ νόμον when it diverges from τὸ ἴσον. Thus ἐπιεικεία, or *æquitas*, represents a higher form of justice than justice κατὰ νόμον; while still in itself just, it improves conventional or legal justice.

This understanding of justice is echoed and emphasized in another classical source we may confidently guess to have been instrumental to Spenser's thinking on justice, Cicero's *De officiis*.[10] Though Cicero never explicitly

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see *A Letter of the Authors*, *Variorum*, I, 167–70. 'So much more profitable and gratious', Spenser writes, 'is doctrine by ensample, then by rule'.

9   Aristotle, *The Nicomachean Ethics*, pp. 316–17.

10   *De officiis* was the most important of Cicero's works to sixteenth-century humanist ethical and political philosophy, and it is very likely that Spenser had both read it and much drawn from it. For its popularity in Cambridge during the sixteenth century, see Leedham-Green, *Books in Cambridge Inventories*, II, 215–17. The relationship between Cicero's *officia* and Spenser's

acknowledges Aristotle or his theory of justice, his opening remarks on the nature of duties owes much to his reception of traditional Peripatetic and Stoic arguments originating in Aristotle's ethical theory. His initial classification, in particular, rings decidedly familiar in the context of Aristotle's remarks on equity:

> Every treatise on duty [*de officio*] has two parts: one, dealing with the doctrine of the supreme good; the other, with the practical rules [*quod positum est in praeceptis*] by which daily life [*usus vitae*] in all its bearings may be regulated [*conformari possit*] . . . And yet there is still another classification of duties: we distinguish between 'mean' duty, so-called, and 'absolute' duty. Absolute duty we may, I presume, call 'right' [*rectum*], for the Greeks call it κατόρθωμα, while the ordinary duty [*commune officium*] they call καθῆκον. And the meanings of those terms they fix thus: whatever is right they define as 'absolute' duty [*officium perfectum*], but 'mean' duty [*medium officium*], they say, is duty for the performance of which an adequate reason [*ratio probabilis*] may be rendered.[11]

Cicero's resort to the Greek term κατόρθωμα as a synonym for his *perfectum officium* recalls Aristotle's similar use of ἐπανόρθωμα to describe the rectification of justice κατὰ νόμον in line with the principles of τὸ ἴσον. We should not be concerned that Cicero broadens the second, 'common' definition of the just to include all those duties predicated not on law but on *ratio probabilis*; the effect of his discrimination is the same: like Aristotle and the other standard Greek expositors of ethical responsibility, Cicero distinguishes between a *medium officium* and a *perfectum officium*, a simple justice and an absolute justice. The difference between them is housed in the root -όρθωμα, a derivative of ὀρθός, 'straight, right' – a principle of justice that must in the end be applied on an individual basis.

Both Aristotle and Cicero, in their formulations of ἐπιείκεια and the *perfectum officium*, stress the superiority of this form over conventional ('common') justice by recourse to words invoking 'straightness': ἐπανόρθωμα, κατόρθωμα, and *rectum* all imply improvement as a kind of 'making straight'. At the same time, this linguistic metaphor is given tension in both accounts by an opposite rhetorical strategy. As Aristotle notes, ἐπιείκεια is like the Lesbian rule, a measure traditionally thought to have been made out of lead and thus conformable to the irregular stone surfaces used in building. This type of rule is characteristic, even celebrated, precisely for its lack of straightness. In effect, Aristotle argues that ἐπιείκεια makes justice 'straighter' by rendering it more pliable – a neat paradox characteristic of his shrewd mind. Cicero, too, pursues the same paradox, calling '*rectum*' not that which works '*in praeceptis*', but rather that which '*in omnis partis usus vitae conformari possit*'. This paradox

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tripartite classification of justice under 'friendship' (*fides*), 'justice' (*iustitia*) and 'courtesy' (*clementia*) is discussed below, pp. 154–55, n. 4.

[11] Cicero, *De officiis*, ed. Walter Miller (Cambridge: Harvard University Press, 1913), pp. 8–11.

expresses in visual terms the political and legal conundrum lying behind it, namely that *æquitas* is different from justice, and yet still itself just.

Beyond these simple and perfected forms of justice, some classical and Renaissance theorists distinguished a third and superior form, perfected justice further modified by mercy, or clemency (L *clementia*). The most copiously cited ancient authority on this subject during the early modern period was Seneca's *De Clementia*.[12] Seneca further complicates the question of the just by arguing, perhaps unsurprisingly, that mercy is not only different from both justice and equity, but better than both, and itself still just. In contrast to equity, which regards the particular circumstances of the case and modifies a general rule to be more just in a particular instance, mercy dispenses with deserved, even equitably just, punishment. In arguing for its essential justice, Seneca resorts again to the same paradox as that conceded by Aristotle and Cicero:

> Mercy means restraining the mind [*clementia est temperantia animi*] from vengeance when it has the power to take it . . . mercy may also be termed the inclination of the mind towards leniency [*inclinatio animi ad lenitatem*] in exacting punishment . . . if we shall say that mercy is the moderation [*moderationem*] which remits something from the punishment that is deserved and due [*ex merita ac debita poena*], it will be objected that no virtue gives to any man less than his due. Everybody, however, understands that the fact of the case is that mercy consists in stopping short of [*quae se flectit citra id*] what might have been deservedly imposed [*merito constitui*].[13]

Seneca acknowledges, like Aristotle and Cicero, the paradox of a form of justice that deviates from the just judgment while still preserving the spirit of justice. The language Seneca uses to express this paradox, likewise, recruits the same metaphor of pliability versus straightness used by his predecessors: *flectere*, 'to bend, bow, curve', is the verb that gives both to Latin and to English the derivatives 'flex' and 'flexible', and the use of the reflexive *se flectere* here (literally 'to turn itself away from') imagines mercy as a leaden self-bending. In fact, this metaphor has, even by this early date, become standard (perhaps even trite) in accounts of equity and mercy.

In appropriating this argument for mercy (*clementia*) rather than equity (*æquitas*), Seneca introduces into a conceptually difficult environment yet another source of confusion. In some ways his formulation of mercy appears

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[12] Seneca's tragedies and philosophical writings were popular throughout the sixteenth century, particularly as a result of works by Erasmus and, more importantly, by Justus Lipsius, who inaugurated the neo-Stoic movement in 1584 with the publication of his *De Constantia in publicis malis* – a text which probably influenced Spenser's views on mutability and constancy, particularly in the *Cantos of Mutabilitie*. See *CHRP*, pp. 367–74.

[13] Seneca, *Ad Neronem Caesarem De Clementia*, ed. John W. Basore (Cambridge: Harvard University Press, 1928), pp. 434–35.

to correspond with Aristotle's ἐπιείκεια: like equity it is a rectification of justice, different but itself still just, and like equity it judges not on the basis of precepts, but on the merits of an individual case:

> Mercy has freedom in decision [*liberum arbitrium*]; it sentences not by the letter of the law [*sub formula*], but in accordance with what is fair and good [*ex aequo et bono*]; it may acquit and it may assess the damages at any value it pleases. It does none of these things as if it were doing less than is just, but as if the justest thing were that which it has resolved upon [*tamquam id, quod constituit, iustissimum sit*].[14]

Seneca goes so far as to link *clementia* with '*aequum et bonum*', reinforcing his association of mercy with Aristotle's ἐπιείκεια.[15] But unlike equity, mercy dispenses with judgment that has been reasonably deserved. Its goal, unlike that of equity, is not justice but peace and security for the ruler and society; this fudge Seneca registers (in his characteristically subtle and elegant way) in the word '*tamquam*', 'just as if', and in the contrafactual clause it introduces: Seneca never claims that the merciful is just, but rather that the dispenser of mercy merely acts as if it is. Here his rejection of judgment '*sub formula*' precisely answers Cicero's use of '*conformari*', and his use of '*quod constituit*' exactly answers his own earlier '*merito constitui*' in a bow to pragmatism: what is actually imposed trumps that which might be deservedly imposed. The vice associated with mercy is not severity (L *severitas*) – with which mercy is actually in a kind of agreement – but pity (L *misericordia*). Severity, which Seneca may well have intended to represent Aristotle's ἐπιείκεια, is rather paired with the vice of cruelty (L *crudelitas*). As this shift to personal, affective vices like *misericordia* and *crudelitas* makes clear, *clementia* is the attribute not of a legal system or judge, but of an emperor, an absolute ruler with unfettered prerogative – a virtue better suited to imperial Rome than to Aristotle's republican polity. Seneca's contribution to the anatomy of justice not only (and probably backhandedly) provided a third type of justice superior to both legal and equitable forms, but a style of justice particularly suited to an absolute and individual monarch. The complex relationship between mercy and equity introduced by his formulation was to trouble early modern expositors, and especially the common lawyers of England.

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[14] Seneca, *De Clementia*, pp. 444–45.

[15] Ironically, *aequum et bonum* would eventually become a standard motto of sixteenth-century English equity.

ENGLISH EQUITY:
THE SIXTEENTH-CENTURY LEGAL TRADITION

The well-travelled paradox inhering in the relationship of justice to equity and mercy became the focus of an important (if somewhat accidental) debate in Tudor government during the early sixteenth century. The force and influence of this concept in legal and political rhetoric developed under Henry VIII, most directly as a result of the peculiar legal constitution of early modern England, unique among the Christian kingdoms of Europe for its robust native 'common' law. At the centre of the debate was the court of Chancery, the pre-eminent conciliar and prerogative court in which the king's Lord Chancellor as royal deputy exercised an equitable jurisdiction known to medieval Englishmen as 'conscience'. In basis, in jurisdiction, and in forms of process, this court stood apart from its neighbours in Westminster Hall, the common law courts of the Common Pleas and King's Bench. The important legal and political question of the 1520s was whether Chancery's 'conscience' fell within the common law or without it, whether it constituted a court of legal equity or extralegal mercy. While this debate reflected a broader struggle for political power between monarch, church, and judiciary, it occasioned a series of complicated discourses on the place of equity and mercy in the justice of English government, discourses that would reverberate through the political and legal life of the following century. The main actor in this debate, the septuagenarian common lawyer Christopher St German, established in his printed works the terms – both conceptual and literal – that were to define discussions of justice and equity in England up to the civil war.

English legal historians have long recognized that common law justice was in crisis during the early years of Henry VIII's reign.[16] Business in the ancient courts of Common Pleas and King's Bench had been declining over decades, probably as a result of the political instability of the Wars of the Roses, and was not to see a turnaround until the late 1520s. At the same time, the political and legal programme of consolidation under Henry and his first chief minister, Cardinal Wolsey, gave strong support to prerogative courts such as Chancery.[17] In fact, business in Chancery was booming: unfettered by traditional

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[16] A summary discussion of evidence, drawing on the work of M. Blatcher and F. Metzger, is presented in J. A. Guy, *The Public Career of Sir Thomas More* (Brighton: Harvester Press, 1980), pp. 37–40.

[17] Another conciliar court established (or at least put on a formal footing) by Wolsey in 1519, the Court of Requests, offered similar equitable relief to that obtainable in the Chancery, while Star Chamber (and in Dublin, Castle Chamber) increasingly throughout the sixteenth century provided extraordinary prerogative justice in criminal causes. Both the Court of Requests and the Star Chamber attracted attacks from constitutionalist lawyers, and both were defended by absolutist partisans, whose polemical histories of the courts are our chief source of information about them: see Julius Caesar, *The Ancient State, Authoritie, and Proceedings of the Court*

and restrictive forms of process and pleading, the Chancellor heard cases in English, could order the discovery of relevant documents, and conducted and judged cases according to his own sense of 'conscience'. As the highest-ranking of the king's ministers and (until Thomas More) invariably a prelate, the Chancellor and his court commanded enormous temporal and spiritual authority. From the perspective of the common-law judges, perhaps the most worrying development was the massive encroachment of Chancery on the traditionally inviolate jurisdiction of King's Bench and Common Pleas in real property cases: during Wolsey's chancellorship, such business relocated from the common law courts to Chancery in record numbers. The growing power of Chancery excited the envy of common lawyers, while the '*liberum arbitrium*' of the Chancellor offended their common law principles; some began to call for reform.

Into this climate Christopher St German introduced his first dialogue on the relationship between common law and conscience, *De Fundamentis Legum Anglie et De Conscientia* ('On the Bases of the Laws of England, and Of Conscience', 1523). Although no copy of this edition has survived, a second Latin edition appeared in 1528, followed by a number of English editions and a second dialogue between 1530 and 1532.[18] Government approval was indicated by St German's appointment as Master of Requests in 1528. The interest of contemporaries and the support of the government suggest the importance of this first dialogue, and something about the way it was perceived by its earliest readers. Its general argument has traditionally been expounded by modern readers as an attempt to situate equity within the common law, subordinating the equitable jurisdiction to an overall philosophy of the grounds of the common law – and indeed this is one of St German's central arguments, but definitely not the feature of his treatise that so attracted and startled his first readers. Equity had long been considered a component of justice: as we have seen, Aristotle and Cicero considered it as such, and St German was merely following his main sources, Jean Gerson and the medieval commentators on Aristotle, in pursuing this line.[19] What was so revolutionary about his dialogue was that he thought to ascribe 'equity' and Gerson's use of Aristotle's

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of Requests (London: Deputies of Christopher Barker, 1597), and William Hudson, *The Court of Star Chamber* (1621), printed in F. Hargrave, ed., *Collectanea Juridica*, II (London: Brooke, 1791–92), pp. 1–240. The present brief account of the development of equity in sixteenth-century English law, however, will focus exclusively on Chancery – not only because it was the most important of these prerogative courts, but because it was considered in contemporary discussion and debate to be the exemplar of the conciliar equity jurisdiction.

[18] The complicated early publishing history of the two dialogues and their revised and translated versions is comprehensively treated in the best modern edition, *St German's Doctor and Student*, ed. T. F. T. Plucknett and J. L. Barton (London: Selden Society, 1974), pp. lxix–lxxvi.

[19] St German's reliance on Jean Gerson's *Regulae Morales* was long ago recognized by Vinogradoff, and has more recently been anatomized in Zofia Rueger's study, 'Gerson's Concept of Equity and Christopher St German', *History of Political Thought*, 3 (1982), 1–30.

term ἐπιείκεία specifically and exclusively to the court of Chancery. In doing so, he erased two hundred years of the development of the Chancellor's 'conscience' jurisdiction and redefined the theory and function of the court – a bold and perhaps even fantastic move, considering that the court was even then open for business under the care of Cardinal Wolsey.[20]

The language of the 1531 English edition of St German's first dialogue betrays the significance of his achievement. At first glance, his arguments appear soundly Aristotelian, in keeping with the tradition of defining equity as a rectification of strict legal justice. For example, St German quotes almost verbatim from Aristotle and Cicero in his definition of equity:

> And such an equytye must alway be obseruyd in euery lawe of man and in euery generall rewle therof & that knewe he wel that sayd thus. Lawes couet to be rewlyd by equytye. And the wyse man sayth: be not ouer moch ryghtwyse for the extreme ryghtwysenes is extreme wronge as who sayth yf thou take all that the wordes of the law gyueth the thou shalte somtyme do agaynst the lawe. And for the playner declaracyon what equytie is thou shalt vnderstande that syth the dedes and actes of men for whiche lawes ben ordayned happen in dyuers maner infynytlye. It is not possyble to make any generall rewle of the lawe but that it shall fayle in some case. And therfore makers of lawes take hede to such thynges as may often come and not to euery particuler case for they coulde not though they wolde And therfore to folowe the wordes of the lawe were in some case both agaynst Iustyce & the common welth: wherfor in some cases it is good and even necessary to leue the wordis of the lawe & to folowe that reason and Justyce requyreth & to that intent equytie is ordeyned.[21]

St German's 'ryghtwysenes' is a direct translation of κατόρθωμα, Cicero's *officium perfectum*, and his distinction between 'ryghtwysenes' and 'extreme ryghtwysenes' savours of Aristotle's description of justice as a mean between extremes. Indeed, the 'wyse man' quoted by St German is probably Cicero, who bequeathed to medieval and Renaissance jurists in his *De officiis* the maxim *summum ius, summa injuria* ('extreme ryghtwysenes is extreme wronge').[22] In his reliance on these classical models, St German appropriates for the English legal constitution the traditional paradox of pliant equity as a 'rectification' of straight justice.

And yet St German's formulation of equity differs from his classical and medieval models in one crucial respect, a difference signalled by the treatise's

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[20] Franz Metzger has dated the end of the 'medieval Chancery', and the beginning of its long process of common law naturalization, to the publication of St German's dialogues. See Metzger, 'The Last Phase of the Medieval Chancery', in *Law-Making and Law-Makers in British History*, ed. Alan Harding (London: Royal Historical Society, 1980), pp. 79–89.

[21] Christopher St German, *The Fyrste Dyaloge in Englysshe Bytwyxt a Doctoure of Dyuynyte and a Student in the Lawes of Englande: of the Groundes of the Sayd Lawes, and of Conscyence*, in *St German's Doctor and Student* (hereafter *Doctor and Student*), pp. 95–97.

[22] See Cicero, *De officiis*, p. 34.

subtitle, *De Conscientia*. What St German was suddenly calling 'equity' had traditionally been known in England by another name, 'conscience' – a term carrying a set of descriptors and modifiers entirely different from those of 'equity'. Where equity is a 'ryghtwysenes' in keeping with the true intent of the lawgiver, conscience is not so strictly limited; it can include concepts more characteristic of Seneca's *clementia*, such as dispensations from severe, even equitable justice. For example, just prior to the Aristotelian passage quoted above, St German follows Hostiensis in noting that 'equytye is a ryghtwysenes that consideryth all the pertyculer cyrcumstances of the dede the whiche also is temperyd with the swetnes of mercye'.[23] And he concludes the passage not strictly as I have indicated above, but rather by saying, '& to that intent equytie is ordeyned that is to say to tempre and myttygate the rygoure of the lawe'. ***Temper*, *mercy*, *mitigate*, *rigour*** – these are words traditionally associated with the medieval jurisdiction of the Chancellor in Chancery, the jurisdiction of conscience. But where such words had originally been associated with the dispensatory judgments of divines acting in Chancery to reconcile English justice with good Christian 'conscience', St German assigns them instead to a new formulation of equity, an impersonal principle administered not out of care for men's souls but rather care for good justice. What St German's first dialogue achieves, in assimilating conscience and equity, is a fusion of the two hitherto independent vocabularies of mercy and equity, a fusion that uses the traditional paradox of equitable justice to subordinate conscience in Chancery to the rule of common law.

As the century wore on, treatments of the Chancery jurisdiction continued to follow St German's influential conflation of conscience with equity, yoking Aristotle's principle of the corrective to the seemingly irrelevant rhetoric of clemency, pity, and relief. Thus we find Sir Thomas Smith, speaking of the Chancery in his treatise *De Republica Anglorum* (1565), following St German in mixing the traditions:

> And for so much as in this case [the plaintiff] is without remedie in the common lawe, therefore he requireth the chauncellor according to equitie and reason to provide for him and to take such order as to good conscience shall appertaine. And the court of chauncerie is called of the common people the court of conscience, because that the chauncellor is not strained by rigour or forme of wordes of lawe to judge but *ex aequo* and *bono*, and according to conscience as I have said.[24]

Likewise, Edward Hake writes in his 1598 treatise on equity, *Epieikeia*, that the

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23 *Doctor and Student*, p. 95.

24 Sir Thomas Smith, *De Republica Anglorum: The manner of government or policie of the Realme of England* (written 1562–65, published 1583), ed. Mary Dewar (Cambridge: Cambridge University Press, 1982), p. 94. Note that '*ex aequo* and *bono*' has become a feature of equity, not of mercy.

common law is 'altogither guided and dyrected by *Epieikeia*, which (as I have read) signifieth sweetnes, gentlenes, goodnes, myldnes, moderation and such like';[25] 'sweetnes' Hake borrows directly from St German, and 'moderation' (L *moderantia*) from Senecan clemency. In fact, Hake considers the Chancery to be only one of the fora wherein the common law 'suffers' itself to be moderated by particular circumstances, and even goes so far as to say that 'the circumstances examynable in the Chauncery are withowte or beside the case'.[26] Such attention to the personal circumstances of the plaintiff had been the hallmark of princely mercy in the medieval Chancery, but Hake is able to claim it as part of an equity inhering not in the judge, but in the spirit of the law itself.[27] St German's conflation of the rhetoric of conscience with the philosophical grounding of the reasonable exception of equity influenced every account of Chancery written in the sixteenth century. In reputation, and perhaps in fact, Chancery continued to be a court of princely mercy and Christian conscience; but for some, both in theory and in law, it was considered an equitable jurisdiction, answerable to the common law and constrained by common law grounds.

St German's first dialogue stunned his contemporaries not only in its conclusions, but in the meticulously reasoned philosophical argument devised to reach them. This argument prepared the ground for the expulsion of the Church from government, and led to the ultimate ascendancy of common law over other still competitive systems (particularly civil and canon law).[28] While the Chancery was not a court of record in the sixteenth century and thus not yoked to precedent – its judgments were *ad personam*, and not *ad rem* – St German argued that the Chancellor was bound only to rectify the common law insofar as it departed, in its generality, from its own basis in the law of god or the law of reason. In a rather radical remodelling of Aristotle, St German argued that equity was not so much a principle of rectification of justice κάτα νόμον in accordance with τὸ ἴσον, as a jurisdictional resolution of competing hierarchical systems, themselves bases of law. According to St German, the common law was based on the six separate grounds of authority:

[25] Edward Hake, *Epieikeia: A Dialogue on Equity in Three Parts* (1598), ed. D. E. C. Yale (New Haven: Yale University Press), p. 103.

[26] Hake, *Epieikeia*, p. 126.

[27] See Hake, *Epieikeia*, p. 11. Hake's opening statement on Chancery goes further, arguing that the Chancellor is 'adourned & beautifyed with the sweete ornaments of clemency & mercy'. (pp. 2–3)

[28] As J. A. Guy writes in *Reassessing the Henrician Age*, it was not Thomas Cromwell but rather St German, in the *Additions*, who first argued for the ecclesiastical sovereignty of king-in-parliament. As he goes on to argue, it was *Doctor and Student* that had provided the legal conditions enabling the English reformation: the coherent and systematic 'theory of law within an English context' did, according to Guy, 'for English law what, a generation or so later, John Jewel and Richard Hooker did for the Anglican Church'. See Alistair Fox and John Guy, *Reassessing the Henrician Age: humanism, politics, and reform, 1500–1550* (Oxford: Basil Blackwell, 1986), pp. 101–03.

Therfore thou shalte vnderstande that the law of Englande is groundyd vpon syxe pryncypall groundes. Fyrste it is groundyd on the lawe of reason. Seconde on the lawe of god. Thyrdly on dyuers generall customes of the realme. Fourthly of dyuers pryncyples that be called maximes. Fyftly on dyuers partyculer customes. Syxtly on dyuers statutis made in Parlyamentes by the kynge & by the common Councell of the realme.[29]

Because these somewhat independent systems could in a particular instance find themselves at odds, the equitable Chancellor was required to reconcile the less authoritative to the more authoritative, dispensing with the prescriptions of, for example, a given statute when it was in clear contradiction to the law of God or of reason. The crucial element of this formulation is that while laws may covet to be ruled by equity, equity is in fact based in, and to some extent ruled by, the common law itself. According to St German, Chancery proceeding was neither arbitrary (i.e. the seat of *liberum arbitrium*) nor congruent with mercy (however 'tempered with the sweetness of mercy'), but reasonable and itself just and legal:

> And the lawe of England wyll in many cases of conscience admitted by the law that there shal be suche remedye in the Chauncerye vpon dyuers thynges groundyd vpon suche equyties. *And then the lorde Chaunceller must ordre his conscience after the rewles and groundes of the lawe of the realme* in so moche that it had not ben moche inconuenyent to haue assygned suche remedye in the Chauncery vpon suche equytyes for the .vii. grounde of the lawe of englande.[30]

The distance of this formulation from both Aristotle and the practice of medieval Chancellors such as Wolsey is striking. Where in Aristotle an ethical subject, or judge, adjusts judgments individually according to the merits of a particular instance or case, the common law of the sixteenth century admitted no impediment to the ancient forms of process or the established remedies. The Chancery, physically and conceptually distanced from the royal courts, provided equitable relief through the injunction, a jurisdictional stop that could, by the Chancellor's prerogative, remove a pending case from the remit of the common law; once the case was before the Chancery, the jurisdictional claims of competing fundamental 'rewles and groundes' could be examined and resolved. This court was not part of the common law, but rather 'a thynge that is suffred by the lawe'. As it happened, the Chancery was not only conceptually and physically distinct from the common law courts, but it actually followed civil law (bill) process rather than common law (writ) process, with an emphasis on the trial of fact through inquest and examination of witnesses.[31]

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[29] *Doctor and Student*, p. 31.
[30] *Doctor and Student*, p. 105; my emphasis.
[31] See Baker, *IELH*, pp. 97–116. The standard introduction to Chancery in this period is W. J. Jones, *The Elizabethan Court of Chancery* (Oxford: Clarendon Press, 1967).

St German's treatise was to have two important and immediate political effects. The new theory of Chancery was designed to push the Church and its historical monopoly on conscience out of law and government, placating common lawyers by reconciling Chancery to the traditional legal constitution under Magna Carta. St German's treatise contributed considerably to this effort. It is probably no coincidence that the same year, 1528, saw Wolsey's fall from power, St German's elevation to the mastership of Requests, and a reissuing of St German's first dialogue by the printer John Rastell. It is certainly no coincidence that Henry VIII broke a century and a half of tradition in 1529 by appointing not a prelate, but the common lawyer Sir Thomas More to the post of Lord Chancellor; St German's treatise had prepared the way for this important change. The second effect of St German's treatise was to reinforce the already nascent idea that equity in English law belonged to a common law jurisdiction, albeit one separate from the two royal courts of Westminster Hall; while Edward Hake was able to argue in 1598 that some equity was permitted the royal judges in the 'exposition' of statute and other written law,[32] it was not after St German denied that the primary forum for English equity lay in the Chancery.

Such a distinction between the jurisdictions of regular, royal justice and extraordinary, equitable justice naturally led to an emphasis on the traditional paradox of rigorous versus pliable forms of law. A standard exposition of this metaphor adapted to the English context appears in Sir Thomas Smith's treatise, *De Republica Anglorum*. Smith, Elizabeth's ambassador to France and a man widely known for his experience and knowledge of both common and civil law traditions, composed *De Republica Anglorum: The manner of governement or policie of the Realme of England* between 1562 and 1565. As a strongly nationalist account of English political and judicial organization in the opening years of Elizabeth's reign, it emphasizes the advantages of the celebrated English mixed constitution over the more extreme monarchical and republican governments of the Continent. Its central theme is the advantage of the rule of law in England. As Smith declares in his opening statement:

> That part which doth rule, define and commaund according to the forme of the governement, is taken in everie common wealth to be just and lawe: As a rule is always to be understoode to be straight, and to which all workes are to be conformed, and by it to be judged: I doe not meane the *Lesbians* rule which is conformed to the stone: but the right rule whereby the Artificer and the Architect doe judge the straightnesse of everie mans worke, he to be reckoned to make his worke perfectest, who goeth neerest to the straightnesse thereof.[33]

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[32] '*Equitas est perfecta ratio que leges et omne dictum scriptumque interpretatur, ex qua jus emanat quod bonum et equum dicitur, nullo scripto comprehensum sed in sola et vera ratione consistens*'. See Hake, *Epieikeia*, especially 'The Seconde Parte, of the Equity of the Common lawes of England', pp. 45–118.

[33] Smith, *De Republica Anglorum*, p. 49.

With his reference to the leaden Lesbian rule, Smith invokes Aristotle's discussion of equity as just such a type of conformable, instance-based judgment and arbitration. In contrast to the Lesbian rule, Smith cleverly adduces the 'straightnesse' implied by Aristotle's and Cicero's use of compounds involving ὀρθός, 'straight, upright'. As he goes on to argue through the whole of the ensuing treatise, England's particular advantage over other commonwealths is its ultimate reliance on the rule of common law, a law unbending and unyielding, above kings, nobles, and parliament.[34] The common inheritance of every Englishman, it has from time out of mind protected their ancient liberties; and though it includes provision for equity, that equitable jurisdiction is, however paradoxically, subordinate to 'the rewles and groundes of the lawe of the realme'.

The inflexibility of the English common law was a commonplace in Spenser's own time. Although many of the bases of the law were unwritten, perhaps in compensation the forms of legal process were remarkably strict and unyielding; as Sir Thomas Smith put it, 'their maximees be taken so straitlie that they may not depart from the tenour of the wordes'.[35] Common law process was governed by writs, pieces of parchment that could be purchased from the Chancery to originate a suit in one of the royal courts of the Common Pleas or King's Bench. By the sixteenth century, the number and type of writs available was strictly limited by precedent (and, more textually, by the *Registrum omnium brevium* of 1531, in which their set forms were enrolled); if a man wished to bring a legal action against another, he had to be sure that the demand or plaint conformed to one of the established writs for a specific cause, which in many cases it obviously could not. Great subtlety was expended in contorting the facts to fit the provided legal form, and lawyers routinely added or subtracted so much truth from the alleged facts of a case as suited their needs in entering the writ.[36] Similarly, it was recognized in the sixteenth century that the right to a jury trial prevented judges from intervening equitably in royal justice. It is apt that the first printed register of writs was produced at the height of St German's pamphlet war with Thomas More

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[34] Smith, a relation of Gabriel Harvey and perhaps a mentor to Spenser in his Cambridge days, was voicing a common enough sentiment in his panegyric on the common law. Spenser makes a similar claim in *A view*; Irenius, responding to Eudoxus's suggestion that judges may offer dispensations in doubtful cases, declares:

> yea but it is daungerous to leave the sence of a lawe vnto the reasone or will of the Iudge whoe are men and maye be miscaried by affeccions and manye other meanes But the lawes oughte to be like stonye tables playne stedfaste and vnmoveable. (*A view*, p. 78)

Spenser was responding to the Geneva Bible's rendition of Ezekiel 11:19–20 and Jeremiah 31:33; see Nohrnberg, *The Analogy of* The Faerie Queene, p. 381.

[35] Smith, *De Republica Anglorum*, p. 93.

[36] For a general introduction to the constraints of writ process, see Baker's introduction to the 'forms of action' in *IELH*, pp. 53–69. Baker discusses the common law tradition of the legal fiction in *IELH*, 201–02.

(1531), and subsequently corrected under the editorial guidance of More's nephew William Rastell for reprinting in 1553; it is apt, too, that we know of the contemporary link between jury trial and common-law rigour from William Roper's life of More.[37]

What St German had achieved in *Doctor and Student* was a compromise solution to end a political tension that had reached its peak under Cardinal Wolsey: in establishing a rational, common law basis for equitable judgment in the Chancery while still preserving its ability to operate outside common law process, St German ate his cake and had it too. The ancient prerogative of the Chancellor's 'conscience' was subsumed into the more reasonable and legally structured equitable jurisdiction. No longer could the Chancery jurisdiction reasonably be considered to be at the personal discretion of the Chancellors, susceptible to *liberum arbitrium*; though still known as a 'court of conscience', it was governed by legal principles tempered with common law 'rewles and groundes'. St German's division of the regular, common law jurisdiction from the extraordinary, equitable jurisdiction of Chancery reified the classical paradox of rectified justice: where the king's courts could provide legal justice, this justice could be perfected by a flexible Chancery equity unfettered by record law, and yet itself – paradoxically – still just.

IMPERIAL EQUITY IN *THE LEGEND OF ARTEGALL*

St German's innovations established a set of terms and concepts instrumental to Spenser in the writing of Book V of *The Faerie Queene*. For example, it should now be obvious why Spenser chose to pair Artegall, the 'judge of equity', with Talus, his automaton-like executor. It would not have required a keen mind to note that English common law, like Talus, was (to use Spenser's own words) like 'stonye tables plaine steadfaste & imoveable'. As observed by Sir Thomas More, the common law's inflexibility was rooted in its impersonal nature; judges merely applied established maxims, precedents, and statutes in a process strictly controlled by custom and usage, thereby absolving themselves of personal responsibility for decisions. Equity, on the other hand, was perceived as distinct, the domain of a single man, the Chancellor. As the equitable judge in *The Faerie Queene*, Artegall can issue injunctions on Talus's behaviour, but his intercession is only given value by Talus's own inherent 'κάτα νόμον' inflexibility. Spenser's initial introduction of both Artegall and Talus confirms such an understanding. Where Artegall has been trained, as

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[37] Roper recounts More's offer to the royal judges to allow them more equitable latitude – i.e. responsibility – in their judgments; they refused, he said, because 'they see that they may be the verdicte of the Iurye cast of all quarrells from them selves vppon them, which they accompte their cheif defens'. William Roper, *The Lyfe of Sir Thomas Moore, knighte*, ed. Elsie Vaughan Hitchcock (London: Early English Text Society, 1935), p. 45.

was noted above, to measure out '*equitie* . . . according to the line of *conscience*', Talus attends on Artegall to '*execute*' his 'stedfast doome' and 'doe what euer thing he did *intend*'; like Spenser's own description of the common law, he is 'immoueable, resistlesse, without end' (V.i.7, 12). Likewise, Artegall can often be seen limiting or correcting Talus's activity, whereas Talus has no ability to interfere with or temper Artegall's judgments (for example, when Artegall commits himself to observing Radigund's terms at V.v.19).

Artegall's many experiences and judgments throughout Book V invoke conflicts between competing systems, or bases, of law, conflicts that he must as a judge of equity resolve. While many of these episodes simultaneously perform other allegorical work – moral, historical, theological – they also contribute to Spenser's representation of equity as an imperial type of justice, a corrective principle intervening from outside, to improve local or legal justice. A close attention to the specifically legal language of Spenser's poetry in these episodes reveals a startling congruence between Artegall's equitable justice and the theory of fundamental rules and grounds underlying the common law, as proposed by theorists like Christopher St German. Such an attention also resolves the apparent confusion between the key terms *justice*, *equity*, and *mercy*, and foregrounds the importance of jurisdictional concepts in Spenser's formulation of justice and, as we will see later, of courtesy. As part of his pane-gyric on the English nation, Spenser turns in Book V to the unique constitu-tion of English common law, incorporating not only traditional classical and early modern definitions of justice, but the theory and practice of England's celebrated limited monarchy.

Artegall's first arbitration comes in his opening encounter with Sir Sanglier and the unnamed squire (V.i). This episode is most famous for Artegall's Solomon-like judgment, delivered at the close of the canto, in which he deter-mines the truth of Sanglier's dispute with the squire by offering up the contested woman to be divided in half.[38] Solomon's judgment is famous as an exemplary application of natural law principles: the love of a mother for her baby reveals the child's true parentage, and the two are reunited; Spenser's use of the judgment invokes the same natural law principles. What goes generally unremarked is the other, only slightly less obvious, biblical allusion, that to the Ten Commandments delivered to Moses in *Exodus*.[39] Spenser varies the orig-inal story from I Kings so that Sanglier's crime, in taking away the squire's lady and killing his own, incorporates no fewer than five (the civil component) of the commandments in the Mosaic moral law: he steals, kills, commits adul-tery, covets his neighbour's wife, and finally bears false witness. Artegall's ensuing intervention, Spenser intends us to see, is justified by an appeal to principles enshrined in natural law (the law of reason) and divine law. This is

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[38] See I Kings, 3:16–28.
[39] See Exodus, 20:3–17.

the intervention of an equitable reformer, and one at pains to demonstrate the basis of his judgment.

What has also gone unnoticed by readers is that Artegall's intervention amounts to something very close to a Chancellor's injunction on common law process. Talus first pursues Sanglier and the stolen lady; finding them, he returns them by due process to the presence of the plaintiff squire and judge. Once there, the squire urges his plea, which Sanglier rejects, in typical legal form:

> Who with sterne countenance and indignant pride
> Did *aunswere*, that of all he guiltlesse stood,
> And his *accuser* thereuppon *defide*;
> For neither he did shed that Ladies bloud,
> Nor tooke away his loue, but his owne *proper good.* (V.i.23)

Sanglier's defiance and assertion that the stolen lady is 'his owne *proper good*' together determine the issue of the case, now to be tried.[40] Because the issue is essentially a trial of right, the traditional solution would be to determine the right by battle; while this type of arbitration was certainly not in general use in Spenser's time, it was, yet, remembered.[41] That Spenser recognizes this type of solution as legitimate and appropriate is indicated by the squire's response:

> Well did the Squire perceiue him selfe too weake,
> To *aunswere* his *defiaunce* in the field,
> And rather chose his *challenge off to breake*,
> Then to *approue his right* with speare and shield.
> And rather *guilty* chose him selfe to *yield.* (V.i.24)

Spenser further underscores the appropriateness of this traditional remedy with Artegall's response in the following stanza. Acknowledging that the ancient modes of arbitration in such a case would be '*Sacrament*', '*ordele*', or

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[40] The purpose of pleading in the medieval common law was to reach the issue (*exitus*) upon which the case could be tried and decided. The formal steps in pleading began with the 'count' or 'declaration' by the plaintiff, to which the defendant was invited to make a 'plea' or 'bar'. If this reply failed to determine the issue, the plaintiff could continue with a 'replication', which could be followed by a 'rejoinder' from the defendant, and so on. That Spenser had the common law pleading process in mind is suggested by Artegall's opening injunction to the squire, 'Who was it then (sayd *Artegall*) that wrought? And why? doe it *declare* vnto me true' (V.i.16).

[41] Battle may not have been in general use for trials of right in England, but it was occasionally used in Ireland at this time. Spenser himself was probably witness to a celebrated trial by battle, ordered by the Irish Council early in September 1583, between Conor MacCormac O'Connor and Teige MacGillapatrick O'Connor, two Irish captains at odds over Teige's killing of certain of Conor's followers. The large crowd observing the battle in the courtyard of Dublin Castle included the Irish Privy Council and the Irish justices. Conor O'Connor was defeated, killed, and beheaded. See *CSPI, 1574–85*, p. 468; and *CCM, 1575–1588*, pp. 361–62.

'blooddy fight', Artegall suggests, instead, that the two rivals submit themselves to his judgment, so that he may try 'by sleight the truth thereout to straine' (V.i.24–25). The process of the case may be summarized, then, in this way: Artegall takes the evidence of the plaintiff,[42] sends his deputy to collect the defendant, and observes the process of the traditional legal remedy, battle, taking place under the direction of his deputy, Talus. At this point, perceiving the injustice about to occur, he intervenes, stopping the trial by battle and effecting an equitable resolution through a process of question and answer – recalling the *interrogationes* of civil law procedure, as practised in Chancery. This is not only equity in the Aristotelian sense, but equity in the English sense: Artegall, as a judge external to the common law process already resolving the case, stops this process and refers the issue to his own conscience, eventually reaching a verdict not according to legal ritual or process, but according to his own opinion. Spenser's careful manipulation of the episode to offer not one but two separate legal solutions – set in the context of his biblical allusions in both crime and judgment – suggests the nature of English equity as a form of judgment that by interceding overrules institutional legal processes. And yet at the same time, crucially, Artegall's 'sleight', by adopting the sanctioned forms of natural and divine law (as the allusions to Solomon and Moses make clear), is also meticulously fashioned after the first two of St German's 'rewles and groundes' of the common law.

This understanding of equity is developed in the succeeding two episodes, Artegall's encounters with Pollente and Munera and with the Giant with the scales. In contrast to the Sanglier episode, where Spenser explores equitable adjudication between precepts from natural and divine law, the first episode of canto ii centres on a conflict between general and particular custom. Leaving aside for a moment Talus's harsh reformation of the bribe-giving Munera, it is clear that Artegall's primary business in the first half of this canto is the reformation of Pollente. Previous studies have compared Pollente's bridge-keeping to a monopoly,[43] and it is true that Spenser notes an economic component to his activity, but the poet's language is more general. Three times during this episode he resorts to the term '*custom*'; in the second instance, he calls the collection of the bridge toll 'the *custome* of their *law*' (V.ii.7, 11, 28). Whatever the specific historical or political referents Spenser is here emphasizing, the use of '*custom*' gives Pollente's practice a firm legal basis as a local and specific customary use in keeping with a kind of 'law'. Modern readers generally fail to appreciate the technical resonance of this important word, which to an Elizabethan ear would have carried a weight of legal and political associations no longer available; Pollente's '*custom*' would correspond, for example, to the

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42 The Chancellor's oldest legal function was not the hearing of equity cases, but the issuing of common law writs for suits in King's Bench and the Common Pleas.

43 See, for example, M. L. Neff, 'Spenser's Allegory of the Toll-Bridge', *PQ*, 13 (1933), 159–67.

'partyculer customes' of St German's scheme of common law bases.[44] Artegall's duty to challenge this custom derives from its contravention of higher-order bases – for example, the general custom of the realm that travellers should have free access to fords and bridges,[45] invoked by Artegall in his query to the dwarf Dony at V.ii.5.

It is significant that Artegall deals with Pollente alone in this episode, while Talus needs no help from Artegall in disposing of Munera. Pollente represents force in contrast to Munera's fraud,[46] but he also represents a different type of legal problem. Because of his power, his wicked law has authority as local custom and thus bears some legitimacy in the common law:[47] it therefore requires the intervention of an equitable judge for reformation. Munera, on the other hand, falls within the purview of the common law: her crimes of bribery and underhanded accumulation of wealth and property can be summarily dealt with by Talus as the executor of common law process. Munera's execution by Talus thus acts as a kind of foil for Artegall's dealing with Pollente: where Munera's case is a straightforward application of justice-by-rule, Artegall must tread more carefully, and judge *ad personam* in the case of Pollente, negotiating a just result from the competing claims of general and particular custom.

In the second episode of the canto, Spenser creates a similar dichotomy between equity case and common law case. The Giant with the scales has committed two separate faults, one of which requires the judge of equity, and the other of which requires the execution of common law process.[48] The first fault is a misunderstanding of the nature of equity; misinterpreting the meaning of Aristotle's τὸ ἴσον, the Giant wishes to distribute all things equally according to an arithmetical mean rather than a proportional mean – allotting

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[44] 'Custom (*consuetudo*)' is defined by Cowell as 'lawe or right not written'; see Cowell, sig. V4r–V4v. 'Custom' also referred in a more limited use to the duties required of feudal tenants, and – perhaps most importantly – as today to the imposts and taxes paid on goods coming through a port. 'Custom' is a very loaded word in *A view*, where Spenser pits it (often coupling it to 'evil') against the 'civil use' and 'fashions' of the English conquerors and settlers – and even, in the larger scheme of the dialogue, against 'law' itself.

[45] This custom is rehearsed, for example, in the repeated Henrician legislation protecting free 'passage' on the Severn. See, for example 23 H. 8 cap. 12 in Rastell, *Statutes*, f. 322v.

[46] The pairing of force and fraud is a regular feature of Spenser's thinking about law and justice, echoing the common law division of personal actions into those of fraud and tort. Other instances of this rhetorical pairing in *FQ* include II.vii.25, IV.viii.31, V.Proem.9, V.iv.31, and V.vii.7.

[47] Spenser later acknowledges the quasi-legitimacy of customs like this; see Arthur's censure of Turpine at VI.vi.35.

[48] In a possible antecedent for this episode, Cicero comments in *De officiis* on the poor policy of those who would pass agrarian, democratic legislation in the Roman senate – obviously similar in substance to the proposals of the Giant in Book V, canto ii of *FQ*. His analysis, like Spenser's, identifies a double fault: breaking the peace (*concordia*) and violating the principles of equity (*aequitas*). See Cicero, *De officiis*, pp. 254–56.

property according to what is 'equal' instead of what is 'fair'.[49] This fault is one of equity and leads to the Giant's extended debate with Artegall on the nature of equity, a debate that eventually results in the destruction of the Giant's balances as unsuitable to the weighing of right and wrong. The Giant's second fault is his intention of using his arguments to stir up '*mutining*' and '*ciuill faction*' and, more importantly, to redistribute property already in the lawful possession of the rich. This amounts to a common law fault: sedition, faction, unlawful assembly, and conspiracy to subvert property were all punishable by precedent and statute.[50] For this felony, the Giant is shouldered by Talus into the sea to his death.

   Artegall's final words to the Giant in this episode include Spenser's clearest statement of equitable principles in the poem. Counselling the Giant to put aside his scales, Artegall tells him:

> Be not vpon thy balance wroken:
> For they doe nought but right or wrong betoken;
> But in the mind the *doome of right* must bee;
> And so likewise of words, the which be spoken,
> The eare must be the ballance, to *decree*
> And *iudge*, whether with truth or falshood they *agree*. (V.ii.47)

Artegall's counsel is a lesson in how to judge or arbitrate properly. The Giant's balance, as a mechanism to determine right and wrong without the intervention of human conscience or 'mind', in part stands allegorically for slavish adherence to common law precedents, maxims, and formulas; like the syllogisms used by common law judges to decide cases by recourse to precedent and analogy, the balance reckons an unknown quantity against one already known.[51] In a sense, the balance is equivalent to Talus's own mechanical process. Like the royal judges of Sir Thomas More's acquaintance, the Giant would like to refer his judgments to an impersonal and unimpeachable authority (*ad rem*); in challenging him, Artegall shows the fallacy of such an approach, emphasizing one of the most crucial aspects of equity – that it depends on the individual mind and ears of the equitable judge (*ad personam*). The 'fair', as opposed to the arithmetically equal, is only attainable through personal judgment.

   More of St German's legal bases come into play in the first episode of canto iv, Artegall's arbitration between the two sons of Milesio, Bracidas and

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[49] The primary source for this distinction between arithmetical and proportional forms of distributive justice is Aristotle's *Nicomachean Ethics*, 5. 3.

[50] For example, see 1 Mar. St. 2 cap. 12, 'An Acte againste unlawfull and rebellyous Assembles'. This statute was confirmed at Elizabeth's accession (1 Eliz. 1 cap. 16).

[51] For an example of Spenserian judgment by analogy, see V.iv.19: 'equall right in equall things doth stand'; this of course echoes Una's rehearsal of the analogical legal principle at I.i.27.

Amidas. Again, finding at his arrival that the parties are about to resolve their dispute by battle (V.iv.6), Artegall intervenes and stops the proceedings:[52]

> When *Artegall* arriuing happily,
> Did *stay* a while their greedy bickerment,
> Till he had *questioned* the *cause* of their *dissent.* (V.iv.6)

The overtly legal nature of this episode has led some past readers of the poem to try to source Artegall's judgment in English legal precedent. The most popular interpretation has been to link this episode with the concept of *alluvion*, an ancient Roman law whereby soil deposited on a bank by the action of a river or watercourse is deemed the property of the owner of the bank.[53] As has occasionally been noted, *alluvion* was accepted by civil doctors, but did not form part of the common law of England. The closest parallel in the common law is the statutory provision of 'wreck', which rules much differently. According to statute, any property abandoned by the owner to the action of a river or sea was deemed property of the king or his patentee, as long as no live thing escaped from it to land. If any person or animal survived the wreck, the owner might within a year and a day identify and claim the property, failing which the property again fell into the possession of the king or his patentee.[54] The conflict Spenser thus creates in this episode is one between civil practice in the depositing of land (*alluvion*) and common law practice in the depositing of treasure (wreck). By civil law and, perhaps, the law of reason, Amidas and Philtera should have the land; they should also by common law rightfully claim the treasure, recognized 'by good markes, and perfect good espiall', especially given that Philtera has escaped from the wreck with her life.[55] Artegall's judgment, instead, contravenes this statutory basis of the law of wreck in favour of a higher-ranking directive, that suggested by two legal maxims. The first, 'that what the sea vnto you sent, your own should seeme' (V.iv.17, 18), was apparently invented by Spenser for this particular instance;

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[52] Note that 'stay' was frequently used in the legal parlance of the time to refer to the 'injunction', the order issued by the Chancery to another court to discontinue proceedings in a case until the Chancery issue had been resolved. See for example this statement from 34&35 H. 8 cap. 26: '. . . that no execucion of any iudgement giuen or to be giuen in any base Court, be stayed or deferred . . .' (*The Statutes at Large*, I, 819).

[53] This argument was first put forward by Gough in his 1918 edition of Book V, citing Gaius's *Digest* 41.1.7 and Ulpian's *Digest* 19.1.13. Gough notes that 'the English and Scottish laws of alluvion agree substantially with the Roman', though he does not note that the 'English' version was a civil precept and not one of the common law.

[54] See above, pp. 107–08, n. 39.

[55] The survival of a passenger from a wrecked ship, and the presence of '*certa indicia et signa*' ('certain proofs and signs') on wrecked goods, were the two exceptions voiding a king's right (by the *jus gentium*) to *wreccum maris*. See Bracton, *De legibus*, II, p. 339. Spenser's careful reference to 'good markes, and perfect good espiall' shows a detailed knowledge of the law of *wreccum maris*.

its repetition in two stanzas, however, suggests that the poet intended it to be understood as a kind of maxim, and it does provide a pretty accurate rendition of a principle of natural law governing the *res nullius* ('thing belonging to no one'), as discussed by Bracton.[56] The more famous maxim, though, governs the first, namely that 'equall right in equall things doth stand' (V.iv.19).[57] On the strength of this precept, Artegall as judge of equity overturns both traditional legal resolution by battle and the more conventional Elizabethan statutory remedy of wreck, distributing land and treasure in an equitable manner between the contesting parties. And yet, again, Artegall's intervention shows, in the way he balances conflicting precepts of the *jus naturale* and the *jus gentium*, that he is operating according to the same fundamental 'rewles and groundes' outlined by St German; for a natural law right (the right of Amidas and Philtera to their own goods) is playfully suppressed in favour of a common law maxim ('equall right in equall things doth stand'), in a way that privileges English common law principles over all. (The facts that this common law maxim is itself a principle of the *jus naturale*, and that the provisions relating to *wreccum maris* are governed by English statute, explain why Artegall can get away with it, and adds to the humour of Spenser's legal quibbling.)

By this point in the narrative of Book V, Artegall has already encountered and negotiated claims based on each of St German's fundamental bases of the common law: natural or rational law, divine law, general customs, legal maxims, particular customs, and statute law. In each of his decisions, Artegall resolves the dispute by considering the competing bases, or jurisdictions, and by passing an equitable decision based on the pre-eminent principle. In a developing anatomy of equity, then, the first four cantos of Artegall's quest show the knight systematically working his way through a docket of cases implicating different fundamental principles. Up until the fifth canto, he has acted justly within the bounds of an English understanding of equity. In the following cantos, however, Artegall comes under the power of Radigund as a

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[56] See Bracton, *De legibus*, II, p. 41: 'Things are said to be *res nullius* in several different ways: by nature or the *jus naturale*, as wild beasts, birds and fish; by the common institution of mankind . . . by accident. They are also said to become such through lapse of time, as treasure trove. Also where there is no apparent owner of the thing, as in wreck [*de wrecco maris*], and the same is true of things regarded as waif, as cattle, where there is no apparent owner.' See also Bracton, *De legibus*, II, pp. 166–67, and p. 339, as above.

[57] As already noted, this maxim was a well-attested standard of common law reasoning. Compare Bracton, *De legibus*, II, 21: 'If new and unusual matters arise which have not before been seen in the realm, If like matters arise let them be decided by like [*si tamen similia evenerint per simile iudicerentur*], since the occasion is a good one for proceeding *a similibus ad similia*.' Edward Hake in his *Epieikeia* considers this maxim one of the main pillars of the 'Equity of the Common lawe', and cites many further authorities, including the second Statute of Westminster. See Hake, *Epieikeia*, pp. 108–09. Judgment by precedent – reasoning by *similia* – recalls the scales of the Giant in V.ii, used to weigh like against like.

result of his own default, a lapse in his judgment. Spenser makes it clear that Artegall's mistake in his fight with Radigund has been to mistake pitying mercy (Seneca's *misericordia*) for equity ('pittiful regard', 'cruell', 'ruth of beautie', '*mollifie*', '*mercie . . . submitted*'; see V.v.13–16). Britomart's subsequent rescue of Artegall shows, in contrast, no pity for the Amazon queen, and is thus successful in restoring Artegall to the correct path in his quest ('without *relent*', '*stayd*' not'; see V.vii.24–34). These matters have been discussed intelligently and at length by several critics and will not detain me here.[58]

What is less often remarked is another, very legally minded, way in which Spenser carefully signals Artegall's flaw and Britomart's restoration. Radigund is not only characterized by her regiment of women, as in the Ariostan source, but by her peculiar habit of setting terms before battle. Before her confrontation with Artegall, she deputes an envoy to deliver her message:

> But these *conditions* doe to him *propound*,
>   That if I vanquishe him, he shall *obay*
>   *My law*, and euer to my lore be *bound*,
>   And so will I, if me he vanquish may;
>   What euer he shall like to doe or say. (V.iv.49)

Artegall unwisely submits himself to these '*conditions*'[59] (V.iv.51), thereby giving his own legal sanction to his eventual enslavement and denying himself the possibility of rescue by Talus, who 'all that while . . . would not once assay, / To reskew his owne Lord, but thought it iust t'obay' (V.v.19). In agreeing to abide by Radigund's '*conditions*', Artegall has surrendered the fundamental basis of his equitable power, its authority to overrule other legal systems.[60]

It is precisely this jurisdictional sovereignty which Britomart refuses to concede when she encounters Radigund in battle in canto vii. Having taken Talus as her page and assumed Artegall's role as judge of equity,[61] Britomart boldly meets Radigund in the field, but is put off:

> But ere they reared hand, the Amazone
>   Began the streight *conditions* to *propound*,

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[58] See, for example, the venerable but solid treatment of A. B. Gough, ed., *The 'Faerie Queene' V* (Oxford: Oxford University Press, 1921).

[59] Compare *Les Termes de la Ley*, ff. 72v–73r:
  Condition is a restraint or bridle annexed & joyned to a thing, so that by the not performance, or not doing thereof, the party to the condition shall receive prejudice and loss, and by the performance and doing of the same, commodity and advantage.

[60] Consider the introduction of Artegall at V.i.8.5, where Spenser notes that 'men admyr'd his ouerruling might'. Words with the prefix 'over-' subsequently figure prominently in Artegall's judgment of Pollente, with both knights trying to 'overgo' or 'overthrow' one another.

[61] Having been initiated into equity in Isis Church, Britomart passes through the Dolon episode (V.vi), which seems intentionally to parallel Artegall's earlier experience at Pollente's bridge. Successfully navigating both force and fraud, Britomart arrives in Radegone as a new champion of equity.

> With which she vsed still to tye her fone;
> To serue her so, as she the rest had ***bound.*** (V.vii.28)

Britomart, in contrast to Artegall, recognizes the folly of submitting the ulti-
mate authority of equity to be subject to any other set of provisions or condi-
tions: 'for her no other ***termes*** should euer tie / Then what ***prescribed*** were by
lawes of cheualrie' (V.vii.28). It seems likely that the 'laws of *cheualrie*' to
which Spenser here refers are not the precepts of the chivalric code, with which
Radigund's conditions in fact accord, but rather represent the inherited tradi-
tions of knights' service, the kind of land tenure often known as 'chivalry'.[62] By
this set of customs, land and title – and thus political power – pass through
primogeniture into the hands of men, not of women as in Radegone. In linking
Britomart's equitable role to the accepted customs of the ancient common law,
Spenser here follows St German in insisting that the judgments of equity are
not outside the law, but are rather resolutions of jurisdictional conflicts
between competing bases of the law itself. Britomart also thus avoids Artegall's
mistake of surrendering the sovereignty of equity to overrule local or strictly
legal justice. By subordinating equity to '*cheualrie*' and not to a personal and
thus corruptible basis (as Artegall has done), Britomart reaffirms the crucial
political paradox of equity: at once both 'in the minde' and '***prescribed***' by
'***cheualrie***'.

   That Spenser calls Radigund's conditions 'streight' (V.vii.28) is suggestive
of the traditional semantic distinctions between 'straight' justice and 'leaden'
equity. In fact, Spenser seems to play on these associations in Artegall's initial
encounter with Radigund. As Artegall presses his attack, Spenser compares
him to a smith, beating iron at high heat:

> Like as a Smith that to his cunning feat
> The stubborne mettall seeketh to subdew,
> Soone as he feeles it ***mollifide*** with heat,
> With his great yron sledge doth strongly on it beat.
>
> So did Sir *Artegall* vpon her lay,
> As if she had an yron anduile beene. (V.v.7–8)

The important word in this passage is '***mollifide***', which Spenser will use again
only a few stanzas later to describe the weak, pitying mercy that leads Artegall
to give up his battle and submit himself to Radigund: 'no hand so cruell, nor
no hart so hard, / But ruth of beautie will it ***mollifie***' (V.v.13). Here the equi-
table judge has softened in the wrong way, not staying true to the paradox of
straightness through flexibility; as Spenser later comments, beauty has the
power to cause 'Great warriours oft their ***rigour*** to ***represse***', and can 'with

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[62] Compare the entry for 'chivalry' in *Les Termes de la Ley*: 'Chivalry is a tenure of land by
Knights service . . .' (ff. 57r–58r).

melting pleasaunce *mollifye* / Their hardned hearts, enur'd to bloud and cruelty' (V.viii.1). Equity may be a leaden, malleable rule, but it is expected to lead to something 'straight': if it leads conversely to 'melting pleasaunce', the equity has gone too far.

Mercilla's trial of Duessa, taking up the latter part of canto ix, proves to contain Spenser's most important piece of political and legal philosophy, and represents what probably was, for the poet, the conceptual focus of the book. Again, the legal and political crisis to be resolved turns on a question of jurisdiction. Where the Radigund episode suggests the dangers of allowing equity to slip into *misericordia*, Duessa's trial illustrates the more controversial jurisdictional question, the confusion between equity and *clementia*. In addition to the pitying mercy of Artegall's submission to Radigund, Duessa demands a princely clemency from Mercilla that would stay her execution not on personal, but on political grounds. Early modern philosophical traditions, following Seneca, distinguished good forms of mercy (L *clementia*) from undesirable forms (pity or L *misericordia*), but Mercilla's eventual harsh judgment of Duessa has never successfully been squared even with the most expansive traditions of *clementia* as understood by early modern political theorists.[63] The most sensible modern readings have been left to argue that Mercilla's true mercy is displayed toward her subjects: in condemning Duessa to death, the queen has preserved her subjects from the future harm inevitable should Duessa live.[64] This argument works well enough when Duessa is considered a plywood stand-in for Mary Queen of Scots in a transparently historical allegory, but not quite so well when one considers the evidence actually presented in the text. With our own understanding of the native English equity tradition, we are in a position to appreciate that Spenser is suggesting something altogether more radical – not merely historical allegory, but prescriptive political philosophy. Instead of defining mercy as a reprieve from the law, a dispensing of justice in favour of compassion, Spenser rough-handedly wrests mercy to equity, blurring the distinction between them and suggesting that true *clementia* in a state ruled by law must, ultimately, be coextensive with equity.

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[63] Aptekar, in *Icons of Justice*, has claimed that Spenser pursues the traditional view of mercy as an extralegal clemency, and asserts that, because 'it is Artegall who punishes', Mercilla achieves a 'merciful' sentence of death. Dunseath, in *The Allegory of Justice in Book V of* The Faerie Queene, notes merely that Mercilla's otherwise overflowing mercy must be constrained in this particular instance by the exigencies of the case (pp. 204–19). Frank Kermode, by contrast, assumes in his treatment of Duessa's trial (' "The Faerie Queene", I and V', in *Shakespeare, Spenser, Donne: Renaissance Essays* (London: Routledge and Kegan Paul, 1971), pp. 56–58) that Mercilla represents not mercy, but 'Justice incarnate as Equity'; sadly, he does not develop or substantiate this claim in his essay.

[64] René Graziani's excellent article, 'Elizabeth at Isis Church', *PMLA*, 79 (1964), 376–89, deals with, among other issues, the 'true compassion which [Elizabeth] owed her people and her own person'.

At first, certainly, this seems not to be the case. As Spenser writes at the opening of canto x of Book V:

> Some Clarkes doe doubt in their deuicefull art,
>   Whether this heauenly thing, whereof I treat,
>   To weeten *Mercie*, be of *Iustice* part,
>   Or drawne forth from her by diuine *extreate*.
>   This well I wote, that sure she is as great,
>   And meriteth to haue as high a place,
>   Sith in th'Almighties euerlasting seat
>   She first was bred, and borne of heauenly race;
> From thence pour'd down on men, by influence of grace. (V.x.1)

The 'Clarkes' cited by Spenser are certainly those like St German and his respondents, whose published treatises were echoed in the moots of the law courts and, no doubt, the council chambers of Whitehall palace. In fact, St German is a particularly apt comparison, as Spenser's diction indicates that he is not considering the issue from a philosophical perspective, but from a technical legal perspective. The early modern legal term *estreat* (occasionally, as here, spelled 'extreat') referred, as a substantive, to the exact copy of some part of the text of a legal document, drawn out and submitted for consideration or execution to another court.[65] As a verb, this word referred to the process of drawing out and transferring such a part of a document. In Spenser's usage, the crucial element of the word is its bridging of two jurisdictions: it is unclear, as he notes, whether mercy is a part of justice and therefore to be administered in the courts of common law, or alternatively if it is drawn forth from the common law jurisdiction by '*extreate*' and thus returnable in some other jurisdiction – here the prerogative power of the monarch (perhaps as deputed to the Chancellor in Chancery: after all, the function of the Mercilla episode in Book V is to educate Artegall, the judge of equity). The poet's initial response seems to be that the sovereign's merciful prerogative, because it is derived from God, is of as high status and validity as legal justice itself.

   While in the opening stanza of his judgment Spenser seems to favour the idea that princely mercy is a valid correction of legal justice, his amplification of the debate in the ensuing stanza complicates matters very significantly. He writes:

> For if that Vertue be of so great might,
>   Which from *iust verdict* will for nothing start,

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[65]   The typical example is of a judgment including provision for a fine; the section setting the fine was copied out and submitted to the Exchequer for levying. Take for example this passage from 5 Eliz. 1 cap. 4:

   And that the said Iustices . . . shall yerely in Michaelmas Terme, certifie by estreate, the fines and forfeitures of euery the offences conteined in this estatute (that shall be found before them) into the Court of the Escheequer. (*The Statutes at Large*, II, ff. 259a–259b)

See also Cowell, *Interpreter*, f. Dd1r: '*Estreate* . . . is vsed in our common lawe, for the copie or true note of an originall writing'.

> But to *preserue inuiolated right*,
> Oft spilles the *principall*, to saue the part;
> So much more then is that of power and art,
> That seekes to saue the subject of her skill,
> Yet neuer doth from *doome of right* depart:
> As it is greater prayse to saue, then spill,
> And better to *reforme*, then to cut off the ill. (V.x.2)

The only clear thing about this stanza is that Spenser is determined to be as ambiguous as possible: what is 'that Vertue', what is 'the principall' and what 'the part', what is 'that' (l. 5), and what is 'the subject of her skill'? By one way of interpreting this passage, we might think Spenser is suggesting that mercy is 'of power and art' in its ability to save Duessa from her 'iust verdict', preserving the defendant (the 'principall') instead of the 'inuiolated right' of legal justice ('the part'). In this reading, mercy would not depart from 'doome of right' in the same sense in which Seneca argued, namely in that the 'subject of her skill' is the transgressor, who despite the trespass against the queen can still be reformed and saved. But this, of course, is manifestly not what happened in Elizabeth's trial of Mary, and the political rhetoric surrounding the trial suggests, as has been argued elsewhere, a much different reading.[66] According to this second interpretation, the 'subject of her skill' and 'the principall' are not the defendant, but the commonwealth, while 'the part' refers to the defendant. Spenser's ambiguity of reference in this passage leaves these two interpretations cohabiting in the text, neither one fully capable of emerging as the dominant or successful construction.

An important clue to the poet's meaning in this stanza comes in line 7. Spenser seems to be contradicting himself in arguing that the 'that' of line 5 is greater than justice, when he also notes that it 'neuer doth from doome of right depart'. But what is 'that'? The poet presumably expects the reader to link 'that' with the 'Mercie' of the first stanza, and yet no early modern expositions of mercy claim that it can preserve the 'doome of right'.[67] Mercy, by definition, is a dispensation from the 'iust verdict' and a violation of 'inuiolated right'. Equity, on the other hand, also violates the 'iust verdict', but, as was universally agreed in both antiquity and in the sixteenth century, 'neuer doth from doome of right depart'. As Spenser goes on to divulge in the succeeding stanzas, Duessa is 'damned by them all', but her harsh judgment is 'tempred' by Mercilla 'without griefe or gall'; finally, enforced by 'strong constraint', Mercilla executes judgment and dispatches Duessa. The narrative result again makes havoc of Spenser's meaning in the earlier stanzas, and seems to leave the legal debate frustratingly open.

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66 See René Graziani, 'Elizabeth at Isis Church', p. 380.

67 Compare, for example, Justus Lipsius's *Six Bookes of Politickes or Ciuil Doctrine*, trans. William Jones (London: William Ponsonby, 1594), lib. 2, cc. xii–xiii, '*the definition of Clemencie*'. Here Lipsius concedes that clemency, that 'moon of Empires', 'goeth somtime a litle aside, from this sharpe & piercing sunne of iustice'. (pp. 30–32)

What Spenser has effectively achieved in this fusion, or perhaps confusion, of equity and mercy, is exactly what St German achieved half a century before him: the merciful prerogative of the crown has been subsumed into the equitable jurisdiction. The question has not been left open, but has been, with a very serviceable ambiguity, closed. Royal mercy, for Mercilla, amounts to the absolute fairness of equity, and no more. Equity, in turn, is an interventionist justice that mediates the occasionally conflicting requirements of human and natural or divine law.[68] The implications of this argument for Elizabeth's domestic and foreign policy are enormous, as Spenser is immediately at pains to show. Because mercy is the most laudable characteristic in a monarch, Elizabeth has not only the opportunity, but the moral obligation to intercede in injustice overseas. As Spenser goes on to say, Elizabeth's merciful equity has licence to stretch from 'the'vtmost brinke of the *Armericke* shore' to the 'margent of the *Molucas*' (V.x.3). Immediately following the poet's revolutionary reformulation of mercy as equity, Arthur and Artegall are called out upon their final quests, Arthur to succour Lady Belge against Gerioneo and Artegall to restore Irena from the depredations of Grantorto. The historical antecedents of these episodes are transparent, have long been recognized, and have been well discussed elsewhere.[69] It remains only to emphasize here that Elizabeth's licence for this international, even imperialist expansion is the nature of her perfect English equity: a marriage of personal conscience and rigorous common law justice, predicated on the moral duty of the judge to refer all judgments to their ultimate bases in the laws of reason and of god. In defending and extending reformed English religion, Spenser argues, Elizabeth will be spreading equity and the rule of law beyond the sea.[70]

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[68] This fusion of equity and mercy is apparent, as in St German, by a mixing of the rhetoric of 'hard' and 'soft' justice; Mercilla's merciful equity is 'tempered' (V.x.4), like the 'mollified' (misguided) mercy of Artegall. Mercilla's mercy-that-is-equity can thus be seen, in semantic terms, to be a subtle revision of Artegall's equity-that-is-mercy. Though both attract the paradox of hard versus soft justice, and the confusion of St German's terms, Mercilla's version does so correctly: soft rhetoric with hard action.

[69] See, for example, the critical summaries in *Variorum*, V, 299–347.

[70] The particular relevance of this imperial mercy to Ireland must have been in the forefront of Spenser's mind at the time he was writing and publishing Book V. The pleas for 'mercy' coming from Elizabeth's English subjects in Ireland were as far distanced from 'pardon' and 'reprieve' as the parliamentary petitions during Mary's trial decades earlier. A characteristic example is the bold urging of the anonymous author of *The supplication of the blood of the English most lamentably murdered in Ireland, cryeng out of the yearth for revenge* (ca 1598), ed. Willy Maley, *Analecta Hibernica*, 36 (1994), 1–90 (p. 72):

> Nay rather is it not cruelty to spare them that shall cutt the throates of true subiectes? Is it not crueltie to shewe mercy, when mercy embouldeneth to mischeefe? where neither pleadges, nor oathe can ensure any loyaltie? It is extreame crueltye, (and with leave be it spoken) no great wisdome to cherishe them that shall wrest the scepter out of yore handes, that shall murder yore faithfull people: ravishe theire wives and daughters: beate out the braines of theire younge children in the armes of their nurces.

In Spenser's formulation, the assimilation of *aequitas* and *clementia* has a bit both of carrot and stick: the Chancellor's jurisdiction must be ordered after the rules and grounds of the common law, but it is precisely this rationalization and integration of the system that makes the international and imperial adventures at the end of Book V possible. For a dynasty with a record for consolidating executive power, Spenser's allegory offers a concession and an opportunity, both tied up in an ebullient English nationalism – the same nationalism that animates Smith's *De Republica Anglorum*, with its pugnacious paeans to common law superiority on the European stage. But an important question arises from the assimilation of mercy and equity, with its blurring of constitutional justice and princely dispensation from the laws – a question that is also implicit in the tensions between *jus naturale* and *jus gentium* in Spenser's handling of Bracton on *similia*. When Bracton argues in the preamble to *De legibus* that '*bona sit occasio a similibus procedere ad similia*', he is in the midst of finessing a difficult relation between the executive power of a king (in parliament) and the conservative judicial power of the courts; the following paragraph in his preamble is his famous monitory statement on the character of a judge (which of course includes the prince):

> Let no one, unwise and unlearned, presume to ascend the seat of judgment, which is like unto the throne of God, lest for light he bring darkness and for darkness light, and, with unskilful hand, even as a madman, he put the innocent to the sword and set free the guilty, and lest he fall from on high, as from the throne of God, in attempting to fly before he has wings.[71]

The introduction of new legal remedies is beset in Bracton's formulation by the dangers of a lawyer, a judge, or a prince working without counsel; it is the principle of argument *a similibus* that is to guard against such autocratic innovations. Here, perhaps, we see one of the origins of Spenser's interest both in the struggle over *assumpsit* that led to Slade's case, and in the relation of equity to mercy that so vexed lawyers and judges throughout the sixteenth century: both jurisdictional struggles raised the spectre of a legal system unhinged from the security of its foundations, and perhaps in danger of slipping into the manage of an executive prerogative power. The laws, in these contested moments of conceptual and jurisdictional struggle, were anything but 'stonye tables plaine steadfaste & imoveable'. In the following book of the poem, Spenser takes up under the heading 'courtesy' the crucial legal question he has left unanswered: what is the role of the monarch in a polity of 'mixed constitution', governed by the rule of law? If even mercy, the most traditional royal prerogative, is to be subordinated to, or at least mixed with, a legal equitable jurisdiction, what is left for the queen?

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[71] Bracton, *De legibus*, II, 21.

Chapter 6

COURTESY AND PREROGATIVE IN
THE LEGEND OF SIR CALIDORE

> For other orders and other manners of living ought to be ordain'd in a
> good subject, and others in a bad; nor can the forme be like, where the
> matter is quite contrarily dispos'd . . . Touching the innovation of these
> orders on a sudden when every one knowes they are not good; I say, that
> this unprofitablenesse, which is easily knowne is hard to correct, for to
> effect this, ordinary meanes serve not, they being rather hurtfull; but of
> necessity extraordinary remedies are to be put in practise, as violence and
> warre . . .
>
> Niccolò Machiavelli, *Discourses upon the first Decade of Titus Livius*, c. 18

*T*HE LEGEND of Artegall shows interventionist equity doing what it does
best – intervening – in situations where each of the parties in dispute has a
justifiable basis in one or another of the various codes (natural, divine,
human) governing civil life. However, this kind of interventionism costs
Artegall, like his sometime-antecedent Lord Grey, a good deal of trouble.
Prematurely recalled by Gloriana from the 'saluage Island', Artegall is harassed
by a pair of hags, Envy and Detraction, and set upon by the Blatant Beast. The
cause of their onslaught, beyond the inherently malicious disposition of such
figures, is not explored in Book V, but we may surmise that something about
Artegall's conduct has rendered him vulnerable. His fault may lie in his very
interventionism itself – at once the basis of his authority and the means of its
subversion. What, for example, do Pollente and Munera, the Giant, Amidas
and Philtera, Radigund, Duessa, and Gerioneo think of Artegall's justice? In
the context of the pervasive historical reference of Book V, these figures seem
less like allegorical props and more like real persons; the particular pathos of
Talus's execution of the Giant in canto ii of Book V, for example, has often
been cited.[1] But if the machinations of malcontents can obstruct or even quash
Artegall's righteous reformations, what will become of his victories and judg-
ments? How can justice overcome or accommodate such invidious enemies?

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[1] See, for example, Annabel Patterson, *Reading Between the Lines* (Madison: University of
Wisconsin Press, 1993), pp. 80–116.

Gloriana's intervention at the end of Book V not only signals the limitations of Artegall's efficacy as a righteous judge, but points to an important jurisdictional conflict between crown and crown servant: what is the legal extent of royal prerogative, and should it intervene directly in the processes of law and political administration? If so, to what end? The answers to these questions are closely linked to the further perfection of Artegall's equitable justice. Building on his presentation of equity and mercy in Mercilla's trial of Duessa (V.ix), Spenser considers in Book VI the complementary interaction between justice and a new principle, 'courtesy', that modifies even equitable justice in accordance with the dictates of honour. In the exploration of courtesy, Spenser completes his vision of justice, drawing heavily on technical legal language and ideas to explore the relation of the queen to her ministers in the rule of law.

TRIBUTE, *DECORUM*, AND 'JUSTICE HARMONICALL'

Critical readings of Calidore's quest have failed to agree on a primary source for Spenser's virtue of courtesy. While some readers prefer to link courtesy with the 'courtesy books' of Castiglione and Guazzo,[2] others associate the virtue with a kind of 'generosity' or 'gentleness', often inflected by New Testament teachings on patience and grace.[3] Probably the most convincing single approach is that adopted by Rosemond Tuve in *Allegorical Imagery*, where she explores several distinct traditions of formulating the virtues and vices, including the Ciceronian and Macrobian schools with their emphasis on the four cardinal virtues.[4] It is not my intent to establish Cicero's divisions as the

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[2] C. S. Lewis famously described courtesy as the 'poetry of conduct' in *The Allegory of Love: A Study in Medieval Tradition* (Oxford: Clarendon Press, 1936), p. 351. See also Catherine Bates, *The Rhetoric of Courtship in Elizabethan Language and Literature* (Cambridge: Cambridge University Press, 1992), pp. 136–72, and Kenneth Borris, 'courtesy', in *SE*, pp. 194–95.

[3] See Maurice Evans, 'Courtesy and the Fall of Man', *English Studies*, 46 (1965), 209–20; Anon., 'Order, Grace and Courtesy in Spenser's World', *Patterns of Love and Courtesy: Essays in Memory of C. S. Lewis*, ed. John Lawlor (London: Edward Arnold, 1966), pp. 178–202; Richard Neuse, 'Book VI as Conclusion to *The Faerie Queene*', *ELH*, 35 (1968), 329–53; Dorothy Woodward Culp, 'Courtesy and Moral Virtue', *SEL*, 11 (1971), 37–51; Robert L. Entzminger, 'Courtesy: The Cultural Imperative', *PQ*, 53 (1974), 389–400; Gerald Morgan, 'Spenser's Conception of Courtesy and the Design of the *Faerie Queene*', *RES*, 32 (1981), 17–36; Mark Archer, 'The Meaning of "Grace" and "Courtesy": Book VI of *The Faerie Queene*', *SEL*, 27 (1987), 17–34; and Michael Trainer, ' "The Thing S. Paule ment by . . . the courteousness that he spake of": Religious Sources for Book VI of *The Faerie Queene*', *SS*, 8 (1990), 147–74. At best, these studies argue that courtesy supplements justice by offering a gentler, kinder vision of social interaction after the harsh judgments of Book V.

[4] Rosemond Tuve, *Allegorical Imagery: Some Mediaeval Books and their Posterity* (Princeton: Princeton University Press, 1966), pp. 57–143. The original passage from Cicero's *De officiis*, which Spenser undoubtedly knew well, reads almost like a blueprint for the scheme of seven virtues in *The Faerie Queene*; Cicero claims that all of virtue consists in four parts, which without too much contortion fit Spenser's own divisions very precisely: we can discern

basis of Spenser's entire moral philosophical project, yet his scheme has a number of features that help to illuminate Spenser's courtesy, in particular. First, the language of Cicero's formulation puts exactly the right accent on Spenser's courtesy: *tribuendo suum cuique* – 'rendering to each his own' – is immediately recognizable as the foundation of Calidore's philosophy. In Spenser's first proper definition of courtesy, for example, he describes it as an ability in knights and ladies 'to beare themselues aright / To all of each degree, as doth behoue'. He goes on in the same stanza to break the virtue down into its component parts: the courteous knight or lady ought first 'well to know their good', after which they must 'yeeld . . . what they owe' – as Spenser writes, 'great skill it is such *duties* timely to bestow' (VI.ii.1; my emphasis). This definition is repeated in Calidore's Acidalian vision in canto x, often cited as the allegorical centrepiece of the book; Colin Clout there deciphers the dance of the Graces with this explanation:

> They teach vs, how to each degree and kynde
> We should our selues demeane, to low, to hie;
> To friends, to foes, which skill men call Ciuility. (VI.x.23)

Essential to Cicero's principle and to Spenser's courtesy are two elements: the ability to recognize what belongs to or befits a person (*suum)*, and a disposition to render that befitting duty. With these correspondences in mind, we may return to the paradigm of courtesy that Spenser presents in the proem to Book VI. Speaking directly to Elizabeth, he acknowledges that the fairest 'patterne' of courtesy is in the queen herself. He then begs her pardon for the double act of drawing out this virtue from her person before returning it back to her: 'so from the Ocean all riuers spring, and **tribute** backe **repay** as to their King' (VI.proem.7). In this paradigm of courtesy, fronting the ensuing book as an interpretative template, Spenser emphasizes the virtue as a literal 'rendering to each his own' – even going so far as to echo Cicero in the use of 'duties' (*officii*) and 'tribute' (*tribuere*).

A second crucial aspect of Cicero's formulation is its division of justice into three separate principles, thereby linking *tribuere* to justice proper, *hominum societate tuenda*. Likewise, Spenser carefully contrives to cast courtesy as the complement to the justice of Book V, leaving no doubt that Calidore, in pursuing the Blatant Beast, is taking up Artegall's project where it has gone wrong. When the two knights meet in the opening stanzas of Book VI, Spenser intimates through syntactical ambiguity the important connection between them: 'Who whenas each of other had a sight, They knew them selues, and

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'holinesse' (*in perspicientia veri sollertiaque*), temperance and chastity (*in omnium . . . ordine et modo, in quo inest modestia et temperantia*), Arthurean magnanimity (*in animi excelsi atque invicti magnitudine*), friendship (*in . . . rerum contractarum fide*), justice (*in hominum societate tuenda*), and, finally, courtesy (*in . . . tribuendo suum cuique*); see Cicero, *De officiis*, ed. Walter Miller (Cambridge: Harvard University Press, 1913), p. 16.

both their persons rad' (VI.i.4). Artegall subsequently gives Calidore crucial information on the location of the Blatant Beast, and wishes him success on his quest. For his part, Calidore laments to Artegall, 'But where ye ended haue, now I begin' (VI.i.6), a comment more intriguing for its ambiguity. These pointed narrative links between the two books echo Cicero in suggesting the conceptual interdependence of justice and courtesy.

Speaking more specifically to Cicero's divisions, a conspicuous element of Spenser's early exposition of courtesy in Book VI of *The Faerie Queene* is its use and application. Calidore, the knight of courtesy, is universally loved for his 'faire vsage and conditions sound', a love that gains him place in 'all mens liking' and that purchases 'greatest grace' with the powerful. In the context of his virtue, the privilege of this 'liking' and 'grace' gives him a unique opportunity to mould the social order:

> Which he could wisely *vse*, and well **apply**,
> To please the best, and th'euill to embase. (VI.i.3)

Calidore virtuously applies courtesy to reinforce and maintain social distinctions and order: in pleasing the best and embasing the worst, he uses honour (or the withholding of honour) not only to exalt virtue, but to give virtuous knights and ladies their proper social distinction. In recognizing and rendering what is befitting to each person, his judgments are closely linked to the more general task of justice, *hominum societate tuenda*.

One feature of Spenser's courtesy unmatched by Cicero's exposition of the cardinal virtues is its emphasis on beauty and the consequent ability to strike love into the hearts of all who behold it: amongst all the virtues, writes Spenser, 'growes not a fayrer flowre, then is bloosme of comely courtesie'. Calidore is likewise graced with 'gentlenesse of spright', 'comely guize', and 'gracious speach' that 'steale mens hearts away' and make him 'beloued ouer all' (VI.proem.3–VI.i.3). In this respect, Spenser's courtesy draws directly on another of Cicero's aspects of virtue, *decorum*. Like Aristotle's ἥ δικαιοσύνη, Ciceronian *decorum* can be both general and particular. In its specific sense, it leads to temperance and self-control; in its general sense, however, it interacts with all the virtues individually, giving them a consistency and order that beautifies them:

> For, as physical beauty with harmonious symmetry [*apta compositione*] of the limbs engages the attention and delights the eye [*movet oculos et delectat hoc ipso*], for the very reason that all the parts combine in harmony and grace, so this propriety [*hoc decorum*], which shines out in our conduct, engages the approbation of our fellow-men by the order, consistency, and self-control [*ordine et constantia et moderatione*] it imposes upon every word and deed [*dictorum omnium atque factorum*].[5]

5   Cicero, *De officiis*, pp. 100–01; see also pp. 98–99, where Cicero compares the relationship between decorum and justice to that between beauty and health.

The parallels with Spenser's formulation of courtesy should by now be quite clear: *decorum* is a mode of beauty, springing from the order of the soul and imposing harmony on every action, that elicits the approbation and love of all who perceive it. Cicero places significant stress on the expression of this mode in words and deeds (*dictorum omnium atque factorum*), a dichotomy likewise emphasized by Spenser in his presentation of Calidore:

> [His] euery deed and word, that he did say,
> Was like enchantment, that through both the eyes,
> And both the eares did steale the hart away. (VI.ii.3)

The pairing of 'eyes and ears' and of 'words and deeds' subsequently runs throughout Book VI, strengthening the links between Spenserian courtesy and Ciceronian *decorum*.[6] In its general form, *decorum* – like courtesy – adorns 'honesty' or nobility as a whole, conferring on it a grace that makes it not only praiseworthy, but beautiful.

Cicero's *decorum*, like Spenser's courtesy, adorns virtue not only in outward expression, but in the inward order and consistency of the soul. According to Cicero's definition, '*decorum id esse, quod consentaneum sit hominis excellentiae in eo, in quo natura eius a reliquis animantibus differat*'. ['*Decorum* is that which harmonises with man's superiority in those respects in which his nature differs from that of the rest of the animal creation'.][7] The central term of this definition is '*consentaneum*', which might be translated into English as 'in harmony (with)' or, more literally, 'consenting (with)'. The beauty of Cicero's *decorum* thus appears to arise from its nature as a principle of 'befittingness' applied to the human soul; mediating between the moral virtues, *decorum* acts as a keystone that confers beauty on virtuous action by giving it consistency. That Spenser's courtesy also accommodates such an inward, intellectual process is evident and unsurprising. For example, the poet writes in the proem to Book VI that 'vertues seat is deepe with the mynd' and 'not in outward shows, but inward thoughts defynd' (VI.proem.5). Internal and external courtesy are furthermore closely linked; as Calidore teaches Crudor in canto i, 'In vaine he seeketh others to suppresse, who hath not learnd him selfe first to subdew' (VI.i.41).

Cicero's two formulations of this propriety – the external, social virtue that 'gives to each its due' and the internal, intellectual virtue that orders and beautifies the soul – provide the bases for Spenser's virtue of courtesy. Cicero's exposition of *decorum*, too, suggests how justice and courtesy are related; for while *decorum* as an internal principle applies to all the virtues and powers of the soul, it is peculiarly appropriate to justice:

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6 See, for example, VI.i.2.3–6, VI.ii.2.1–4, VI.ii.13.1–5, VI.ii.24.3–5, VI.iii.16.7–9, VI.iii.19.1–2, VI.vi.76–9, VI.vi.42, VI.ix.26, VI.x.30.3–7, and VI.xii.28.
7 Cicero, *De officiis*, pp. 98–99.

> We should, therefore, in our dealings with people show what I may almost call reverence [*reverentia*] toward all men – not only toward the men who are the best, but toward others as well. For indifference to public opinion implies not merely self-sufficiency, but even total lack of principle. There is, too, a difference between justice and considerateness [*inter iustitiam et verecundiam*] in one's relations to one's fellow-men. It is the function of justice not to do wrong to one's fellow-men; of considerateness [*verecundiae*], not to wound their feelings; and in this is the essence of *decorum* best seen [*perspicitur*].[8]

The contrast between justice and considerateness (*verecundia*) shows *decorum* at its clearest. As Artegall finds in his own quest, even equitable justice can lead to resentment and intervention; in neglecting what others think of him, he has displayed arrogance, and carelessness. In the world of practical policy, it is not enough merely to correct legal justice in accordance with equity; even the equitable judgment must be made with considerateness, so as to guarantee not only that justice is done, but that it maintains its practical efficacy. One must not only do good, Cicero argues; one must do good well.[9]

The distinction between justice and *verecundia* was taken up by the political theorist and contemporary of Spenser's, Jean Bodin; his extensive use of this idea may help to account for Spenser's interest in the subject.[10] Bodin, writing in the 1570s and 1580s in response to the claims of Huguenot separatists, attempted in his *Six Livres de la République* to fashion a justice that aimed not for equality nor for equity, but for peace.[11] In direct response to Aristotle's double treatment of arithmetic and geometric (or proportional) forms of justice,[12] Bodin treats beyond these of a 'justice harmonicall' that, mixing strict equality with seemly proportion, will satisfy both the people and the aristocracy. According to Bodin, this type of justice seeks 'a little to decline from that inflexible straightnesse of *Polycletus* his rule, as also from the vncertaine pliantnesse of the Lesbian rule, that is to say, from the Arithmeticall, and

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8 Cicero, *De officiis*, pp. 100–03.

9 Quintilian takes up Cicero's observations on *decorum* in the *Institutio Oratoria*, xi, where he considers *decorum* as an (and perhaps the) animating principle of rhetoric. I regret not having space to deal with the rhetorical aspect of *decorum* here.

10 Bodin's influence on Spenser's thought, particularly in evidence in *A view*, was traced in detail by H. S. V. Jones in 'Spenser's Defense of Lord Grey', *Illinois Studies in Language and Literature*, 5 (1919), 7–75.

11 The main thrust of Bodin's 1576 *Six Livres de la République* was its attack on the theory of the mixed constitution, as proposed by Machiavelli in Florence and Contarini in Venice; for this reason, and because of its confutation of the separatist Huguenots, it became widely read in England – for example, it is not widely recognized that William Lambarde's *Archeion, or, A discourse vpon the high courts of iustice in England* (drafted in the 1590s, though not published until 1635), shows an intimate and sympathetic familiarity with Bodin's absolutist thought. The *Six Livres* were eventually translated into English by R. Knollys as *The six bookes of a Commonweale* (London: A. Islip and G. Bishop, 1606).

12 See Aristotle, *Nicomachean Ethics*, 5. 3.

Geometricall proportion of gouernment of estates'.[13] Instead, it provides a tempered rule: 'not so stiffe, but that it may bee easily bowed when need shall be, and yet forthwith become also straight againe'.[14] Bodin is again here eating St German's cake, and having it, too: like the English equity of the Chancery, Bodin's rule can be flexible and pliant, but firmly enough entrenched in the overall rule of law to appear rational, ordered, and fundamentally legal. But Bodin recognizes a political problem with the administration of equity as defined by the common lawyers of England, in that such equity seeks justice for its end, and not the peace of the realm. In order to establish peace, as Bodin notes, justice must aspire to something beyond mere equity:

> Neither is it enough that the lawes and magistrats constraine the subiects for feare of punishment to forbeare to wrong one another, and so liue in peace; but they must also bring to passe, that although there were no lawes at all, yet they should be at vnitie among themselues, and one of them still loue another.[15]

'Justice harmonicall' can bring about such peace and unity by its mysterious commingling of arithmetic and geometric proportion, adding together four distinct elements of good government: 'Law, Equitie, the Execution of the law, and the Office or Dutie of the Magistrat or Iudge'.[16] While the fine points of Bodin's harmonical recipe remain somewhat obscure, the main principle of his argument is clear: the governor must supplement law and equity with something else, a mode of implementation that will draw his subjects to the law of their own accord. Bodin's harmonical justice not only delivers perfect justice, but delivers it in such a way – with such policy, even – that it is universally accepted and supported. In Bodin's ultimate political goal of 'peace' or εἰρήνη, we may perceive (as Dunseath has noted) Artegall's quest to liberate Irena in Book V, canto xii; Artegall's failure to achieve this quest without incurring the attack of Envy and Detraction and of the Blatant Beast in turn gives rise to Calidore's own quest. Final εἰρήνη is not, suggests Spenser, the achievement of Artegall, but of Calidore.

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13 Bodin, *Six bookes of a commonweale*, p. 760. Appropriating the traditional metaphor of the straight, arithmetical rule versus the pliant, geometrical corrective, Bodin here radically enlarges the limited princely role of Seneca's *clementia*.
14 Bodin, *Six bookes of a commonweale*, p. 760.
15 Bodin, *Six bookes of a commonweale*, p. 759.
16 Bodin, *Six bookes of a commonweale*, p. 760.

THE COURTEOUS REFORMATION OF JUSTICE:
THE FAERIE QUEENE VI.I–VI.II

The special relationship of courtesy to justice implied in this Ciceronian formulation is the most salient feature of Calidore's first two adventures in Book VI of *The Faerie Queene*. In these two episodes, the knight of courtesy repeats Artegall's own early adventures both narratively and verbally, giving literal force to his remark to Artegall that 'where ye ended haue, now I begin' (VI.i.5). For example, in his reform of Crudor and Briana, Calidore confronts a 'custom of the castle' episode nearly exactly parallel to Artegall's experience with Pollente and Munera in Book V, canto ii. The unnamed squire who first alerts Calidore to the '*custome* lewd and ill' practised at the castle, notes that Briana and her seneschal Maleffort occupy a strategic position above a rocky strait, similar to Pollente's castle above the bridge. The custom itself is also similar to that observed by Pollente and his groom, Guizor:

> For may no Knight or Lady passe along
> That way, (and yet they needs must passe that way,)
> By reason of the streight, and rocks among,
> But they that Ladies lockes doe shaue away,
> And that knights berd for **toll**, which they **for passage pay**. (VI.i.13)

'Passage pay' recalls the 'passage penny pay' of Pollente's custom, and the 'Ladies lockes' and 'knights berd' refer directly back to Guizor's 'polling' and 'pilling' of the poor. Calidore, like Artegall before, deems this custom 'a shamefull *vse*' and 'to be *ouerthrowne*', and immediately sets out for the castle to take Briana and Maleffort in hand.

The legal colouring of this episode, too, parallels the earlier episode involving Artegall; legal diction figures in Briana's custom itself ('*obserue*', '*mayntaind*', '*custome*', '*vse*', '*ouerthrowne*', '*reare*', '*Seneschall assynd*', '*executes*', '*execution of . . . lawlesse doome*'; see VI.i.13–16), in Calidore's encounter with Maleffort ('*pursue*', '*villain*', '*reft*', '*piteous spoile*', '*iniurious theft*', '*weft*', '*iustifyde*', '*defyde*', '*party . . . take*', '*raunsome*', '*damadge*'; see VI.i.18–20), in Calidore's confrontation with Briana ('false *traytor* Knight', '*murdred*', '*Seneschall*', '*rob*', '*spoile*', '*withstand*', '*treason vndertsand*', '*auenge*', '*pay* thee with thy *right*', 'shame *requight*', '*answerd*', '*afford*', '*blemish*', '*punish*', '*breake bands* of *ciuilitie*', 'wicked *customes make*', '*defame*', 'noble *armes*', 'gentle *curtesie*', '*forgoe*', 'euill *manner*', '*maintaine*', '*replyde*', '*recreant*', '*defyde*', '*defiaunce*', '*liberty*', '*deface*'; see VI.i.25–28), and in Calidore's battle with Crudor ('*tooke in hand . . . quarrell to maintaine*', '*intreat*', '*vsage*', '*suppresse*', '*subdew*', '*mercie*', '*pay* each . . . with his *own*', '*graunt*', '*saue*', '*conditions*', '*propound*', '*performe . . . precept*', '*sweare*', '*withouten dowre* or *composition*', '*release . . . condition*', '*accepting*', '*faithfull oth*', '*bynding . . .* firmely *to obay*', '*swore . . . true fealtie*', '*accord*', '*compeld*',

'*acknowledg'd bound*', '*restord*', '*freely gaue*', '*paine*', '*retaine* nor *land* nor *fee*', '*hyre*', '*rightfull meed*', '*recompence*', 'former *wrong*', '*agreed*'; see VI.i.33–47). That Spenser intended this episode as a rewriting of Artegall's encounter with Pollente and Munera is underscored by a string of verbal echoes (including the crucial '*custom*' itself), and by the general recourse to a legal vocabulary.

But Spenser also intended this episode as a critical rewriting of Artegall's original. That this is so is suggested by the repeated association of Maleffort with the word *execute* (VI.i.15–16), a word used nowhere else in Spenser's poetry except in relation to Talus, Artegall's own executor (see V.i.12.3, V.iv.2.3, and V.viii.29.9). The link between Talus and Maleffort strengthens the association between Artegall's interventionism and Briana's predatory profiteering: to what degree is either of these actions licensed, or justifiable? In reforming the custom of Briana's castle, then, Calidore is implicitly also revising Artegall. His course of reformation is initially as brutal and peremptory as Artegall's in the previous book, as he quickly and rashly kills both Maleffort and Briana's porter. But here Calidore's adventure begins to diverge from precedent. Briana, echoing Munera's pleas to Talus in Book V, rightly upbraids Calidore for his conduct, saying:

> False *traytor* Knight . . . no Knight at all,
> But scorne of armes that hast with *guilty* hand
> *Murdered* my men, and slaine my *Seneschall*. (VI.i.25)

Calidore's response is starkly in contrast to that of Talus: 'much . . . abashed at that word', he defends himself persuasively, but alters his strategy. Instead of delivering Briana to her punishment, he seeks to convert and reform her to civility: '*forgoe* this *euill manner*, which ye here *maintaine*', he counsels her, and 'doe in stead thereof mild *curt'sie* showe to all, that passe' (VI.i.27). Briana at first rebuffs him, dispatching her dwarf to summon her champion Crudor. After defeating Crudor in a battle that, again, parallels Artegall's contest with Pollente, Calidore accedes to Crudor's plea for mercy, sparing him. He then delivers a round lecture on courtesy, takes a personal oath of fealty, swears Crudor to uphold courteous behaviour, and provides for Crudor's marriage to Briana. In this judgment, Calidore manages not only to reform Crudor and Briana, but also to bring them both to love him in the process; Crudor's sworn fealty and Briana's grateful thanks ensure that justice has not only been done, but has been done in a way that, benefiting all, will stick. In a final *coup* of kindness, Calidore declines Briana's offer to invest him with her castle and lands, passing the title instead to the injured squire and his lady, 'for *recompence* of all their former *wrong*' (VI.i.47).

Calidore's second judgment, the trial of Tristram for the killing of the discourteous knight, likewise parallels Artegall's first encounter in Book V, the judgment of Sanglier. Although Spenser inverts the narrative in the retelling,

the chronology of the discourteous knight's episode pursues Sanglier's precedent quite closely. Travelling through the forest with his lady, the discourteous knight comes upon Priscilla sitting with her lover Aladine; thereupon the discourteous knight 'inly gan her louer to enuy, and wish, that he part of his *spoyle* might share' (VI.ii.17). Recognizing his own lady to be a let, the discourteous knight puts her down from his horse and sets upon Aladine. During the ensuing commotion, in which the knight seriously wounds Aladine, Priscilla escapes into the undergrowth. The discourteous knight, deprived of his prey, departs in a rage with his own lady, abusing her and forcing her to follow behind on foot. Tristram, seeing the dishonour being done to the lady, intervenes, incurs the discourteous knight's anger, and successfully defends himself, killing the knight. Arriving late, Calidore judges the event of Tristram's victory and installs him in the place of the discourteous knight, giving him horse, armour, and lady.

This episode is, again, characterized by the same legal language as its original in Book V, canto i. This language appears in Calidore's initial interview with Tristram ('*armes impugneth*', '*broken*', '*law of armes*', '*breake*', '*witnesse*', '*offer . . . wrong*', '*blame*', '*declare*', '*in lieu*', '*pertaine*', '*requite*', '*breach*', '*inquire*', '*due hire*', '*deny*', '*cleard*', '*th'imputed blame*', '*charge with guilt*', '*quite clame*'; see VI.ii.7–14), in his subsequent interrogation of the injured lady ('*irreuocable*', '*cause*', '*rayse . . . blame*', '*concernes*', '*clere*', '*truth discouer*', '*frank loues, free*', '*spoyle . . . share*', '*presumpteous powre*', '*gainesayd*', '*defend*', '*iustifie*', '*requested*', '*better right to trie*', '*time . . . giue*', '*termes aby*', '*outrage*', '*wreake . . . guilt* of his owne *wrong*', '*appease*', '*t'auenge*', '*refused*', '*iust cause accused*', '*complayning*', '*abused*', '*regarded . . . playnt*'; see VI.ii.15–23), and in his resolution of the case ('*sweare faith*', '*recreant*', '*desolate*', '*safegard*', 'thankfull *guerdon*', '*repay*', '*seruice*', '*accept*', '*despoyling*'; see VI.ii.34–39). Calidore passes two judgments in this episode. First he exonerates Tristram – under suspicion for breaking the law of arms by fighting with someone above his station – and accepts his claim that the discourteous knight should not have attacked him, unarmed and unhorsed, in the first place.[17] Similarly, he clears the lady of guilt for the discourteous knight's anger and consequent death by recourse to principles of natural law:

> Now sure (then said Sir *Calidore*) and right
> Me seemes, that his befell by his owne *fault*:
> Who euer thinkes through confidence of might,
> Or through support of count'nance proud and hault
> To wrong the weaker, oft falles in his owne *assault*. (VI.ii.23)

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17 As Gerald Morgan has rightly noticed in 'Spenser's Conception of Courtesy and the Design of the *Faerie Queene*', the chivalric precept of 'courtesy', a part of the law of arms, forbade knights to use unfair advantage.

As in Calidore's first adventure, this episode begins to diverge from its Book V precedent about halfway through. Priscilla's escape denies the discourteous knight the option of imitating Sanglier's earlier abduction. The change in narrative allows Spenser a revised conclusion without, however, altering the main issues of Calidore's judicial dilemma from those of Artegall before him. Like Artegall, Calidore must determine whether to allow a judgment by battle that has, in this case, already occurred. Like Artegall, Calidore must inquire into the history of the case to determine how to rule. Like Artegall, Calidore bases his judgment on equitable precepts from natural law and human codes, even though the judgment seems to contradict a fundamental and obviously applicable code of conduct (here the law of arms; see VI.ii.7). Because of the economy of characters in this version, however – one knight dead, one new knight created and inserted – Calidore is able to tie up the surviving characters neatly in a socially reformed couple. Instead of Artegall's just punishment of a scornful Sanglier, Calidore again, in the terms of his judgment and resolution, binds the affected parties to himself by courtesy: Tristram he dubs knight and calls his squire, and the lady – now fitted with a courteous and chivalrous lover – has only Calidore to thank for her salvaged honour. Instead of redelivering Artegall's decisions, Calidore delivers equitable judgments in such a manner as to bind the plaintiffs and defendants both to himself and to each other with ties of virtue, establishing not only justice, but harmony.

COURTESY AND THE *LEX ANGLIAE*

Like Spenser's virtue of justice, courtesy participates in a peculiarly English legal set of arguments. Critics of Book VI have tended to assume the obvious in linking 'courtesy' with the life of the court and the practice of courtship; as Spenser writes at the opening of canto i, 'of Court it seemes, men Courtesie doe call'. But 'courtesy' had another, widely used, and very relevant meaning in Elizabethan England, one related to the law. The *lex Angliae*, more commonly known as the 'courtesy of England', or even 'the courtesy', was an ancient custom of land tenure famously described by Littleton in the *Tenores Novelli* and in frequent use in Elizabeth's day.[18] In the English version of Rastell's 1579 *An exposition of certaine difficult and obscure words*, it is described in this way:

> To hold by the *curtesy of Englande* is, there where a man taketh a wife inheritrix, and they haue issue a sonne or daughter, and the wife dieth, whether the issue be deade or a liue, the husbande shal hold this land for terme of his life by the *curtesie of England*, and by the law. And in this case the fee, and the right

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[18] 'Tenancy by the courtesy' was one of the hinges around which turned Arthur Gorges's protracted legal wranglings. See p. 76, above, and pp. 167–68, n. 28, below.

remaineth in the person of hym of whome he holdeth. And for that this tenant may not alien in fee, nor for terme of anothers lyfe, and if he doe, it is lawful to him in the reuersion to enter.[19]

And, as Littleton adds, 'he is called Tenant by the *curtesie of England*, because this is vsed in no other realme but in England only'.[20] The origin of the term, as seems to have been understood by those using it in the sixteenth century, was probably in the extension of a royal privilege, or allowance, technically in conflict with common law or customary practice. At some point, this royal courtesy had itself been enshrined in custom, but nonetheless continued to be known by the name, 'courtesy', that set it apart from normal practice.

For 'courtesy' was likewise a more general term for extralegal dispensations or customs. A common example, still in some use today, was the extralegal extension of a 'courtesy title' to a widow or to the heir apparent to a dukedom.[21] It is significant that many of the privileges extended 'by courtesy' during this period were of an honour-bearing kind; extralegal intervention was necessary in these cases to protect the honour of an individual, or to soften the blow of an otherwise dishonourable legal necessity. Where simple justice proceeds according to the law, and equitable justice according to what is fair, courtesy improves upon both by reconciling equity with what is considerate, kind, or proper. As a dispensation granted in extraordinary cases, it beautifies justice by bringing the three bases – what is right, what is fair, and what is fitting – together.

The role of courtesy as an extralegal dispensation recalls the similar role of equity in Book V as an extra-jurisdictional intervention. There is an important difference, however, in the way Spenser treats such jurisdictional conflicts across the two books: where Artegall is concerned to establish the pre-eminent code of conduct in a situation where a competing hierarchy of systems has come into conflict, Calidore is charged with bringing equitable law, and its bases, into conversation with extralegal considerations such as Cicero's *verecundia* in such a way that justice may be done without loss of honour to any party. In contrast to the results of Artegall's judgments, in other words, Calidore cannot afford to create losers.[22] An important result of this shift is

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19 Rastell, *An exposition*, f. 200v.
20 Coke, *Institutes I*, f. 29r. Sir Thomas Smith deemed the courtesy of England an important enough topic to include it in *De Republica Anglorum* (p. 133), a curiously specific inclusion in the otherwise broadly focused account of English political organization.
21 An example of 'courtesy' used in this way occurs in the printed marginalia to the 1583 edition of Smith's *De Republica Anglorum*. Smith notes in the treatise that a widowed Lady retains her title, even if she remarries a man of lower station; the note reads, 'She is no Ladie by the law although so called of courtisie'. See *De Republica Anglorum*, pp. 150–52.
22 So game theorists distinguish between 'zero-sum' and 'coordination' games. Cicero discusses these concepts in *De officiis* in his treatment of *beneficentia* and *liberalitas* (pp. 46–49), where he writes, 'Now there are many – and especially those who are ambitious for eminence and

that Artegall's interventionism, of such value in the imperial equity of Book V, becomes in Calidore's quest a limitation, even a vice. This shift may be most readily appreciated by reflecting on the anti-courteous elements of various episodes of Book VI and on the book's pre-eminent villains. In nearly every episode of Calidore's quest, the dispute or problem at issue centres on an invasion of some kind, either of some character's physical space, legal prerogative, or personal honour. The abstraction of such invasionary perils is the marauding of the Blatant Beast – an evil which has no respect for boundaries or individual sovereignties – and its accomplices, Despetto, Defetto, and Decetto, the cannibals, and the brigants.

Spenser never explicitly invokes tenancy by the courtesy during Book VI, but he turns repeatedly, in every canto, to language and narrative elements that demonstrate a focused interest in issues of jurisdiction, extralegal prerogative, and dispensation. In each of the opening two episodes discussed above, for example, Calidore reinforces the legal diction of Calidore's courtesies with an act characteristic of royal, or royally deputed, prerogative. Following Spenser's extended treatment of prerogative mercy in the trial of Duessa in Book V, canto ix, the reader is primed to recognize this type of extralegal dispensation as a peculiarly regal power.[23] By placing the merciful reprieve – a stay of execution – at the centre of Calidore's reformation of Crudor, and thus at the centre of this episode's revision of Artegall's judgment of Pollente, Spenser gives added emphasis to Calidore's inheritance from the queenly Mercilla (VI.i.42). In the second episode, Calidore can only knit up the final courteous couple after he has raised Tristram's social status by dubbing him knight. A royal prerogative enjoyed by the queen[24] and extended to her deputies, the dubbing of a knight here indicates Calidore's special role not only as a legal arbiter, but as an extralegal agent charged with the preservation of peace. It is in these two prerogative acts most specifically that Calidore demonstrates his courtesy; that they are both acts of royal privilege suggests the strong legal basis of Spenser's formulation of courtesy, and prepares the reader for the subtle meditations on power, prerogative, and jurisdiction to come.

In the following episode, Calidore's succouring of Priscilla and Aladine,

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glory – who rob one to enrich another; and they expect to be thought generous towards their friends, if they put them in the way of getting rich, no matter by what means. Such conduct, however, is so remote from moral duty that nothing can be more completely opposed to duty. We must, therefore, take care to indulge only in such liberality as will help our friends and hurt no one.'

23 As Smith writes of the royal prerogative, 'the prince useth also to dispence with lawes made, whereas equitie requireth a moderation to be had, and with paynes for transgression of lawes, where the payne of the lawe is applyed onely to the prince'. See Smith, *De Republica Anglorum*, p. 86.

24 Compare Sir Thomas Smith, *De Republica Anglorum*, p. 87: 'The prince giveth all the chiefe and highest offices or magistracies of the realme, be it of judgment or dignitie, temporall or spirituall.'

Spenser again makes the legal basis of courtesy explicit through use of technical diction. Coming upon Priscilla and the wounded Aladine in the covert glade, Calidore inquires into their condition, noting again the discourteous and 'vnknightly **breach of armes**' that has led to Aladine's mortal situation. Calidore expresses his first courtesy by dispensing with conventional etiquette in his offer to carry Aladine to the safety of his father's nearby castle. His second courtesy comes in the succouring of Priscilla, who has by her exposure in the glade received no less mortal a wound to her honour (see VI.ii.43.8–9, VI.iii.8.6–9, and VI.iii.12.5–9). Aladine, now recovered at his father's castle under Priscilla's watchful care, acquaints Calidore with the history of their secret and dangerous love before putting his plea:

> In th'end his kyndly *courtesie* to *proue*,
> He him by all the *bands* of loue besought,
> And as it mote a faithfull friend behoue,
> To *safeconduct* his loue, and not for ought
> To leaue, till to her fathers house he had her brought. (VI.iii.15)

In this request, Aladine resorts to a word, '*safeconduct*', that had rich legal and political associations in Elizabethan Ireland. In this dangerous land of kern and brigands, dotted with English garrisons and checkpoints, a '*safeconduct*' or 'saufconduit' could be granted by senior English officers to surrendering Irish rebels, allowing them to pass unmolested – and free from legal impediment – from local custody to the presence of the Lord Deputy or queen. These passes figured largely in the daily administration of Grey's policies during Spenser's term as secretary to the Lord Deputy from 1580–82. The privilege of granting safeconducts was also, as might be expected, an opportunity for corruption, and Irenius duly discusses them in *A view* as one of the many aspects of military administration to be tightened and regularized.[25]

The appearance of a '*safeconduct*' in Calidore's deliverance of Priscilla again focuses attention on the extralegal prerogative power of the crown. Aladine requests Calidore, in legal terms, to suspend some otherwise applicable law or code in order to return Priscilla safely to her father's house. In the context of the wound she has received to her honour, the inflexible code from which Aladine seeks deliverance is clearly that of honesty; in order to save Priscilla's honour, Calidore must 'deuise' a '*colour*' and a 'counter-cast of slight' – in effect, he must give the lie to her father.[26] While such a breach of

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25 See *A view*, p. 165.

26 It is certainly significant that 'colour' – a word that Spenser normally associates with fraud and guile (see *Mother Hubberds Tale*, ll. 988, 1164; *The Shepheardes Calender*, 'Februarie' l. 162, 'Maye' l. 303; and *FQ* II.ii.34, IV.i.53) – is associated with Calidore twice in this episode, at VI.iii.8 and III.16.9. See also VI.Proem.4 and VI.x.37. 'Sleight', likewise, is associated almost exclusively in Spenser's diction with fraud and crime; see, for example, I.viii.23, II.vii.64, IV.ii.10, V.ii.7, V.iii.30, V.xi.25, V.xi.39, and VI.vii.1.

virtue and law would normally not be permitted a knight – as many readers of this episode have noted, Calidore's testimony to Priscilla's father (VI.iii.18) amounts to perjury – Calidore 'his *faith* thereto did *plight*, it to *performe*', and the mitigating circumstances of the situation justify his extralegal dispensation. In this resolution, Spenser has completed his inversion of Artegall's judgment of Sanglier in Book V, canto i; where Artegall there condemned a knight to infamy by the carrying of the head of an innocent lady, Calidore by contrast preserves a lady from infamy by the carrying of the head of a guilty knight.

The nature of courtesy as an extralegal prerogative appears again in Calepine's delivery of the infant to Matilde in canto iv. Having rescued the child from a bear, Calepine encounters Matilde, lamenting her childlessness and the certain decay of her husband's estate. Sir Bruin has recently overthrown the giant Cormorant and is now '*seiz'd* of all the land, as in his *fee*, with peaceable *estate*' (VI.iv.30). To ensure the continuity of his conquest, he requires an heir to whom he may pass on the '*heritage*'; without one, 'all is in time like to *returne* againe / To that foule feend, who dayly doth *attend* / To leape into the same after our liues end' (VI.iv.31). Calepine offers Matilde the infant in his '*charge*', which she accepts 'as of her owne by *liuery and seisin*' (VI.iv.37). Befitting the tone of this episode more generally – this episode is, again, dominated by legal diction relating to real property – Spenser here makes an uncomplicated legal joke. The phrase '*livery and seisin*' is a corruption of the original '*livery of seisin*', the formal process by which one man invested another with possession of (or 'seisin in') land. This feudal ceremony consisted of the transfer of some symbolic item, typically a clod of earth, as a sign of the transfer of title. In passing the child to Matilde, Spenser suggests, Calepine is affirming just such a transfer, the reinvestiture of Sir Bruin in his conquered land. In effect, Calidore's supply of the infant as heir guarantees the peaceful transition of Bruin's estate from conquered territory to inheritable fee; his intercession looks, from an allegorical perspective, very like a case of the famed Tudor practice of 'surrender and regrant'.[27] Spenser's use of corruption 'livery and seisin' may result from another intended reference, to the writ of 'livery' brought by a ward to gain possession of lands upon majority. In raising the issue of wardship through his diction, Spenser alludes to another prerogative right of the crown.[28]

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[27] The policy of 'surrender and regrant' was developed during the later part of Henry VIII's reign as a way of bringing Old English and Gaelic Irish lords to heel under the newly styled 'king' of Ireland. Lords and Irish 'captains' holding by 'tanistry' (an elective form of succession) surrendered their lands and titles to Henry, receiving them back with new English names and styles. This policy was still being put into use with recidivist and intractable Irish lords well into the reign of James I. For further discussion, see T. W. Moody, F. X. Martin, and F. J. Byrne, eds, *A New History of Ireland, Vol. III: Early Modern Ireland, 1534–1691* (Oxford: Clarendon Press, 1976), pp. 47–51.

[28] Calepine's struggle with the bear and subsequent meeting with Matilde may again reflect the complicated legal history of Sir Arthur Gorges's efforts to legitimize his daughter Ambrosia

PRIVILEGE UNBOUND: TURPINE AND MIRABELLA

As the book proceeds, Spenser's emphasis shifts from prerogative solutions to the dangers of mishandled or abused prerogative: these episodes, in which a person in some position of privilege fails to accept the associated responsibilities, reflect back on Spenser's early emphasis on the '*use*' and 'application' of courtesy. '*Safeconduct*' features at the centre of the first of these episodes, Calepine's confrontation with the discourteous Turpine at the castle of the ford. Uncertain of the wounded Serena's safety in crossing the ford on foot, Calepine requests Turpine to assist them:

> Whom *Calepine* saluting (as became)
>   Besought of *courtesie* in that his neede,
>   For *safe conducting* of his sickely Dame,
>   Through that same perillous foord with better heede,
>   To take him vp behinde vpon his steed. (VI.iii.31)

Having recently been mauled by the Blatant Beast, Serena's honour is in a vulnerable state very similar to that of Priscilla in the preceding canto. Turpine, however, is not Calidore, and instead of helping the two lovers, he scorns Calepine and his 'shame'. Calepine, in turn, openly challenges Turpine to battle, using the legal formula now familiar from Book V:

> Vnknightly Knight, the *blemish* of that name,
>   And *blot* of all that armes vpon them take,
>   Which is the *badge of honour* and of fame,
>   Loe I *defie* thee, and here *challenge make*,
>   That thou for euer doe those armes *forsake*,
>   And be for euer held a *recreant Knight*,
>   Vnlesse thou dare for they deare Ladies sake,
>   And for thine owne *defence* on foote alight,
> To *iustifie* thy *fault* gainst me in equall fight. (VI.iii.35)

This is a strong challenge – perhaps the clearest and most daring challenge of the entire poem – putting not only Turpine's honour at the stake, but the honour of his lady and his very knighthood itself. Instead of responding to Calepine's defiance, as even the most unswervingly evil figures of the poem have before done, Turpine 'seem'd not to weigh his threatfull words at all' and 'both his *challenge* and him selfe *contemnd*' (VI.iii.36). In refusing to grant

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and gain title to her inheritance, the lands of her grandfather Henry Howard, Viscount Bindon. See Chapter 3, p. 76, above. Certainly Book VI is filled with variations on Gorges's hasty and unsanctioned marriage with Douglas: Aladine and Priscilla meet in defiance of the greedy and ambitious father, as do Bellamour and Claribell, and the identity of Pastorella (a forged child) reflects back on Matilde's own 'vnder hand' practices.

safe conduct or to respond to Calepine's formal challenge, Turpine simulta-neously demonstrates both his privileged status and his refusal to accept the responsibilities conferred by that status. In subsequently rejecting Calepine's entreaty for '*harbour*' and '*house-rome*' in his castle (VI.iii.37–43), Turpine ignores one of the most basic and ancient codes of courtesy – the provision of hospitality. Not content with such passive discourtesies, finally, on the following morning Turpine breaks the law of arms by pursuing and attacking the unhorsed and unarmed Calepine.[29]

The litany of legally styled discourtesies to which Turpine subjects Calepine and Serena is revenged by Arthur in canto vi. Arthur's defeat and punishment of Turpine likewise emphasize connections between honour and the avoid-ance of responsibility to an extralegal privilege. In his approach to the castle of the ford, Arthur recreates Calepine's own approach of several cantos earlier, pretending great weariness and sore wounds. His application for 'lodging' is stiffly rebuked by the 'homely groome', whom the salvage man tears to pieces for his discourtesy. Turpine himself, after challenging Arthur but refusing to fight with him, receives more merciful treatment: the prince spares him his life, but strips him of his arms. In his speech of rebuke, Arthur first links Turpine's offence to the other evil customs now familiar from Books V and VI:

> For first it was to thee reprochfull blame,
> To *erect* this wicked *custome*, which I heare,
> Gainst errant Knights and Ladies thou dost *reare*;
> Whom when thou mayst, thou dost *of arms despoile*,
> Or of their vpper garment, which they weare:
> Yet doest thou not with manhood, but with guile
> *Maintaine* this *euill vse*, thy foes thereby to *foile*. (VI.vi.34)

The echoes of Artegall's and Calidore's earlier reformations of Pollente and Crudor are unmistakable, linking Turpine's fault to the offences against justice and equity perpetrated by earlier wayward knights. But this evil custom, though unjust in its way, is not the root of Arthur's anger; he is concerned, rather, with Turpine's shameless *mode* of executing the custom:

> And lastly in *approuance* of thy *wrong*,
> To shew such faintnesse and foule cowardize,
> Is greatest shame: for oft it falles, that strong
> And valiant knights doe rashly *enterprize*,
> Either for fame, or else for exercize,
> A wrongfull quarrell to *maintaine* by fight;
> Yet haue, through prowesse and their braue emprize,

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[29] Turpine's offence against the law of arms is suggested by Tristram's earlier experience. His offence against nature and reason is indicated by Serena's desperate plea to 'rest with reason pacifyde' (VI.iii.49) and by the intercession of the salvage man at the opening of canto iv.

> Gotten great worship in this worldes sight.
> For greater force there needs to *maintaine wrong*, then *right*. (VI.vi.35)

In stripping Turpine of his arms (VI.vi.36), Arthur offers the courteous treatment appropriate to the worthless subject, fulfilling the promise of Calidore's early characterization as one who practises 'th'euill to embase'. This punishment is carried to its logical conclusion after Turpine again attempts Arthur's life in the succeeding canto. For his further treason, Turpine is subjected to the second degree of legal punishment for his offences against honour: he is 'for greater *infamie*' hung by his heels from a tree and '*baffuld*', to be a 'picture of . . . punishment' for all those who 'through *treason* doe *trespasse*' (VI.vii.26–27). In bringing Turpine into '*infamie*', Arthur removes from him not only his arms and honour, but his very legal status itself. It is crucial to note that this shaming of Turpine shows once again the exercise of a regal prerogative right pertaining to honour, and that this prerogative relates closely to legal process – for those sentenced to '*infamie*' in the Tudor period were subsequently denied access to public office or privilege, and were forbidden to enjoy legal rights such as sitting in Parliament, exercising a franchise, or offering testimony in legal courts. Because he is confronted with a recidivist and incorrigible evil, Arthur cannot effect the kind of social recuperation exampled by Calidore in the reformation of Crudor and Briana. Instead, the prince relies on powers of royal prerogative: the right to grant and revoke arms and the honour of knighthood, and the power to put a subject under 'infamy'.[30]

The history of Mirabella in many ways parallels that of Turpine, developing similar concerns. Like Turpine, her central fault is a refusal to observe the responsibilities of her privilege: in this case, as befits a lady she is bound not by the code of chivalry but by the customs of love and the authority of Cupid. On account of her beauty and the 'giftes of natures grace' she has been lifted to 'great dignitie' and 'honorable place', but her 'proud and insolent' nature leads her to scornfulness, as a result of which she loses the ability to 'weigh of worthinesse aright' (VI.vii.29). Unable to judge properly the worth of others, Mirabella is incapable of extending courteous treatment to the deserving. Although graced with power, her pride prevents her from performing the generous acts of prerogative permitted to one of her station.

Again, Spenser goes to great length to cast her fault in the language of legal power and privilege. Mirabella considers herself '*borne free*, not *bound* to any wight', and is described as the '*Ladie of her libertie*', graced by her beauty with '*soueraine* might'. Her lovers and suitors suffer, appropriately, 'for want of *remedie*' (VI.vii.30–31). Her punishment at the hands of Cupid, also fittingly, takes an explicitly legal colour. Keeping his '*court*' on the feast of Saint Valentine

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[30] Artegall anticipates Arthur in the uncasing of Braggadocchio in Book V, canto iii – though this baffling is of a different kind, as Braggadocchio has committed a crime of forgery or fraud by assuming an illegitimate status, while Turpine has abused the privilege of a legitimate status.

('vnto the which all louers doe *resort*, that of their loues successe they there may make *report*'), Cupid orders the '*roules*' to be read 'in which the names of all loues folke were *fyled*'. Finding many to be missing – 'ded', 'kept in *bands*', '*exyled*', 'or by some other violence *despoyled*' – Cupid removes his blindfolds in order to count his men, and '*muster* them *by oth*':[31]

> Then found he many missing of his crew,
>   Which wont doe *suit* and *seruice* to his might;
>   Of whom what was becomen, no man knew.
>   Therefore a *Iurie* was *impaneld* streight,
>   T'*enquire* of them, whether *by force*, or *sleight*,
>   Or their owne *guilt*, they were away *conuayd*.
>   To whom foule *Infamie*, and fell *Despight*
>   *Gaue euidence*, that they were all *betrayd*,
> And *murdred* cruelly by a rebellious Mayd. (VI.vii.34)

Having '*indited*' Mirabella of these '*crymes*', Cupid wills a '*capias* should *issue* forth, *t'attach* that scornefull lasse'. A '*Baylieffe errant*' departs '*in post*' with the '*warrant*', attaches Mirabella, and brings her 'vnto the *barre*, whereas she was *arrayned*'. Not willing to '*plead*' or '*answere* ought' on account of her pride, Mirabella receives the '*iudgement . . . as is by law ordayned* in *cases* like'.

Mirabella's pride and great worth has set her, as she thinks, beyond the demands of Cupid's law and economy, an arrogant misuse of prerogative. Spenser uses two details to reinforce this fault in a legal mode, raising again the concerns of jurisdiction and prerogative peculiar to courtesy. In styling Mirabella as the 'Ladie of her *libertie*', the poet invokes two important legal uses of the word. As a synonym for 'prerogative', *liberty* signified a generalized legal privilege outside the normal run of common law practice.[32] Even more relevant to Spenser's treatment of courtesy, though, was the more specific use of the word to refer to the legally autonomous regions, or palatinates, ceded to the great Old English lords in Ireland by medieval English kings.[33] Sir John Davies, in his 1612 treatise on the civil reformation of Ireland, cites these liberties as one of the main sources of Ireland's legal and political recalcitrance. In a section entitled, 'The *Liberties* granted to the first aduenturers were too

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[31] Spenser was a commissioner of musters for County Kildare in 1583 and 1584; he thus can reasonably be conjectured to have understood the legal and military importance of this act. See *Fiants*, no. 4150.

[32] Compare Sir Thomas Smith in *De Republica Anglorum*, p. 101: 'Those high Constables bee made by the Justices of the peace of the shire, and each hundred hath his baylife, who is made by the Lorde if any hath that *libertie*, or else by the sherife of the shire for the time being.'

[33] Consider, for example, an important piece of legislation from Henry VIII's reign, 'An Act for continuing of certaine liberties and franchises heretofore taken from the Crowne' (27 H. 8 cap. 24; see *The Statutes at Large*, I, 595). The regular collocation of 'franchise' and 'liberty' in such contemporary legal sources points emphatically to Spenser's intentional invocation of jurisdictional ideas in the representation of Mirabella.

great', Davies discusses the palatinates, or 'liberties', granted to the Norman conquerors of Ireland by Henry II:

> And so, in each of these Counties Palatines, there were two Sheriffes; One, of the *Libertie*; & another of the *Crosse*: And so in *Vlster*, & so in *Wexford*: And so at this day, the Earle of *Ormond* maketh a Sheriffe of the *Liberty*, and the King a Sheriffe of the Crosse of *Tipperary*. Heereby it is manifest, how much the Kinges Iurisdiction was restrained, and the power of these Lords enlarged by these High Priuiledges.[34]

As Davies remarks, the Earl of Ormond still enjoyed such a liberty in Tipperary during Spenser's day, a thorn in the side of the Dublin government discussed in veiled terms by Spenser in *A view of the present state of Ireland*.[35] Mirabella's refusal to be bound by the responsibility of her prerogative maps seamlessly onto the legal and political friction between Ormond and Dublin throughout Grey's tenure as Lord Deputy, and beyond through the 1590s. Spenser's use of '*liberty*' conjures not just Mirabella's unbound and insolent pride, but her legal claim to a peerless sovereignty. As she herself boasts, 'what could the Gods doe more, but doe it more aright?' (VI.vii.31).[36]

The legal basis of Mirabella's prerogative is further emphasized in her response to Cupid's indictment. Having been called to the bar to answer charges, Mirabella 'nould *plead*, nor *answer* ought euen for stubborne pride, which her *restrayned*' (VI.vii.36). Persisting in her claim to be beyond the jurisdiction of Cupid's law, Mirabella is sentenced with the judgment 'as is *by law ordayned* in *cases* like'. Many critics of the poem, following Todd and lately Hamilton, have assumed that Mirabella is, for her silence, merely deemed guilty of the accusation and sentenced accordingly; however, this was not the law of the land in Spenser's day, and the punishment to which Spenser alludes was much more severe. While all English subjects were by Magna Carta guaranteed a trial by jury at common law, this option could only be made available by their own explicit choice. As J. H. Baker explains:

> If the prisoner declined to accept this choice, either by standing mute of malice or by rejecting three jury-panels of twelve, he was sent back to prison *tanquam refutans legem communem* ('as one who refuses the common law'). The 1219 instructions made it clear that prisoners so remanded were not to be put in

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[34] Sir John Davies, *A Discouerie of the True Causes why Ireland was neuer entirely Subdued, nor brought vnder Obedience of the Crowne of England, vntill the Beginning of his Maiesties happie Raigne* (London: John Jaggard, 1612), pp. 137–40.

[35] The Earl of Ormond's autonomous liberty of Tipperary, not receptive to the queen's justice, was perceived to be a hiding place for thieves and a safe route of passage between Munster and the Pale. Spenser goes so far as to suggest that Ormond's fidelity itself is a concern. See *A view*, p. 194.

[36] It is important to note here that Mirabella's 'liberty' recalls that of Radigund, another female figure who claims exemption from jurisdictional catchment. See V.v.25, V.v.40, and V.vii.42.

danger of their life; but the imprisonment was nevertheless meant to coerce defendants into accepting a jury, and parliament in 1275 expressly provided that it should be a *prison forte et dure*. These words meant a harsh regime with a meagre diet, but by a grisly misunderstanding the *prison* of the statute was read as *peine*, and by the 1300s the 'hard penance' usually involved pressing the accused to death under heavy weights.[37]

Mirabella, frightened by 'the extremitie of law', pleads for mercy and receives it, though Cupid nonetheless imposes a strict '*penance*'. Mirabella's trial and penance comes into focus, then, as a polished variation of the Turpine episode, this time targeted not at her courtiers but at Elizabeth herself, for Mirabella's elaborated refusal to take a husband immediately suggests her as another of Spenser's chaste avatars for the queen, alongside Una, Belphoebe, Britomart, and Gloriana. The poet's final, explicit warning elaborates this argument:

> Ye gentle Ladies, in whose *soueraigne powre*
>   Loue hath the glory of his *kingdome* left,
>   And th'hearts of men, as your eternall *dowre*,
>   In yron chaines, of *liberty* bereft,
>   *Deliuered* hath into your hands *by gift*;
>   Be well aware, how ye the same doe *vse*,
>   That pride doe not to *tyranny* you lift;
>   Least if men you of *cruelty* accuse,
> He from you take that *chiefedome*, which ye doe *abuse*. (VI.viii.1)

That Mirabella receives her comeuppance from Cupid's legal system could only have been a calculated attempt on Spenser's part to remind Elizabeth of her own legal constraints. Mirabella's horror at the '*extremitie of law*' puts forceful emphasis on Elizabeth's own paradoxical position: although above the law and endowed with the privilege of granting dispensations from it, the queen, like all ladies, is ultimately responsible to it; it is at once her instrument and her own author. This point is further underscored when, in the succeeding canto, Mirabella refuses Arthur's offer to restore her 'liberty' by subduing her gaoler Disdain; as she there insists, 'I must fulfill this *penance*, which enioyned is to me, least vnto me betide a greater ill' (VI.viii.29–30). Wondering at her resolve, Arthur concedes that this voluntary submission of prerogative to the rule of law is necessary to the continuance of Cupid's 'kingdome':

> Certes (sayd then the Prince) the God is *iust*,
>   That taketh vengeaunce of his peoples *spoile*.
>   For were no *law* in loue, but all that lust,
>   Might them *oppresse*, and painefully turmoile,
>   His *kingdome* would continue but a while. (VI.viii.23)

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[37] Baker, *IELH*, pp. 508–09. *Peine forte et dure* was not abolished until 1772, after which it was held that a failure to plead constituted an admission of guilt.

Spenser deepens the paradox of the lawgiver submitting to the law by making Cupid here both God and king (much as James VI and I would go on to do in *The Trew Law of Free Monarchies*, figuring himself as a kind of god on earth): the application of this allegory to contemporary political theory oscillates between identifying Elizabeth with the 'iust' Cupid – a god – and the transgressive Mirabella – the figure for a wayward ruler. This bifurcation of the prince's person draws on the contemporary quasi-legal division of the queen's two bodies, and two roles as lady (to be courted) and prince (to be sued to), but goes a step further by insinuating that the person of the lady achieves consonance with the person of the prince precisely by recognizing the need to submit her will to her duty. It is significant that, having given Mirabella the freedom to choose her own captivity, Arthur must thereafter restrain the Saluage man from beating Scorn and Disdaine: the justice he effects and ratifies is a civil justice, higher than the natural justice to which the Saluage man instinctively returns, and Arthur's appeal is not to plain justice, but to the continuance of the kingdom.

Spenser's investigations into the prerogative basis of courtesy establishes a focused political argument that details, for the queen and her courtly readers, the responsibilities entailed in positions of political power and privilege. Prerogatives such as mercy, safeconducts and protections, the dubbing and baffling of knights, and the disposing of wardships should allow Elizabeth and her powerful subjects to manage the distribution of honour, binding subjects together in a social fabric not merely just, but considerate and kindly. While Spenser goes to great pains to establish courtesy as an extralegal dispensing power superior to the reformed justice of equity, he leaves no doubt, in his treatment of Turpine and Mirabella, that courtesy, too, is tied fundamentally to the law; as Bracton argues in a passage that would take on an explosive political charge under the early Stuarts:

> The king must not be under man but under God and under the law, because law makes the king. Let him therefore bestow upon the law what the law bestow upon him, namely, rule and power. For there is no *rex* where will rules rather than *lex*.[38]

Implicit in and fundamental to Spenser's formulation of courtesy is the concept of jurisdiction, the right of a given authority in a given location or sphere of action at a given time. Again, Spenser makes the connection in the same way as Bracton, who in *De legibus* reconsiders the place of the *rex sub lege* in his discussion of 'ordinary jurisdiction':

> He must surpass in power all those subjected to him . . . Nevertheless, since the heart of a king ought to be in the hand of God, let him, that he be not unbridled,

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38 Bracton, *De legibus*, II, p. 33.

put on the bridle of temperance [*frenum temperantiae*] and the reins of modera-
tion [*lora moderantiae*], lest being unbridled [*effrenata*], he be drawn toward
injustice . . . For he is called *rex* not from reigning but from ruling well, since he is
a king as long as he rules well but a tyrant [*tyrannus*] when he oppresses by violent
domination the people entrusted to his care. Let him, therefore, temper his
power by law, which is the bridle of power [*frenum potentiae*], that he may live
according to the laws, for the law of mankind has decreed that his own laws bind
the lawgiver . . . Nothing is more fitting for a sovereign [*imperium*] than to live by
the laws, nor is there any greater sovereignty than to govern according to law.[39]

The words and images Spenser recruits to narrate the episode of Mirabella
turn repeatedly to this image of 'bridling' and 'reining': Mirabella herself is led
by Disdaine, whose force 'compelling her, wher she would not', hales 'her
palfrey by the hempen raines'. Enias, who also confronts Scorn and Disdaine
in his effort to release Mirabella and the captive Timias, is by means of an epic
simile similarly brought to curb:

> As when a sturdy ploughman with his hynde
>   By strength have ouerthrowne a stubborne steare,
>   They downe him hold, and fast with cords do bynde,
>   Till they him force the buxome yoke to beare:
>   So did these two this Knight oft tug and teare. (VI.viii.12)

This image of 'reining' and 'bridling' will, of course, reach a new pitch and
intensity in the final canto of the book, where Calidore at last confronts and
subdues the Blatant Beast with a 'muzzell strong / Of surest yron, made with
many a lincke'. (VI.xii.34) But if Spenser is keen to pick up the image of
bridling and reining in his legally coloured portrait of constitutional sover-
eignty, he also manages to force another allusion – this one with a bit more bite
to it – from the experience of Timias, who as Mirabella's first would-be cham-
pion in canto vii finds himself bound by the hands and led before his master
Arthur. It was a common and famous saying of the canonists that *papa
successori manus ligare non potest* ('the pope cannot bind the hands of his
successor'), one which Jean Bodin takes up in passing – and in a very relevant
connection – in his arguments on sovereignty in the *Six livres de la République*:

> If then the soueraigne prince be exempted from the lawes of his predecessors,
> much lesse should he be bound vnto the lawes and ordinances he maketh
> himselfe: for a man may well receiue a law from another man, but impossible it is
> in nature for to giue a law vnto himselfe, no more than it is to commaund a mans
> selfe in a matter depending of his owne will . . . And as the Pope can neuer bind
> his owne hands (as the Canonists say;) so neither can a soueraigne prince bind
> his owne hands, albeit that he would.[40]

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[39] Bracton, *De legibus*, II, pp. 305–06.
[40] Jean Bodin, *The six bookes of a common-weale*, trans. Richard Knollys (London: Adam Islip for
G. Bishop, 1606), sig. I iiijr–I iiijv.

It is with a kind of bravado, then, that Spenser parades before Arthur in this emblematic vision of constitutional sovereignty not only a 'tyrant' lady with a bit between her (palfrey's) teeth, but a man bound by the hands. The intention is as clear as the allusive marshalling of sources is cutting: courtesy may have power to suspend and improve the law, but it may also have an unshirkable duty to the law.

BORDERS, BODRAGS, AND THE BLATANT BEAST: CALIDORE'S CRIMINAL JURISDICTION

Where the Turpine and Mirabella episodes show Spenser exploring the misuse of prerogative power, the experiences of Serena and Pastorella in cantos viii to xi examine the threat of usurped prerogative – an active, rather than passive, trespass of privilege. Above all, these episodes demonstrate the power of the monarch to impose strict martial law punishment on dangerous offenders. In containing the threats posed by the cannibals, the brigants, and the Blatant Beast, Calepine and Calidore must resort to a new type of courtesy, readily distinguishable from the earlier judgments of the book. While Crudor and Briana, Tristram and his lady, and Aladine and Priscilla depart happily reformed and restored, Calepine's adventures show a somewhat more serious aspect of courtesy, acting to punish those great ones like Turpine and Mirabella who cannot be made amenable to reformation. In the final section of the book, the two knights of courtesy confront a new type of threat to social peace: agents acting to destroy social institutions and boundaries. As the malady becomes more severe, so must the remedy.

Spenser's earlier suggestions of jurisdictional concerns and boundary-crossing here become literalized in the two bands, of cannibals and brigants, who attack Serena and Pastorella. The cannibals who abduct and threaten Serena, first, are a 'saluage nation' characterized above all by their tendency to illicit border-crossing:

> There dwelt a saluage nation, which did liue
> Of *stealth* and *spoile*, and making nightly *rode*
> Into their neighbours borders; ne did giue
> Them selues to any trade, as for to driue
> The painefull plough, or cattell for to breed,
> Or by *aduentrous marchandize* to thriue;
> But on the labours of poore men to feed,
> And serue their owne necessities with others need. (VI.viii.35)

These cannibals are primarily border-crossers: invading the rightful domain of others, they take unlicensed liberties with property not their own. 'Thereto', as Spenser notes, 'they vsde one most accursed order, to eate the flesh of men . . . which on their border were brought by errour, or by wreckfull wynde'

(VI.viii.36). In this 'monstrous cruelty gainst course of kynde', the cannibals cross not only physical borders, but the most deeply infixed borders of natural law and humanity. The brigants who invade Pastorella's shepherd community in canto x, likewise, are characterized by Spenser first and foremost as border-crossers and invaders:

> A *lawlesse* people, *Brigants* hight of yore,
> That neuer vsde to liue by plough nor spade,
> But fed on *spoile* and *booty*, which they made
> Vpon their neighbours, which did nigh them border,
> The dwelling of these shepheards did *inuade*,
> And *spoyld* their houses, and them selues did *murder*,
> And droue away their flocks, with other much disorder. (VI.x.39)

Like the cannibals, the brigants are thieves and invaders, refusing to respect the integrity of geographical boundaries or of legal boundaries such as ownership. Neither of these groups is practising a local custom or following an idiosyncratic code; they are not in need of judicial reform, but of criminal correction. The responsibility of Calepine and of Calidore is clear: rescue and punish.

While some readers of Book VI have recognized a sudden shift, in the narratives of the cannibals and brigants, to a recognizable and politicized geography – borders, and border-crossers, invoke a literal understanding of property – few readers have thought to contextualize these thieves and cannibals in their natural historical habitat, the Irish countryside of the 1580s and 1590s.[41] It had since Giraldus been legend that remote parts of Ireland were overrun by cannibals, but it was certain knowledge to Spenser's contemporaries that most of the Irish countryside was home to thieves, brigands, robbers, and wayward kern, galloglass, and horseboys – outlaws and idle men who were given to raiding and pillaging both English and Irish settlements. Spenser elsewhere uses the Gaelic term 'bodrag' (*buaidhreadh*) to describe such cross-border incursions.[42] In Spenser's usage these bodrags are a type of raid peculiar to Gaelic peoples like the Scots and Irish, who can invade from beyond the borders of civilized areas and retreat again, taking shelter and sustenance among their itinerant cattle, or *creaght*.

More specifically, Spenser himself gives testimony in *A view of the present*

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[41] Two exceptions are Sheila T. Cavanagh, ' "Licentious Barbarism": Spenser's View of the Irish and *The Faerie Queene*', *Irish University Review*, 26 (1996), 268–80; and Thomas Herron, 'Irish Den of Thieves: Souterrains (and a Crannog?) in Books V and VI of Spenser's *Faerie Queene*', *SS*, 14 (2000), 303–17.

[42] See II.x.63, where Spenser writes that Constantine was 'oft annoyd with sundry *bordragings* of neighbour Scots, and forrein Scatterlings' ('scatterlings' appears for outlaw Irish twice in *A view*; see *A view*, pp. 60 and 80). See also *CCCHA*, ll. 312–15, where Colin observes that, in Cynthia's realm, the peace is disturbed by 'no nightly *bodrags*, nor no *hue and cries*'. It is certainly significant that '*hue and cry*' is only used once elsewhere in Spenser's poetry, to describe the alarm raised by the brigants when Calidore rescues Pastorella (VI.xi.46).

state of Ireland of the success of one particular captain of such Irish thieves, the notorious rebel Feagh McHugh O'Byrne. Irenius describes the rise of Hugh McShane, his father, in detail, noting that father and son both achieved their greatness 'thoroughe the strengthe and great fastenes of *Glan malour* which Adioyneth vnto his howsse of *Ballinecorre*'; here they drew to themselves 'manye theves and Outlawes which fledd vnto the succour of that glenne as to a Sanctuarye and broughte vnto him parte of that spoile of all the Countrie thoroughe which he grewe stronge and in shorte space got vnto himself a greate name therby amongest the Irishe'.[43] The strength of Glenmalure, just south of Dublin and the Pale in the Wicklow mountains, was in its natural inaccessibility; like the island retreat of the brigants in Book VI, a network of overgrown caves and wooded areas could hide and protect a huge number of men. Feagh McHugh controlled the narrow and thus strategically crucial entrance to the glen: his house, Ballinecorr, was situated at the centre of its mouth. Glenmalure was also well placed on the borders of several rich counties as a base for cross-border pillaging. As Irenius comments in *A view*:

> . . . they all flocke vnto him and drawe vnto his Countrye as to a stronge houlde wheare they thinke to be safe from all that prosecute them, And from thence they doe at theire pleasures breake out into all the borders adioyninge which are well peopled Countries, as the Counties of dublin, of kildare, of Satherlagh, of kilkenny, of wexforde, with the Spoiles wheareof they victell and strengthen themselues which otherwise shoulde in shorte time be starued and forpined.[44]

It is significant, too, that Spenser takes time in *A view* to comment on Feagh McHugh's other kind of trespassing, his meteoric climb from baseness to great local power and, finally, to the ability to front Elizabeth and her deputies. Eudoxus even goes so far as to 'commend' the traitor for his 'hardinesse' in achieving such a social transformation.[45] This social border-crossing – characteristic too of the other great contemporary traitor, the bastard grandson of Conn O'Neill, Hugh Earl of Tyrone – represents another important link between the brigants of Book VI and the political/military situation in Ireland in the 1590s.[46] The similarities with Spenser's cannibals and brigants are

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43 *A view*, pp. 171–72.

44 *A view*, p. 173.

45 *A view*, p. 172.

46 In fact, a detailed set of correspondences could well suggest that the episode of Calidore's defeat of the brigants is, in part, a historical allegory of Sir William Russell's February 1595 campaign against Feagh McHugh. The brigants' attack on the shepherds in canto x of VI, for example, occurs while Calidore is 'hunting in the woods (as was his trade)'; during this attack, the brigants spoil the shepherds' houses, murder the shepherds, and steal their sheep (VI.x.39–40). Sir William Russell, under colour of a 'hunting party', departed Dublin for Ballinecorr on 16 January 1594/5; catching Feagh McHugh and his retainers off guard, he drove them from their stronghold into the glens, and installed a garrison to keep the house (see Russell's journal, catalogued in *CCM 1589–1600*, pp. 220–60). Two weeks later, on 30

obvious and need little elaboration; it remains only to note that Spenser had had some personal experience with Feagh McHugh, during Grey's first (and disastrous) military encounter at Glenmalure in 1580.[47] While it is not necessary to argue that Spenser intended readers of Book VI to see Feagh McHugh and his unassailable band of thieves in the brigants of cantos x and xi, there is no doubt that his representation of these figures as border-crossing ravagers and spoilers of other men's property was heavily inflected by an experience of such armed groups in the Irish countryside. The further discussion in *A view* of wayward bands of kern, often lurking in waste places in the company of itinerant cattle-herds, refers repeatedly to this habit of unimpeded traversing of borders – both geographical borders and social borders, such as those prohibiting rape and murder.[48]

Calepine and Calidore have often been taken to task by readers for an apparent failure of 'courtesy' in dealing with the cannibals and brigants, respectively.[49] Once we have appreciated the nature of courtesy as an extralegal prerogative, acting to restore not justice but social peace, we can likewise appreciate the relevance and meaning of the Serena and Pastorella episodes. Unlike Turpine and Mirabella, the cannibals and brigants are not persons of quality, and they do not therefore participate in the economy of honour. They cannot be reformed by recourse to punishment. Instead, they are 'scatterlings', base routs who are either naturally abhorrent (cannibals) or who have by their actions (e.g. slavetrading) forfeited their rights to honourable dealing. Thus

January, Walter Reagh and his followers sacked the town of Crumlin, burning the houses, stealing the cattle, and murdering the inhabitants. In response to this attack, Russell garrisoned Ballinecorr and, from 6 February, built a substantial fortification around it to control access to Glenmalure; in addition to the fortification itself, Russell made a point of cutting new passes through Drumkilt (where it was claimed one man could hold off ten) and other common ways in the glen, hoping to use them as strategic holds for persecuting Feagh McHugh – similar to the strategy adopted by Calidore in attacking the brigants in canto xi, where he fights in a doorway to limit the number of attackers who can access him at any one time (see VI.xi.46). Although, as Spenser reports in *A view*, Russell was called by events in Ulster to depart on a campaign to the north, the received opinion was that he had dealt Feagh McHugh a blow from which the brigand could not recover. While Spenser is thought to have completed the second instalment of *The Faerie Queene* sometime before February 1595, some inconsistencies of the narrative in canto xi of Book VI suggest that it may have been altered at a late stage, perhaps as it went to print. McHugh was eventually, in May 1597, cornered in a cave in the glens and executed on the spot; see *CCM 1589–1600*, pp. 258–59.

[47] Grey was defeated by a combined force of O'Byrne and Viscount Baltinglas at Glenmalure on 25 August 1580, fifteen days after his arrival in Ireland. See *CSPI 1574–1585*, p. 247.

[48] In fact, Spenser's description of the social and political problems facing English rule in Ireland repeatedly returns to the same metaphor of the border traversed; likewise, his schemes for reformation universally rely on policing of borders and the isolation of criminal elements. See *A view*, pp. 64–65, 98, 154–55, 158–59, 173. This theme is discussed in more detail in the next chapter.

[49] Richard Neuse, in 'Book VI as Conclusion to *The Faerie Queene*', goes so far as to claim that Calidore is 'radically inadequate to his task'.

Calepine arrives on the scene in canto viii swinging his sword mercilessly on the cannibals; 'of whom he makes such hauocke and such hew, that swarmes of damned soules to hell he sends' (VI.viii.49). Calidore likewise defends his position at the mouth of the captain's cave 'so long till all the entry was with bodies mand' (VI.xi.46). The ruthless punishment that these knights of courtesy here execute is a new face to the royal prerogative, the right of the crown to punish rebels and outlaws with death, the right to impose martial law.[50] As Spenser insists, Calidore's diversion among the shepherds and his rescue of Pastorella is not without allegorical purpose:

> For all that hetherto hath long delayd
>   This gentle knight, from sewing his first quest,
>   Though out of course, yet hath not bene mis-sayd,
>   To shew the *courtesie* by him profest,
>   Euen vnto the lowest and the least. (VI.xii.2)

This assertion flies in the face of the poet's earlier suggestion that Calidore is 'slacking' and 'delaying' his mission by remaining among the shepherds (VI.x.1), a charge that has been rehearsed by many readers. The crucial change is that, by the opening of canto xii, Calidore has been called upon to punish the brigants. The 'lowest and the least', we must surmise, refer not only to the shepherds, but to the brigants who capture them: in dealing with the thieves ruthlessly and oppressively, Calidore shows the courtesy of a monarch who is empowered to suspend normal legal process when substantial danger threatens the state. Courtesy is not merely an art of pleasing, but of judging people correctly and acting correctly to 'please the best, and th'euill to embase'; like the equity of Artegall, courtesy is not inherently kind or generous. This is a lesson Calidore must learn if he is to defeat the Blatant Beast.

The capture of the beast follows allegorically from Calidore's defeat of the brigants in several ways, and recapitulates earlier models of courtesy at the same time. Because, for example, the beast attacks reputation rather than property, it is not obviously amenable to law, and requires something above a mere justiciar. Its attacks focus directly on the honour and reputation of the

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[50] Compare Smith in *De Republica Anglorum*, pp. 85–86:

> In warre time, and in the field the Prince hath also absolute power, so that his worde is a law, he may put to death, or to other bodilie punishment, whom he shall thinke so to deserue, without processe of lawe or forme of judgment . . . This absolute power is called marciall lawe . . .

Elizabeth, by royal patent ('fiant'), licensed several of her governors in Ireland to exercise martial law at various times, the most notable being Sir Richard Bingham, president of Connaght. Spenser himself advocates such a ruthless reformation of 'stoute and obstinate Rebells suche as will neuer be made dutifull and obediente nor brought to labour or ciuill Conuersacion haueing once tasted that licentious liffe and being acquainted with spoile and outrages'; see *A view*, p. 157 (and compare *FQ* VI.i.1, where Spenser describes courtesy as the 'roote of ciuill Conuersation').

victim, making it the nemesis of the honour-bearing courtesy Calidore displays in his reformations of equitable justice in the opening cantos of the book. Its attacks are directed primarily through defamatory words, parodying the smooth rhetorical skill of Calidore's courtesy. Most central to its nature, though, is its indiscriminate rapacity: this is a beast that ranges through all estates, in city and country, giving no respect to laity or cloth, to rich or poor, to guilty or innocent. In this rapacity and failure of discrimination, the beast parallels the border-crossing of the cannibals and brigants, and focuses attention again on the crucial legal issue of jurisdiction and boundary.[51] The nature of the beast reveals the true importance of the elements of courtesy discussed at the opening of this chapter: where Calidore is able to discern good and evil, and to respond to it appropriately, the beast lacks completely that faculty of discernment and appropriate response. Where Calidore reinforces social order through his confirmatory praise and blame, the beast disrupts social order by its indiscriminate ranging. Both Spenser's diversion from Calidore's quest among the cannibals, and Calidore's own delay of his quest among the border-crossing brigants have been central to his education in due courtesy; to conquer the beast, his experience suggests, he will need to *confine* it.

The role of law in this process of confinement grows, too, from Calidore's treatment of the brigants. Where the crimes of the brigants required strict martial law, the Blatant Beast requires a similar type of prerogative punishment. Lindsay Kaplan has recently shown, in her study of defamation in early modern England, that Books IV to VI of *The Faerie Queene* recurrently deal with the legal fine print of defamation, in both spoken and written forms.[52] As she argues, this material stretches from the introduction of Ate, through Sclaunder and Malfont, to the hags Envy and Detraction and, finally, to the Blatant Beast. While in fact Spenser's interest in defamation stretches back much further – Archimago and Duessa slander Una in the first cantos of Book I, for example – there is no question that Spenser intends the Blatant Beast to recapitulate and elaborate his previous investigations of defamation. The beast has a hundred tongues and a carping bark, a stinging venom, a lethal bite, and a dogged determination to run its victims to the ground. Along with its occasional associates, the hags Envy and Detraction and the trio Defetto, Decetto, and Despetto, the Beast 'infixes' the sting of 'infamy' in the name of both men and women, regardless of their goodness or guilt. Furthermore, the crimes of speech associated with the beast rely repeatedly on technical legal language (*depraue*, *slaundersously vpbrayd*, *misconstrue*, *blot* . . . with *blame*, *wrest*, *publish*, *detraction*, *mischief*, *distort*, *combynd*, *rayle*, *guile*, *abusion*, honour

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51 For the indiscriminate ranging of the beast, see VI.vi.12, VI.ix.3–4, VI.xii.22–23, and VI.xii.27–28.

52 M. Lindsay Kaplan, *The Culture of Slander in Early Modern England* (Cambridge: Cambridge University Press), 1997. See particularly Chapter 2, 'Allegories of defamation in *The Faerie Queene* Books IV–VI'.

blent, treacherie, contention, sclaunders, infamy, remedy, notable defame, lofty creast, honest name, blotted, iniury, reuile and raile, shamefull infamy, blasphemous, defaming, endammadge, liberty, worthy blame, cleare of crime, blamefull blot, backebite, endite; see V.xii.28–43, VI.vi.1–15, VI.xii.22–41). Just as the courteous treatment of the cannibals and brigants amounted to violent punishment, so the curbing of the Blatant Beast must be effected by prerogative power. Calidore's confinement of the beast, using not his sword but rather his shield and a 'muzzell strong', reflects the power of the queen to bring defamers, blasphemers, seditious persons, and scandalmongers to justice in her sovereign prerogative court, the Star Chamber.

In the final book of *The Faerie Queene*, Spenser turns to the direct role of the queen in the government of the nation, celebrating the power of prerogative within the framework of the mixed constitution. Safeguarding her subjects' honour and dealing courteously with all upright suitors, the queen is also empowered to take stiff measures against those who shirk their legal or political responsibilities; even stiffer are the penalties she may impose on those who overrun their rights, and on those with no respect for law and property. In all these prerogative acts, according to Spenser's formulation in the *Legend of Sir Calidore*, Elizabeth is to pursue a single goal, by the law or by the sword: the establishment not only of justice, but of peace and civility.

Chapter 7

THE COMPOSITION OF THE WORLD: MANAGING POWER IN THE *TWO CANTOS OF MUTABILITIE*

> . . . sequitur quod iusticia fruens, felix per legem est.
>
> Sir John Fortescue, *De laudibus legem Angliae*, 4

THE POLITICAL allegory of Books III to VI of *The Faerie Queene* shows Spenser raising his gaze from the social (friendship, contract), through the consensual institutions of government (justice, equity, the courts), to the sovereign (prerogative, executive power). The *Two Cantos of Mutabilitie*, in turn, act as a kind of coda to the poem as a whole, providing not only a case study in the 'virtues' of government, but a historical and jurisprudential view of the policy needed to coordinate these virtues into a cohering, effective system.[1] Spenser's gathering focus on Ireland reaches its peak in these cantos, as the narrative shifts from the abstract topography of Fairyland to the distinctly Irish geography of Arlo Hill. Similarly, the developing preoccupation with issues of jurisdiction and border-crossing through Books V and VI finds its ultimate apotheosis in Mutability, the errant trespassing titan whose legal claims 'range' out of the earthly sphere, through the lunar realm, and into heaven itself.[2] The most obvious organic link between the *Cantos* and the last

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[1] Spenser's 'historical' method in the *Cantos*, as elsewhere in *FQ*, relies on a sixteenth-century conception of history as an 'exemplary' discipline, superior to other intellectual modes for its emphasis on truth and practical judgments. This theory had been cultivated by Lorenzo Valla in his *Disputationes dialecticae*, and was championed in the sixteenth century by the French theorists Baudouin and Bodin, who strengthened the 'exemplary' element by linking history to jurisprudence. See *CHRP*, pp. 746–61; and Timothy Hampton, *Writing from History: The Rhetorical of Exemplarity in Renaissance Literature* (Ithaca: Cornell University Press, 1990), ch. 2 (pp. 31–80).

[2] In fact, the narrative links between the *Cantos of Mutabilitie* and Book VI are as strong as those tying Book VI to Book V. In Calidore's sojourn among the shepherds and his defeat of the brigants (VI.ix–xi), we see a generic trespass into the pastoral, a figure intruding into the sacred and forbidden space of a goddess (Venus), and the subsequent incursion of thieves and murderers into a previously peaceful, even idyllic environment. In the *Cantos*, exactly the

two books of *The Faerie Queene* is, of course, the unyielding emphasis on legal terms, legal process, and legal arguments. By returning to and historicizing these important strands from the legends *Of Iustice* and *Of Courtesy*, Spenser signals the political importance of the dispositional, even jurisdictional, question of Mutability's plea; and suggests the need to read these cantos alongside explicit analysis of the contemporary political situation in Ireland, including *A view of the present state of Ireland*.

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REWRITING THE PHLEGREAN PLAIN:
THE LAW OF HEAVEN

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Of the two moments of apocalyptic potential in the *Two Cantos of Mutabilitie*, the second is probably more familiar: after Mutability and Jove have delivered their pleas before Nature (VII.vii.47–56), a 'silence long' ensues while Nature considers her verdict. It is a dangerous moment, for a verdict in favour of Mutability would consign not only the mortal sphere, but the heavenly sphere to chaos; with no firm fixity in the universe, a kind of Theataetean nightmare of flux would prevail. But this doubtful moment is only mirroring, and fulfilling, the promise laid by an earlier point of apocalyptic suspense, the moment in the first canto where Jove considers destroying Mutability with his 'burning levin-brond' (VII.vi.30). No sooner has Mutability thrust herself into the council of the gods and delivered her challenge (VII.vi.26–27) than Jove recalls one of the great apocalyptic battles of mythology, the battle with the giants on the Phlegrean plain:

> But now, this off-scum of that cursed fry,
>   Dare to *renew* the like bold *enterprize*,
>   And *chalenge* th'*heritage* of this our skie;
>   Whom what should hinder, but that we likewise
>   Should handle as the rest of her *allies*,
>   And thunder-driue to hell? With that, he shooke
>   His Nectar-deawed locks, with which the skyes
>   And all the world beneath for terror quooke,
> And eft his burning levin-brond in hand he tooke. (VII.vi.30)

Jove is here poised upon the destruction of Mutability: a re-enactment of the war against the giants, a show of violence so devastating that it would re-form the world and root out all of mortal creation. Jove's anger, and his subsequent decision to relent, follow Spenser's main source for this passage, the account of

same progression is repeated: Spenser himself commits a generic trespass into the pastoral with his narration of the Molanna's love for the Fanchin (compare VI.x.1, VI.x.25–28, and VI.xii.1 with VII.vi.37), Faunus breaks in on the sacred privity of Diana's bath, and the indignant goddess curses Arlo with a posterity of thieves, murderers, and wolves.

the punishment of Lycaon in Ovid's *Metamorphoses*.[3] As in the Ovidian source, Jove recognizes that the utter destruction of Mutability would be no more appropriate than an unconditional surrender; Mutability must not achieve hegemony, yet neither may Jove risk the fabric of the universe by attempting to destroy her completely.[4] Thus Jove pauses, creating a moment of stasis at the caesura centred in the thirty-first stanza: 'He staide his hand' (VII.vi.31.5; compare *Metamorphoses* 1. 254).

It is here that Spenser's narrative diverges radically from his Ovidian source. In *Metamorphoses*, Jove may prefer water to fire, but he proceeds nonetheless with his destruction of the mortal world: a great flood obliterates humanity, and it is left to Pyrrha and Deucalion to restore animal creation. In the *Cantos of Mutabilitie*, Jove offers an entirely different solution, rejecting violence altogether: in place of war or flood, he supplies law. Readers often assume that Mutability brings about the trial of canto vii through her claim to the inheritance of Saturn (VII.vi.26–27) or her 'appeale' to Nature (VII.vi.35), but the legal argument in fact begins earlier, when Jove offers his fellow gods a choice between 'open force' and 'counsell wise' (*attache*, *arrest*, *prest*, *charge*, *molest*, *discharge*, *defeated* all their *deed*, *succeed*, *off-spring* of their *bloud*, *presumption*, *deuise*; see VII.vi.16–22). In taking the course of law rather than that of prerogative power – contravening Ovid's precedent – Jove acknowledges the potential of an endless cycle of violence. Modern readers are perhaps likely to accept such an alteration more readily than Spenser's contemporaries would have done; not steeped in mythology as they were, we may be less surprised to

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[3] Spenser's imitation of Ovid here has been often noted; see, for example, William Nelson, *The Poetry of Edmund Spenser: a Study* (New York: Columbia University Press, 1963), pp. 297–99, Colin Burrow, 'Original Fictions: Metamorphoses in *The Faerie Queene*', in *Ovid Renewed: Ovidian influences on literature and art from the Middle Ages to the twentieth century*, ed. Charles Martindale (Cambridge, Cambridge University Press, 1988), pp. 99–119; and Syrithe Pugh, *Spenser and Ovid* (Aldershot: Ashgate, 2005). This episode from Book I of *Metamorphoses* is probably more crucial to Spenser's project in the later parts of *The Faerie Queene* than previous studies have registered. A considerable number of elements are shared between this part of *Metamorphoses* and Spenser's writings – not only Book V, Book VI, and the *Cantos of Mutabilitie* in *The Faerie Queene*, but also *A view of the present state of Ireland*. Ovid refers to the flight of Astraea at *Metamorphoses* I.149–50. Mutability's inheritance of the giants' struggle parallels that of Lycaon (*Metamorphoses* I.156 ff.), while Jove's convention of the council of the gods is likewise borrowed from Ovid (*Metamorphoses* I.166–67). Lycaon, whom Ovid describes as '*notus feritate*', is the pattern for the trespasses of the cannibals (see *Metamorphoses* I.226–29) and brigants of Book VI, while his punishment – transformation into a wolf (*Metamorphoses* I.232–39) – inspires Spenser's account of the spoliation both of the shepherd's community in Book VI and of Arlo Hill in VII.vi. The Irish political resonance of these narratives is only enhanced by a further important link: Jove's address to the gods (*Metamorphoses* I.190–91) is the source for Spenser's most famous (and most contested) pronouncement on Irish affairs in *A view of the present state of Ireland*: '*cuncta prius temptanda, sed inmedicabile curae ense recidendum, ne pars sincera trahatur*' (compare *A view*, pp. 44, 133, 148, 157).

[4] Compare Ovid, *Metamorphoses*, I.253–61.

see such a famous story retold in so striking a way. The revision is particularly conspicuous because Spenser has used the myth of the giants' revolt so often before in *The Faerie Queene*; it is one of his most frequently cited allusions.[5] It is worth remembering, too, that Cynthia has earlier threatened Mutability's transgressions with 'the wrathfull Thunders wrack' (VII.vi.12); she has certainly not promised her that Jove will see her in court.

Spenser's decision not only to alter the story, but to underscore this alteration is manifest: the reader is deluged throughout these two cantos with a flood of legal terms, mostly relating to issues of tenure and of right to the estate of lordship or dominion. This diction appears throughout both of the *Cantos*, but even a sampling from the first canto (Argument to VII.vi.36) will give a sense of its depth and focus: *raigne, pretends, soueraine, decay, reare, empire, beare, antique race, linage* ancient, *registred, records* permanent, *aspire, rule, dominion, behest, thralled, attempt, empire, shoulder* from . . . *right, raigned*, by *force* and *tortious* might, *displace, kingdome, soueraigne seat, assign'd, defeated . . . deed, succeed, off-spring* of . . . *bloud, presumption, thrust, Empire, prosecute* her *plot, acknowledge, birth-right, right, iniuriously . . . held*, Heauens *rule, Witnesse, renew, chalenge, heritage, allies, challenge*, Heauens *interesse, Title* of . . . *Titans Right*, by *Conquest, soueraine* might, *decree, wonne . . . Empire*, to our selues we *hold, partakers, ceasse . . . claime, obtaine, Lord* and *Soueraign, betray . . . Right, tride*, equall *Iudge*, dewfull *Right, behalfe . . . partiall, appeale, Scribe . . . Appellation seal, appointed, presence, appeare, triall* of . . . *Titles* and best *Rights*. Spenser's heavy use of such diction underscores the importance of his departure from Ovid's precedent.

The significance of Spenser's legal revision of *Metamorphoses* is not difficult to appreciate when viewed in its native Irish context. As Spenser acknowledges in *A view*, the reform of Ireland must be achieved not only by the sword, but through the law; it is one of the central projects of *A view* to negotiate the delicate balance between these two methods.[6] Jove's resort to legal argument and, ultimately, adjudication in the *Cantos of Mutabilitie* suggests that similar concerns are at stake in the final cantos of *The Faerie Queene*, and emphasizes Spenser's familiar argument that social stability must be bought with force and maintained with law. In fact, the parallels between the 'plot' outlined in *A view* and the political allegory of the later books of *The Faerie Queene* run much deeper. To understand the culmination of these congruences in the trial on Arlo Hill, we must return briefly to the brigants of Book VI.

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5 See *RR* iv.6, xi.9, and xvii.4; *VG* 40; and *FQ* II.x.3, III.ix.22, V.i.9, V.vii.10, and VI.vii.41.
6 See, for example, *A view*, p. 147: 'ffor it is vaine to prescribe lawes wheare no man carethe for kepinge them nor fearethe the daunger for breakinge them. But all the Realme is firste to be reformed and lawes are afterwardes to be made for kepinge and Continewinge in that reformed estate.' See also pp. 55, 148.

REVISITING THE BRIGANTS:
BOOLYING, FOLKMOTES, AND THE CHANNELS OF POWER

The management of boundaries and the control of flows of power is the first and one of the most important strategies for civification discussed in *A view*. Irenius opens his catalogue of aberrant Irish practices with an indictment of the 'Custome of Bolloyinge', or 'pasturinge vppon the mountaine and waste wilde places and removinge still to freshe lande as they haue depastured the former'[7] – what we would today call 'transhumance'. Irenius exposes in detail how this custom breeds 'manye great enormityes vnto that Comon wealthe'. Not only do 'outlawes or loose people . . . which live vppon stealthes and spoile . . . finde reliefe onely in those Bollies beinge vppon the waste places', but 'the people that live thus in these Bollies growe theareby the more Barbarous and live more licentiouslye then they Could in townes', 'for theare they thinke themselues haulfe exemted from lawe and obedience and havinge once tasted fredome doe like a steare that hathe bene longe out of his yoke grudge and repine ever after to Come vnder rule againe'.[8] Diffused across the countryside, itinerant boolyers are inherently ungovernable.

The geographical, cultural, and political polarity that Irenius here develops between the boolies and the towns[9] is later expanded through a recurrent interest in legal and social practices involving the channelling or diffusing of flows ('streams') of people. For example, Irenius goes on to extol the virtues of enclosure and settled farming: not only will enclosure serve as a 'principall barre and empeachement vnto theves from stealinge of Cattle', but it will be 'a gavle againste all Rebles And outlawes that shall rise vp in anie numbers againste that gouernment'. Unable 'to bring forthe and afterwardes to drive his stollen praye but thoroughe the Comon highwaies wheare he shall sone be discried and mett withall', the thief or rebel will be both easily found and effortlessly despatched: he shall 'be well encountred withall by a fewe in so streight passages and stronge enclosures'.[10] The Irish will be discouraged from population diffusion, and the countryside scored with obstacles to confine travel within licensed and governable routes. Enclosure is particularly effective against rebels: not only does it impede the movement of their cattle, or *creaght*, but in restricting travel to common highways it offers the English garrisons and soldiers important strategic advantages (compare, again, Calidore's

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7   *A view*, p. 97.
8   *A view*, p. 98.
9   Irenius develops the same opposition between governed centre and lawless periphery in his discussion of the Old English living in Ireland after the conquest of Henry II. In this formulation, all of Ireland is the 'desert waste' perverting civilized English manners; see *A view*, pp. 113ff.
10   *A view*, p. 135.

defence of the cave entrance at VI.xi.46). Physical boundaries are thus also social, military, even political, borders.

Given the importance attached to this strategy, it is no surprise that the need for enclosures and physical border-guards later forms a central part – in fact, the first part – of Irenius's plans for the institution of civility in a reformed Ireland. In addition to the wide highways to be built through woods, bogs, and mountains passes, Irenius recommends that a network of bridges and forts be established to control crossings, and that all other fords be 'marred and spilt':

> . . . whereof this good will Come that no nighte stealthes which are Comonlye driven in by waies and by blinde fordes vnvsed of anie but suche like, shalbe Convaied out of one Countrye into another as they vse, but that they muste passe by those bridges, wheare they maie either be happelye encountred or easely tracted or not suffred to passe at all by meanes of those gatehowses thereon.[11]

All highways, Irenius adds, should further be 'fenced and shutt vp' to channel thieves and other outlaws into passages where they might more easily be pursued and apprehended. In contrast to the transhumance of nomadic shepherds and the boundary-breaking bodrags of kern and horseboys, Irenius advocates measures to control and monitor the flow of traffic across the Irish countryside. It is the poet's mind that sees this practice as the conceptual opposite of diffusionary Irish customs such as boolying. It is a poet's eye, again, that sees that this tactic for control is the same strategy used by the Irish themselves in the depredations and spoils of the countryside: the fissure-like opening to Glenmalure was Feagh McHugh's chief strength, and Spenser notes several time in *A view* that the Irish 'enemy' has survived for so long through his ability to master these geophysical vantage points.[12]

Looking back to the final cantos of Calidore's quest, it is clear that the border-crossing brigants are not the only trespassers of Book VI; the shepherds themselves, by leading a rustic life physically distanced from the court and its legal and social norms, invite the predations of their despoilers. It is not good enough, Irenius's argument suggests, for Calidore to punish those who steal, spoil, and spill; he must also act to protect the potential victims by discountenancing their own customs of border-crossing boolying; and indeed, this is the only reasonable explanation of the allegorical significance of the border-crossing Blatant Beast's invasion of Melibee's pastoral community. It is crucial

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[11] *A view*, pp. 224–25.

[12] 'It is well knowne that [the Irishman] is a flyinge enemye hidinge him self in woodes and bogges from whence he will not drawe forthe but into some streighte passage or perilous forde wheare he knowes the Armie muste nedes passe theare will he lye in awayte and if he finde advantage fitt will daungerouslye hazard the troubled Soldiour' (*A view*, p. 151). For Spenser's treatment of Feagh McHugh, see *A view*, pp. 170–74. The way to root out Feagh McHugh, as Irenius notes, is merely to 'shutt him out of his great glenne whereto he so much trustethe' (*A view*, p. 174).

to recognize that Spenser locates the origin of this incivility in the physical, geographical indiscrimination of both brigants and boolyers: diffused, uncollected, and disordered, they are ungovernable and potentially barbarous.

The flip side of this diffusionary evil is the possible social disorder threatened by unlicensed gatherings. In considering such assemblies a danger, Spenser was following the prevailing political wisdom of his time. The attitude of Elizabeth's government followed the precedent of her predecessors: assemblies, especially those convening for religious or political purpose, were dangerous to the peace and should be suppressed. Legislation throughout the Tudor period pursued this traditional policy through statute, proclamation, and exemplary punishment.[13] While Elizabeth was primarily concerned with the conventicles and illegal gatherings of extreme Protestants, she appears to have feared the volatility, too, of unlicensed tournaments and of popular processions and gatherings. Spenser's awareness of the political sensitivity of such assemblies is evident throughout *The Faerie Queene*; in episodes such as the battle of Cambel and Telamond, the tournament for the girdle of Florimell, the confrontation between Artegall and the Giant with the Scales, and especially (as we shall shortly see) the trial at Arlo, we find the poet resorting to diction emphasizing the illicit power and danger of the assembly: 'rout', 'prease of people', and the rest echo the diction of contemporary statutes and proclamations, and the prevailing Elizabethan anxiety over tumultuous convocations.[14]

Nowhere was this fear more well-placed than in Ireland, where assemblies

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[13] The usual ancient authorities ranged from 2 Edw. 3 cap. 3 (Statute of Northampton) to 2 H5 St. 1 cap. 8. For our purposes here, probably the most important piece of Tudor legislation was Mary's 1553 'acte againste unlawfull and rebellyous Assembles', which declared felony any assembly of twelve persons or more for the purpose of contravening any 'Lawes or Statutes of thie Realme or any of them'. Similarly pernicious groups of between two and twelve persons could expect at least a year's imprisonment (see 1 Mar. St. 2 cap. 12). Far from repealing this severe legislation, Elizabeth's first parliament confirmed it, commenting that it 'hathe been proved by Experience to be a very good and beneficiall Lawe, and meete to be continued and kept in force, aswell for the Preservacion of the Peace, as also for the Common Wealthe and Quyetnes of this Realme' (1 Eliz. cap. 16). The record of Tudor royal proclamations providing for unlawful assemblies is likewise telling; see Hughes and Larkin, nos 13, 168, 334, 340–42, 353.5, 395.5, 420, 457.5, 715, 735, and 769.

[14] For rascal routs, unruly presses, throngs, heaps, assemblies, troops, rascal crews, riotous arrays, swarms, vulgar throngs, tumultuous affrays, and lawless multitudes see II.vii.44 (Philotime's supporters), II.ix.13–17 (outside Alma's castle), IV.i.28 (Ate), IV.ii.40 and IV.iii.41 (Cambel and Triamond), IV.iv.43 (Satyrane's tournament), V.ii.29–54 (the Giant with the Scales), V.iv.21–24 and V.v.5 (the Amazons), V.vi.28–30 (Dolon's castle), V.viii.50 (the Souldan and Adicia), V.xi.18,34 (Belge, Gerioneo, and the Idol), V.xi.43–47 (Sir Burbon), VI.ix.8,45 and VI.x.16 (the shepherds), VI.xi.46 (the brigants), and VII.vii.3–59 (Arlo Hill). The wording of contemporary statutes and proclamations makes use of these specific words, especially such favourites as 'routs', 'assemblies', 'multitudes', 'presses', and 'riots'. Among proclamations, see for example Hughes and Larkin, nos 63, 77, 168, 333, 341, 582, 715, 735, and 796.

of Old English and of Irish often meant robberies and spoiling, murder and concealment, or very often treason itself. Thus Irenius wishes the Irish custom of tanistry to be suppressed, if for no other reason than because of the frequent assemblies it requires in order to select the captain and tanist.[15] But such illicit gatherings later appear to be only part of a more general habit of local and unlicensed assembly. 'Theare is a great vse amongst the Irishe to make greate assemblies togeather vppon a Rathe or hill', Irenius informs Eudoxus, ostensibly for the purpose of settling private disputes and other civic matters through 'parlies'; however, these meetings only provide further occasion for illicit activity.

> ffor to them doe Comonlye resorte all the scum of lose people wheare they maye frelye mete and Conferr of what they liste which else they Coulde not doe without suspicion or knowledge of others Besides at those parlies I haue diuerse times knowen that manye Englishemen and other good Irishe subiectes haue bene villanouslye murdered by movinge one quarrell or another amongest them, for the Irishe neuer come to those Rathes but armed wheather on horse or fote which the Englishe nothinge suspectinge are then Comonlye taken at advantage like shepe in the pinfoulde.[16]

The danger to the peace arising from such concentrations of 'Irishry' is exquisitely focused by the final image of the cornered Englishman, trapped like a 'shepe in the pinfoulde'. Irenius demands that such illicit folkmotes be abolished: a key element in the civilising of Ireland must be the reform of any native custom that hinders the Dublin government's physical control over the movement of people in the countryside.

By contrast, as Spenser later concedes in *A view*, legitimate congregations can strengthen the authority of the queen and her administration in Ireland.[17] The tension between the danger of assembly and its important benefits contributes to the shimmering, dreamlike quality of the great folkmote on Arlo Hill (VII.vii). Spenser takes care, in his presentation of the gathering, to include a number of details that undermine its stability. For example, although all creatures are called to attend, dangerous elements are, curiously, excluded ('Onely th'infernall Powers might not appeare . . .'; see VII.vii.3). Order, we are meant to surmise, cannot allow the participation of the 'vnruly' underworlders. And, as we might expect, *Order* himself shortly makes his appearance:

> And thither also came all other creatures,
>   What-euer life or motion doe retaine,
>   According to their sundry kinds of features;

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[15] See *A view*, p. 50.
[16] *A view*, pp. 128–29.
[17] See *A view*, pp. 213–14.

> That *Arlo* scarsly could them all containe;
> So full they filled euery hill and Plaine:
> And had not *Natures* **Sergeant** (that is *Order*)
> Them well **disposed** by his busie paine,
> And raunged farre abroad in euery border,
>   They would haue caused much confusion and disorder. (VII.vii.4)

Spenser here goes straight to the heart of the danger of this assembly: gathered together here are all the creatures of the universe, an immense convocation with tumultuous potential. The paradox of their assembly is encapsulated concisely in Spenser's use of 'raunged' in this passage, especially in its construction 'raunged farre abroad in euery border'. 'Range' represents here the aphetic form of 'arrange', and is thus equivalent to 'dispose' in the previous line. But it also means, in a Spenserian coinage, 'to roam, to traverse', and elsewhere in *The Faerie Queene* such ranging is typically done abroad in the border.[18] Order thus staves off disorder by an act of disposition and arrangement, but only just: the very borders and the act of arrangement themselves admit the potential for 'confusion and disorder'.[19] The accretion of contradictions associated with order and disorder in this brief passage points directly to Spenser's arguments for and against assembly in *A view of the present state of Ireland*: diffusion is to be eschewed, but assembly is equally dangerous unless it can be meticulously controlled.

TANISTRY, KINCOGISH, AND COUNTENANCING RIVALS: THE FLOW OF LOYALTY

Spenser's interest in the management of the flow of power in *A view* does not end with the physical. Similarly crucial to the Dublin government's effectiveness is control over allegiances. These relationships are handled in a way

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[18] 'Range' is several times associated with 'abroad', and with the Blatant Beast. See VI.x.5.1, VI.xii.2.8, and VI.xii.40.1. The tension between the two interpretations of 'range' first appears focused in Book VI, where Calidore finds the nymphs 'ranged' in order around the Graces; see VI.x.11.9 and VI.x.12.1.

[19] The disordering order of 'range' is given further focus in this passage by Spenser's reference to the 'solemne bridall cheare' of Peleus and Thetis. This wedding is famous for two associations, references to both of which have already appeared in the poem: it was on his way home from this gathering that Jove seduced Eurynome and engendered in her the three Graces, handmaids of Venus and, as we have learned in Book VI, the sources of courtesy (see VI.x.22). But the wedding of Peleus and Thetis is also remembered as the setting for Ate's delivery of the golden apple, the event that divided Juno, Venus, and Diana, and led eventually to the Trojan War (see II.vii.55). Without making overmuch of a formal equation between the terms, it is clear that Spenser is here confounding courtesy – the affirmation of the integrity of borders, and of social order – and calamitous disorder, represented in Ate and the apple of discord, within a single allusion.

essentially analogous to Irenius's prescriptions for roads and bridges: a given flow of allegiance is only permissible if it travels through prescribed channels, and is oriented ultimately toward the queen. The most important of the Irish customs in contravention of this principle is, of course, tanistry. This unique form of tenure vested the lordship of a given territory not in a particular person and his descendants, but rather in a collective, the sept or clan. The individual leading the sept, the captain, retained his priority as lord of the land as a life interest only, and the right did not pass through him to his heirs; instead, the mantle was passed through election to the 'tanist', a kind of vice-captain elected concurrently with the captain.[20] As Irenius explains, tanistry is particularly well suited to frustrating English attempts at colonization. Because the tanist is 'allwaies readye knowen', the sept is never without a leader, should the captain fall in war or by some sudden accident. More importantly, 'tanistry' emphasizes the present existence of the tanist as future elected leader. His preordination limits the powers of the captain himself, in much the same way that a tenant for life, in English landholding traditions, could be limited in his actions by the rights of the reversioner. The existence of the tanist emphasizes the true collective tenure of the sept or clan and acts as a check against the personal ambitions of a captain who would prefer to be a lord in the English sense.[21] In an analogous way to the custom of boolying, the practice of tanistry diffuses allegiances and the flow of power across a wide landscape, leaving little purchase for a colonial administration that would substitute new imperial masters for old domestic ones.

Diffusion of allegiance forms but one half of the problem for English administrators hoping to convert Irish (and Old English) loyalties toward an English queen. The other, more pressing danger is the possibility of focused but misdirected allegiances, bestowed not on the queen or her servants but on Irish captains or Old English feudal lords. Spenser's first treatment of this subject comes via a discussion of *kincogish*, an ancient Irish legal custom that was revived and promoted by the Dublin administration in the early 1580s. As Irenius describes it in *A view*, it is a custom whereby:

> . . . everye heade of every septe and everye Chiefe of everye kindred or familye shoulde be answearable and bounde to bringe forthe euerye one of that kindred or sept vnder him at all times to be iustified when he shoulde be required or Chardged with anye treason felonye or other haynous Cryme.[22]

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[20] For Spenser's introduction and condemnation of tanistry, see *A view*, pp. 49–50.

[21] In practice, tanists wielded considerable political power within the Irish septs, and in many cases acted as a check on the leadership of the captain. That this function of the tanist was widely recognized and even intended helps to explain why the custom was known as 'tanistry' rather than, for example, as 'captainry'.

[22] *A view*, p. 80.

As Irenius argues, this apparently legal necessity carries dangerous consequences:

> ffor whilste everye Chief of a septe standethe so bounde to the lawe for everye man of his blodd or septe that is vnder him, *inclusive* everye one of his septe is put vnder him, and he made greate by the Comaundinge of them all . . . Heareby the Lordes and Captaines[23] of Countries the principalles and heades of septes are made stronger whom it shoulde be a moste speciall care in policye to weaken and to set vpp and strengthen diuerse of his vnderlinges againste which whensoeuer he shall Offer to swarve from duetye maye be hable to bearde him.[24]

In the theory of power management that Spenser is here promulgating, single heads of power are only to be permitted when they belong, physically or through allegiance, to the queen and her English administration. Unlicensed focuses of power, whether fords and bridges or local rulers and other authorities, must be undercut through diffusionary tactics. Thus Spenser condemns the over-diffusion of customs such as tanistry, but encourages the cultivation of diffusion in the face of customs, like kincogish, that promote concentration of power in the hands of one potentially subversive individual.

On the other hand, Spenser is also well aware of the perils of the undercutting approach to unlicensed allegiances. Such a strategy had led, as Spenser notes during a long digression on the fortunes of Hugh O'Neill, Earl of Tyrone, to the rebellion of the Earl (and the Nine Years' War, then underway). Hugh O'Neill, the second son of Matthew, Baron of Dungannon, had been raised to his father's title only in order to 'beard' Turlough Luineach O'Neill, the head of the sept after the death of Shane, Hugh's uncle. As Spenser notes, Hugh owed all his greatness to Elizabeth's support;[25] his betrayal of the privileges and authority granted him forms, in Spenser's hands, a powerful lesson on the dangers of the policy of 'countenancing rivals'. Irenius gives a similar lesson in his discussion of the plot, much bruited during the 1590s, for containing Tyrone. Where some suggested setting up against him the sons of Shane O'Neill, Irenius recommends that it is 'not by anie meanes to be put in profe / for weare they let forthe and Coulde ouerthrowe him who shall afterwardes ouerthrowe them or what assurance Can be had of them'.[26] The management of allegiances among the Irish and Old English must thus steer between two opposing threats: first, the New English administration must

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[23] It should be noted that the terms used by Spenser to describe the leaders of mere Irish septs are precisely the same words repeatedly associated with the brigants in Book VI of *The Faerie Queene*. The leader of the brigants is there known as the 'chief', and is termed the 'captain' – the most common epithet for Irish leaders, and the standard contemporary English translation of *taoiseach* – a total of nine times in canto xi of Book VI.

[24] *A view*, pp. 80–81.

[25] See *A view*, pp. 167–68.

[26] *A view*, p. 167.

endeavour to wean the native Irish off their defensive customs of diffused and collective leadership, customs that do not permit the ready substitution of Dublin- and London-oriented hierarchies stressing loyalty to the English crown. On the other hand, the administration must be careful to develop hierarchies that avoid undue strengthening of intermediary figures: in the volatile political environment of Elizabethan Ireland, such figures – like Tyrone or *mesne* lords such as the Earl of Desmond – could quickly exploit their local power to turn against their English masters.

Spenser offers several solutions to this problem within *A view*. The first proposal relies on what Spenser describes as a Saxon precedent, a law instituted in England at a time, some centuries earlier, when its political situation supposedly mirrored that of Elizabethan Ireland, 'infested with Robbers and outlawes'. Alfred had then divided the realm into shires, the shires into hundreds, and each hundred into ten tithings:

> . . . of which Tenn eache one was bounde for another and the eldest or beste of them whom they Called the Tithingeman or borsholder that is the eldest pledge became suertye for all the reste So that if anie one of them did starte into anye vndutifull accion the borsholder was bounde to bringe him forthe who ioyninge efte sones with all his tithinge woulde followe that lose persone thoroughe all lose places till they broughte him in /[27]

According to Irenius's adaptation of this plan for Ireland, a new hierarchy would be substituted for the old, this one dependent not on feudal bonds of loyalty and allegiance, nor on any type of association tied to land and lordship, but rather to a new set of relationships established for the purpose and directed solely to the queen and her administrators. The crucial difference between this system and the existing Irish system is that it dissociates the honour hierarchy from the new tithing hierarchy: neither the nobility nor the gentlemen necessarily figure in the new loyalty structure.[28] Thus when Eudoxus objects that the same result could be achieved with less trouble by countenancing the ancient practice of lords 'booking' their tenants, servitors, and retainers, Irenius responds unequivocally:

> [It] is a Comon order amongst them to haue all the people booked by the Lordes and gentlemen, but it is the worste order that euer was deuised for by this

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[27] *A view*, pp. 201–02.

[28] This strategy shares obvious features with many of the concerns discussed in Chapter 4, and particularly with the opposition in Books III and IV between the contractual language of feudal obligation and that of the new civil service hierarchy. In the same way that the narrative of Amoret and Scudamour explores aspects of the honour-based structures of friendship and loyalty, while Florimell's and Marinell's relationship focuses exclusively on trade-related language and exchanges, so Irenius here pits the honour communities of the nobility and gentlemen against a distinct new hierarchy of civil servants and crown-oriented administrators.

bookinge of men all the inferiour sorte are broughte vnder the Comaunde of theire Lordes and forced to followe them into anie accion whatsoeuer, Now this yea are to vnderstande that all the Rebellions which youe see from time to tyme happen in Irelande are not begone by the Comon people but by the Lordes and Captaines of Countries vppon pride or willfull obstynacie againste the gouerne-ment which whensoeuer they will enter into they drawe with them all theire people and followers which thinke themselues bound to goe with them because they haue booked them and vndertaken for them And this is the reasone that in Englande ye haue fewe suche bad occacions by reasone that the Noblemen how euer they shoulde happen to be ill disposed haue no Comaund at all ouer the Cominaltye thoughe dwellinge vnder them because euerye mann standethe vppon himselfe and buildeth his fortunes vppon his owne faithe and firme Assuraunce The which this manner of Tythinge the polls will worke allsoe in Irelande.[29]

Irenius here articulates the underlying end of many of the disparate objections and schemes he has posited throughout the treatise: with careful management, the queen and her administration can control the flow of power both physical and social throughout the country, steering carefully between the opposed excesses of diffusion and concentration. If this policy is pursued carefully, the queen can even use legitimate assemblies – convened under a tithingman who commands his pledges 'no further then his princesse service' – to strengthen the stability of her rule.[30] Whatever the context, it is crucial that the queen be seen to be the ultimate source of all hierarchical loyalty trees and the master of every strait and narrow, ford, and bridge.

The management of allegiances is a central theme in the tale of Faunus and Molanna (*FQ* VII.vi), and one of the strands linking this episode to the trial on Arlo Hill. It is easy to forget that Molanna, as a nymph of Diana, is not a free woman, but a virgin bound in a sorority regulated by a strict code of conduct. The myth of Callisto, upon which Spenser's tale of Molanna is partially based, illustrates this fact well: raped by Jove, Callisto tries in vain to keep her devel-oping pregnancy, the testimony to her broken chastity, from Diana's knowl-edge. When her secret is eventually revealed, Callisto is expelled from the group, and in some versions of the story punished mercilessly.[31] In preferring the love of the Fanchin over her allegiance to Diana and her adherence to the code of chastity, Molanna commits a greater crime: she has deliberately betrayed her allegiance to serve her own personal ends. She is stoned, befitting a harlot, but for her faithlessness Diana also desecrates her once virgin banks. The union of the Molanna and the Fanchin, however, is also a marriage of

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[29] *A view*, p. 205.

[30] See *A view*, pp. 213–14: 'So as of these Tithinges theare Cane no perill ensue but a certaine assurance of peace and greate good, for [the Irish] are theareby withdrawne from theire Lordes and subiected to the prince'.

[31] For the story of Callisto, see Ovid, *Metamorphoses*, II.401–65.

rivers, and as such recalls the dynastic symbolism of the wedding of the Thames and Medway (IV.xi). In this context, it is crucial to remember that Diana, or Cynthia, can often in *The Faerie Queene* represent Elizabeth, and also that Molanna and Fanchin are not loyal English rivers, but Irish streams. Molanna's transferral of allegiance from her queen to her neighbouring Irish river, then, takes on a colour of political significance. When we recall the conceptual conventions of Spenser's analysis of power management in *A view*, and some of the typical rhetoric of his analysis of allegiances, this colour deepens. For in *A view*, Spenser repeatedly uses the metaphor of the stream to express his recommendation of breaking the power of the Irish captains and the Old English lords.[32] Molanna's infidelity to Diana thus figures not only as a preference for self-interested allegiance over hierarchical responsibility to her mistress, but equally as a dangerous, even treasonous confluence of Irishness in place of what might be construed as proper deference to English authority. The resulting descent of the countryside into barbarous incivility needs little explication: thieves and murderers are to be expected where hierarchical authority has broken down.

The analogy Spenser is developing between control of physical conduits of power on the one hand and structural control of allegiances on the other may seem alien, even far-fetched. We are not in the habit today, for example, of drawing up surveys of allegiances as a way of describing structures of power within a community. But this was a way, and a common way, of describing political relations in Spenser's time. As Irenius himself comments in *A view*, for example, '*Arundell* of the Strond in the Countie of Corke whoe was Auncientlie a great Lorde . . . is nowe become the lord Barries man, and doeth to him all those services which are due vnto her Majestie'. A neighbour planter of Spenser's in Cork, Nicholas Browne, actually compiled in 1597 a descriptive geography of Munster detailing the relationships – allegiance or enmity – obtaining between all the principal New English, Old English, and mere Irish inhabitants of the province.[33] His treatise reads in a similar way to contemporary maps of Ireland showing geographical features superimposed on the names of the baronies, great houses, and septs controlling each area. Visual mapping of political relationships – allegiances and enmities, genealogies, feudal services – mimics the geophysical structures – watercourses, roads, straits and valleys – represented on topographical maps. Spenser's early

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[32] For example, consider Irenius's plan for the institution of tithingmen loyal to the queen:
 . . . for by this the people are broken into manie small partes like litle streames that they cannot easilie Come togither into one heade which is the principall Regard that is to be hadd in Ireland, to kepe them from growinge vnto soche a heade and adhearinge vnto great men (*A view*, pp. 205–6).

[33] Nicholas Browne, 'Munster in AD 1597', ed. James Buckley, *Journal of the Cork Historical and Archaeological Society*, 2nd ser., 12 (1906), 52–68.

readers, familiar with this kind of political analysis, would have readily recognized its relevance to an interpretation of the Faunus and Molanna episode.

The structural similarities I have been noting between physical and political flows of power, too, suggest the relationship of Molanna's transgression to the trespassing of Mutability in the surrounding narrative, where the management of allegiance is more explicitly at stake. Mutability's first legal claim to the empire of heaven is based on inheritance – the right of her titan forebears, she claims, has been usurped by Jove (VII.vi.26–27) – but Jove refuses to engage her on this claim. Instead, he adduces his own right through 'conquest':

> For, we by *Conquest* of our *soueraine* might,
> And by eternall *doome* of Fates *decree*,
> Haue wonne the *Empire* of the Heauens bright:
> Which to ourselues we *hold*, and to whom wee
> Shall worthy deeme *partakers* of our blisse to bee. (VII.vi.33)

The contest between the claims of inheritance and conquest here invoke the Irish contemporary Irish political context; '*inheritance*' was by far the most common strategy among Irish landholders in justifying their rights to seigniories, constantly under threat during the Tudor period through the incursion of New English settlers.[34] 'Conquest', on the other hand, had in Spenser's time a legal meaning, related to landholding: it denoted any manner of acquiring land apart from inheritance, and was typically used in contradistinction to 'heritage';[35] purchase of lands through legal conveyance could, for example, be described as 'conquest'. In opposing Mutability's claims with this word, Jove suggests an alternative legal basis for his title to Titan's right, a title he further affirms was confirmed by '*decree*'. It may come as no surprise to learn that Elizabethan parliaments often prepared statutory confirmations[36] of private conveyances, meant to establish the legality of these transfers and to make them matter of public record.[37] Given the Irish context, Spenser's use of 'conquest' also invokes the Norman conquest of Ireland, which as Spenser notes in *A view* made future kings of England absolute lords of all Ireland.[38]

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[34] See, for example, *CSPI* 63/147/14–15, the complaint of Lord Roche, Spenser's Old English Munster neighbour, against Spenser and some of the other New English undertakers. Roche repeatedly reminds Elizabeth of his ancient 'inheritance', and informs Elizabeth that Spenser is 'pretendinge falslie title' to the viscount's lands around Fermoy.

[35] The *OED* is somewhat misleading in restricting this usage to Scotland; it appears fairly copiously among Irish legal documents of the period to describe conveyancing.

[36] A parliamentary statute is, of course, a 'decree'; so Cowell, *Interpreter*, f. Qqq2r, defines statute as 'a *Decree* or *act of Parlament*'.

[37] A famous example is Elizabeth's statutory confirmation of the escheat of the lands of Sir Francis Englefield in 1592 (see 35 Eliz. cap. 5), but there are many others.

[38] Spenser discusses the legal implications of the Norman conquest in *A view*, p. 52. It is interesting that Irenius favours in this passage the right of the conqueror over Henry VIII's kingly title.

But the main effect of Jove's claim of conquest is the new model of power relations it introduces, one based not on the authority of genealogy but rather on lordship and the flow of allegiance: 'Which to our selues we **hold**, and to whom wee/ Shall worthy deeme **partakers** of our blisse to bee'. In appealing to Nature's adjudication in the matter, Mutability meets Jove on his own ground, offering to justify her right not merely by force, not merely by inheritance, but finally through the same channels that he himself proposes: through allegiance.

'FOR TRIALL OF THEIR TITLES AND BEST RIGHTS': THE COMPOSITION OF THE WORLD

Abandoning her claim to title through inheritance, Mutability argues before Nature her *de facto* position as *mesne* lord to all of mortal, and later immortal, creation. She begins by citing the allegiance of the Earth, but turns quickly to the Earth's '**tenants**':

> Yet mauger *Ioue*, and all his gods beside,
>   I doe possesse the worlds most **regiment**;
>   As, if he please it into parts diuide,
>   And euery parts **inholders** to **conuent**,
>   Shall to your eyes appeare incontinent. (VII.vii.17)

Following this 'convention', Mutability then turns her attention to the gods themselves, whom she demonstrates convincingly to partake of change and mortality. In parading all of creation before Nature, Mutability is determined to show that the universal flow of allegiance is directed, in all cases both earthly and heavenly, through her; in the case of the 'immortal' gods, Mutability argues by analogy that, being partakers in change like mortal creatures, the gods should likewise yield '**homage**' to her. Change is a quality shared by all creatures, and therefore, working from the general to the specific, Mutability must be, hierarchically speaking, feudal lord to all of creation. Spenser's emphasis on terms like **tenants**, **inholders**, **homage**, and **convent** stresses the bond of feudal allegiance shadowed under Mutability's '**regiment**'. In a sense, this feudal power structure, and its Irish colouring, have been waiting to emerge ever since Mutability's earliest appearance, where Spenser associates her with the word '**decay**' (VII.vi.1). Although a common word in Spenser's diction, and often used in a general sense, its association with Mutability in the context of her challenge to the gods' title suggests its frequent use in the legal and political assessment of property: in 1590s Ireland **decay** was used to describe the declining state of a family's tenure, lost or compromised through lack of heirs or through conversion or translation of tenure (i.e. from English to Irish law). It could be used slightly more generally to describe any decline in

property, both in lands or chattels.[39] Mutability causes such '*decay*' through-
out creation, seeming to confirm her own standing as new feudal lord to the
decayed '*inholders*'. Spenser's lesson is clear: the rightful sovereign Jove has let
matters get seriously out of hand.

Some recent readings have considered the *Two Cantos of Mutabilitie* as a
meditation on dominion and empire, while others have linked them to the
secretive but widespread manuscript debate on the succession.[40] These
approaches, which consider the contribution of the *Cantos* not only to specific
points of Irish policy but to larger questions of political philosophy and juris-
prudence, are very valuable and have been explored in detail. However, histor-
ically speaking, this episode bears a strong resemblance to a familiar policy tool
of Elizabethan Irish government, and one entirely in keeping with the theme of
channel-control that Spenser has been developing throughout the *Cantos*. It is
crucial to appreciate that what we are witnessing is *not* 'the trial of Mutability',
but an inquest at which 'all, both heauenly Powers, and earthly wights, / Before
great Natures *presence* should *appeare*' (VII.vi.36). What Spenser is present-
ing, as he expressly informs us in the first canto, is a '*triall* of . . . *Titles* and best
Rights', or an inquest into tenure. This is nothing less than a complete inven-
tory of the formal allegiances of every member of creation, a thorough over-
haul of the political status of every living thing: to which side do they incline,
Mutability or the gods?

The call for such an inquest is the second important component of
Spenser's plan for the civil reformation of Ireland in *A view*, supplementing
the more general strategy of re-establishing the hierarchies of allegiance
throughout Ireland to put the queen and her administration back at the focus
of power:

for reformation of all which I wishe that theare weare a Comission graunted
forthe vnder the great Seale . . . vnto persons of speciall truste and iudgement to

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[39] Thus Nicholas Browne writes in his tract on Munster, 'The Lo: Desces howse is in a manner
cleane decaied, theare remayneinge noe more but him selfe of it' (Browne, 'Munster in AD
1597', p. 60). Likewise Spenser cautions in *A view* that new colonies often attract only the 'the
worst & most decayed men'. In connotation and association, 'decay' seems to have had about
the same amount of technical colouring as a similar word, 'decline'. Within *The Faerie Queene*,
'decay' is used to describe the political corruption of Ate (IV.i.29) and the decline of Bracidas's
lands (V.iv.9.6). So Nature also warns Mutability at the end of the *Cantos*, 'thy decay thou
seekst by thy desire' (VII.vii.59).

[40] Elizabeth Fowler, 'The Failure of Moral Philosophy in the Work of Edmund Spenser', pp.
67–71, links Jove's 'conquest' to Scudamour's 'conquest' of Amoret and the Roman legal
tradition of *dominium*. For a study relating Mutability to 1590s machinations around the
succession, see Mary K. Woodworth, 'The Mutability Cantos and the Succession', *PMLA*, 59
(1944), 985–1002. Of obvious relevance here is the painstaking historical work of Marie
Axton, in 'The Influence of Edmund Plowden's Succession Treatise', *HLQ*, 37 (1974), 209–26;
and in *The Queen's Two Bodies: Drama and the Elizabethan Succession* (London: Royal Histori-
cal Society, 1977).

enquire thoroughe out all Irelande . . . how euerye man houldethe his landes of whom and by what tenure so that euerie one shoulde be admitted to shewe and exhibite what Righte he hathe and by what services he houldethe his lande . . . thearevppon woulde appeare firste how all those greate Englishe Lordes do Claime those greate services what seigniories they vsurpe what wardeshipps they take from the Quene what Landes of hers they Conceale and then howe those Irishe Captaines of Countries haue encroched vppon the Quenes freholders and Tennantes how they haue translated the Tenures of them from Englishe houldinge vnto Irishe *Tanistrye* And defeated her maiestie of all her rightes and dewties which are to accrewe to her thereout.[41]

Eudoxus naturally queries whether such a commission would not 'stir vp all the Irishe into Rebellion', as they would stand by such an inquest to lose their lands and power. Irenius's response emphasizes that such a commission would not seek to change the *effect* of the tenures, but only the structure of power underlying them:

> Neither shoulde theire Landes be taken awaie from them nor the vttermoste Advantages enforced againste them but this by discreacion of the Comissioners should be made knowen vnto them that it is not her maiestes meaninge to vse anie suche extremitye but onelye to reduce thinges into order of Englishe lawe and make them houlde theire Landes of her . . . so as they shoulde thence forthe holde them rightefullye which they now vsurpe moste wrongefully.[42]

This provision for an inquest into tenure is obviously a crucial part of Spenser's project for the civil reformation of Ireland, complementing the strategy discussed above for turning the hearts of the common sort back toward the queen. By re-establishing the original tenures of the landholders throughout Ireland, Elizabeth will reorder the flow of allegiance in the hearts and in the actions of Irish lords and gentlemen. Once sworn to these allegiances and tenures, landholders can be justifiably prosecuted or punished for failure to yield rent, for failure to yield service, or for more direct conspiracy to support or pay homage to any competitor for rule in Ireland.

In fact, a celebrated and controversial inquest into Irish tenures had been launched in the early 1580s by the then Lord Deputy Sir John Perrot, when Sir Richard Bingham was commissioned by the queen to take a 'composition' of the province of Connaught. Bingham's commission cited the 'continuall dissencion of the Lordes and chieftetaines' in Connaught, who having challenged 'to them selves in the tyme of Iustice [h]is declinacioun aucthorities cuttinges and cessinges vncertaine vnlawfull and vnprofitable vnder pretext of defendinge the people vnder ther seuerall rules' did 'ronn vnto all errors of forgettinge ther duties to vs, and contempninge the waies of Iusti[c]e'. In order

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41 *A view*, pp. 207–08.
42 *A view*, pp. 208–09.

that her 'prerogatives' might be known, and the 'rightes and tytles' of her lords might be 'reduced from thincertainty wherein it stode to contynew certaine for euer hereafter', Elizabeth appointed Bingham to make 'composition' with the Connaught lords, both Irish and English, to convert and translate their titles from Irish to English customs:

> And thervppon in lue of thincertaine Cesse accustomed to be borne to vs for the Marshall goverment of that countrie, And of the vncertaine cutting and spendinges of the Lordes aforesaide uppon our subiectes vnder ther rules, to compounde after yore best discrecion betwixt vs and the said Lordes ours and ther freeholders customarie holders and tenants and the lordes and ther tenants for a chardge and a Rente certaine to vs upon euery quarter or quantitie of lande within that province.[43]

Bingham's directive is equivalent to Spenser's proposal in *A view* and to Nature's inquest in every way: it proposes an enquiry into title, convening all the 'inholders' of a given domain, in order to establish 'by trial' all 'Titles and best Rights'. Perhaps the most important element of Bingham's commission, for our present purpose, is the contrast Elizabeth develops between 'thincertaine Cesse' and the 'vncertaine cutting' on the one hand and the 'chardge and a Rente certaine' on the other. The 'cesse', as Irenius elaborates on Eudoxus's behalf in *A view,* was an unfixed levy exacted on Irish tenants by the government (originally by Old English lords) as a contribution to the maintenance of garrisons. The other 'cuttings' allowed the local Irish and Old English lords were the stuff of custom: sorehin, coignye and livery, cuddy, and a range of other traditional duties licensed to the local lord in return for his protection. In order to make her offer attractive to landholders, Elizabeth stressed that these uncertain duties – both those exacted by her on her land-holders, and those exacted by the landholders on the tenants – would be reduced to a system of certain payments. Spenser's account of the aims of the commission differs substantially from that delivered to Bingham: he stresses the revenues due to her majesty, but even more the advantage of bringing landholders under her allegiance. This distinction is certainly occasioned by the different audiences intended for the documents; Spenser was attempting to win over the English government, whereas Elizabeth was playing to the anxieties of her Irish subjects.[44] The importance of this distinction between the two

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43 *The compossicion booke of Conought*, ed. A. M. Freeman (Dublin: Irish Manuscripts Commission, 1936), p. 4. The original document must be presumed to have perished during the calamitous fire at the Four Courts in 1918. It was, fortunately, copied in about 1700, although imperfectly. I have suggested emendations in square brackets above to make better sense of the transcription.

44 A more clinical and historical view, supplied by a contemporary somewhat distanced in time and space from the event, incorporates both elements. Sir Henry Docwra writes in his *Narration* that the purpose of the composition was:

documents is that it very closely resembles the action of the inquest in the *Cantos of Mutabilitie*. Mutability enters willingly into the inquest because she perceives the change in established tenures to be to her advantage, but it is Jove who comes away with 'all things firmely staid vpon the pillours of Eternity', '*confirmd* in his *imperiall see*'. Although 'cesse', 'cuttings', and 'rents' are not explicitly at issue in the confrontation between Jove and Mutability, the rhetoric of certainty versus uncertainty is: and it is in this rhetorical battle that Jove triumphs.

Jove's hegemony receives confirmation in the famous, if concise, judgment of Nature at the very end of the *Cantos*. Spenser's elaborate development of border-crossing themes, from the last few cantos of Book VI through to the end of the *Two Cantos of Mutabilitie*, thus prescribes action for Elizabeth, while Nature's verdict justifies this action. The careful management of allegiance, the meticulous restoration of ancient English tenures, the sensitivity to borders and the physical channels of power, the threat of force coupled to the rule of law – all these elements must be addressed by the colonial administration, and supported by the sovereign. What is more, she like Jove has been '*confirm'd*' in her right to govern Ireland as a lord, to introduce the changes and plot the courses for reform that Spenser has suggested both in *The Faerie Queene* and in *A view of the present state of Ireland*. As a mirror for the prince, the poem thus accomplishes its two aims, the same aims precedented by Merlin's mirror in Book III: it shows Elizabeth both what she is – the sovereign conqueror of Ireland – and what she must do – her political destiny. And it is, at least in part, this destiny for which Spenser prays in the closing lines of the *Cantos of Mutabilitie*. The 'Sabaoth God' he here beseeches is not or not only the god of rest, as has often been suggested (wresting the orthography of a word Spenser only uses three times in two lines). It is the Lord of Hosts: a conquering god, the Eli-Sabaoth. Writing probably from the blood and turmoil of the Tyrone rebellion, Spenser offers a final plea. Put on the mantle of your full power, he beseeches Elizabeth, and bring peace to pass in Ireland.

to take away the greatness of the Irish lords . . . that the inferior subject might be freed from their Irish customs, cuttings and unreasonable exactions, and by knowing what was their own . . . be drawn to depend ever after upon the state, and not on those Irish lords or gentlemen: which also might . . . bring a more certainer yearly rent or revenue into her majesty's coffers. (Docwra, *A Narration of the services done by the army ymployed to Lough-Foyle* . . . In *Miscellany of the Celtic Society*, ed. John O'Donovan (Dublin, 1849), p. 190)

Chapter 8

LYRIC OPPOSITION IN SPENSER, SHAKESPEARE, AND DONNE

SPENSER was not the first to combine legal thought with a literary imagination; in the sixteenth century alone, the works of Skelton, More, Rastell, Heywood, Bale, and Sidney all contain occasional legal elements, and the English medieval tradition of legal literature is in some ways even stronger.[1] The Aristotelian association between comedy and justice was well known to sixteenth-century dramatists, and the use of the courtroom trial developed a convincing pedigree in English drama well before the plays of Middleton and Webster[2] – two developments in the theatre that undoubtedly had something to do with the preponderance of law students, and legally educated patrons, in the audiences at Elizabethan and Jacobean playhouses.[3] But *The Faerie Queene* still deserves to be recognized as extraordinary and influential: in combining with the matter of the heroic poem the language and concepts of native English law – sometimes in specific and technical ways, at other times in a diffuse and ambient manner – Spenser pioneered for the poets and dramatists of the 1590s a new rhetorical register for politically engaged poetry. While much is made of Spenser's archaism, his skill with language reached far beyond the apparently effortless pastiche of Chaucer, Langland and Skelton that he had, by 1579, made his hallmark; and it is in the enrichment of a pastoral and epic vocabulary to include words from technical sources – like the law – that Spenser

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[1] See, e.g., John Rastell's interlude *Of the nature of the .iiii. element* (London: John Rastell, 1520), a play that deals extensively with the *jus naturale*; John Bale's *A newe comedy or enterlude, concernyng thre lawes of nature, Moises, and Christe, corrupted by the sodomytes, Pharysies, and papistes* (London: Thomas Colwell, 1562); George Gascoigne's *The glasse of gouernement* (London: Henry Middleton for Christopher Barker, 1575), a moral comedy of justice on the Aristotelian plan; and, of course, Sidney's *The Countess of Pembroke's Arcadia* (London: William Ponsonby, 1595), which concludes in its fifth book with a state trial reconciling ethical and human norms against equity and the law of nations.

[2] In, e.g., Ben Jonson's *Volpone, Or, The Foxe* (London: George Eld for Thomas Thorppe, 1607), or Shakespeare's *Measure for Measure* (ca 1604; first published in the folio edition of 1623).

[3] For more on the composition of contemporary theatrical audiences, see Andrew Gurr, *Playgoing in Shakespeare's London,* 3rd edn (Cambridge: Cambridge University Press, 2004).

shows his 'daedale hand' most conspicuously. There is no question that the cultural context developing around English poetry and drama in the last decade of Elizabeth's reign, and under James, created demand for literature with a legal edge; but Spenser got in at the ground floor, in both a spectacular, and an unlikely, way.

In concluding this study I want to sketch some of the ways in which Spenser's experimentation with law and language in *The Faerie Queene* influenced other genres and other writers of poetry – turning first to his own immediately following work in *Amoretti and Epithalamion*, and concentrating thereafter on the lyric poetry of Donne and Shakespeare. In effect, I will be making a transition – that is, I will be following Spenser's own transition – from a court-centred poetry (epic) to the literary production of the Elizabethan Inns of Court (lyric, particularly Ovidian poetry and complaint). The poets writing from and for the community of the Inns of Court deserve special attention for a number of reasons. For one very obvious thing, their writings were embedded in a social and intellectual culture to which the terms of the law were native and current; here, naturally, we ought to look for some affinity to Spenser's legally minded project in *The Faerie Queene*. For another, the young men of the Inns of Court – a heterogeneous collection of genuine students of the law, ex-university men on their way to other careers and vocations, and the upper gentry and nobility – represented a kind of counter-culture in London to the fashions of the court, an intellectual and political community with its own social and artistic traditions, and its own hierarchy and patronage relationships. But above all they deserve our attention because it was to this culture that Spenser himself turned, immediately upon completion of the first six books of his epic, in 1595. In very theatrically turning his attention from *The Faerie Queene* to the *Amoretti*, Spenser turned his back on the court and tried his hand at the Inns.

Sonnet sequences, if not lyric poetry generally, had become identified with the Inns at least since the publication of Philip Sidney's *Astrophil and Stella* in 1591, and possibly before; and it is surprising that critics have not made with more emphasis the striking connection between the sonnet-culture of the 1590s and the young gentleman students of the city. Thomas Nashe – as ever a keen observer of, if sometimes an inscrutable commentator on, the politics of the literary marketplace of the 1590s – draws attention to the oppositional nature[4] of sonnet sequences in his preface, 'Somewhat to reade for them that

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4   I use the word 'oppositional' here to describe a social and political positioning of some literary works – normally effected through the work's argument, advertisement of patronage connections, genre, and other similar kinds of markers – that makes them appear to contest a 'court' ideology. These are inevitably nebulous terms, but nonetheless useful: it is obvious that the pastoral complaint of *The Shepheardes Calender*, with its apparent sympathies for precise Protestants, was perceived as 'oppositional' when it came off Hugh Singleton's press in 1579, directly after Stubbes's *Gaping Gulf*. Similarly, it is also obvious that, on the face of things,

list', to the posthumous, corrected text of *Syr P. S. his Astrophel and Stella* in its second 1591 edition. Nashe accomplishes a number of deft turns in his four-page introduction, including a eulogy for Sidney, an attack on Spenser, a celebration of the Countess of Pembroke, and a satire on the new print-poetry culture (which, of course, he is himself exploiting, in pushing Sidney's poetry through the door from manuscript to print publication). What is perhaps most interesting about this preface is the way it returns to a rejection of Spenser's poetry as a kind of compulsive refrain. Nashe explicitly condemns the gothic associations of Spenser's epic by attacking hobgoblins and fairies (e.g., 'breake of your daunce you Fayries and Elues . . .'), and in the oblique allusions (to shadows, night, the *ignis fatuus*) to Spenser's allegorical method, as set out in *A Letter of the Authors*, makes it clear that Nashe has Spenser's recently published epic in his sights.[5] The swipes continue through to the end of the preface, as he castigates 'other Sheepheards that haue beene fooles in the Morris time out of minde', and scorns those who 'retaile the cinders of *Troy*, and the shiuers of broken trunchions, to fill vp their boate that else should goe empty', lamenting that learning has 'lost it selfe in a groue of Genealogies'. And while, in the sensational *Mother Hubberds Tale* of earlier in the year, Spenser had not gone so far as to identify himself with the courtly and cynical Mule,[6] Nashe's elaborate reference to the courtly Ass (who is 'no great statesman in the beastes common-wealth') seems to take in Spenser, among others, in its satirical charge.[7]

Nashe's edge in this preface is important because he identifies, in coordination with the oblique and direct attacks on Spenser, two oppositional origins from which Sidney's poetry might derive its own political and satirical edge. First, obviously, is the patronage of Mary Herbert, Countess of Pembroke and Sidney's sister, 'whom Artes doe adore as a second *Minerua*, and our Poets extoll as the Patronesse of their inuention'.[8] The Countess of Pembroke's literary circle is constructed as a private one, largely based in manuscript circulation, where 'learning, wisedome, beautie, and all other ornaments of

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Thomas North's 1579 translation of Plutarch's *Lives of the Noble Grecians and Romans*, dedicated to Elizabeth, was not an oppositional text.

[5] Thomas Nashe, 'Somewhat to read for them that list', in *Syr P. S. His Astrophel and Stella, Wherein the excellence of sweete Poesie is concluded* (London: Thomas Newman, 1591), sig. A3v.

[6] See *Mother Hubberds Tale*, ll. 581–654.

[7] For all of these comments, see 'Somewhat to read for them that list', sig. A4r–A4v. Nashe made Spenser-baiting something of a habit between 1591 and 1592, a pastime that seems to have been among the incitements provoking Gabriel Harvey to arms in the pamphlet war that soon consumed both of them. For more on Nashe's swipes at Spenser, see my 'Getting it Back to Front in 1590: Spenser's Dedications, Nashe's Insinuations, and Ralegh's Equivocations', *Studies in the Literary Imagination*, 38 (2005), 173–98; and 'Printing *The Faerie Queene* in 1590', *Studies in Bibliography*, forthcoming 2007.

[8] 'Somewhat to read for them that list', sig. A4r.

Nobilitie whasoeuer, seeke to approue themselves in thy sight, and get a futher seale of felicity from the smiles of thy fauour'. It is significant that the poets of this circle seek no other 'seale', such as that of publication, and that Nashe makes a show of preferring the Countess of Pembroke to all other (including royal) patrons ('Thou only . . . thou only . . .').[9] But it is the other oppositional positioning for *Astrophil and Stella* – the one that Nashe makes a show of disclaiming – that is more important. The Sidney family did not authorize the publication of *Astrophil and Stella* in 1591, and so Nashe's appeal to the Countess of Pembroke, with its apparent celebration of manuscript circulation, cannot but be read as tongue in cheek. Similarly, the literary community that he seems to denigrate is of course the one for which he himself was writing: not only the market of print publication, but the one that flourished seasonally with the 'tearme' – that is, that period in London economic and intellectual life when an influx of suitors, following the legal 'terms' in which the royal courts were sitting, poured into the capital to pursue their business. 'Onely I can keepe pace with Grauesend barge,' Nashe writes, 'and care not if I haue water enough, to lande my ship of fooles with the Tearme, (the tyde I shoulde say.)'[10] Nashe's denial reveals – by its attempt to conceal – a complete identification of the London literary market in 1591 with the activity of the courts, and an appropriation of Sidney's sonnets for this community of suitors, at the expence of the manuscript environment in which, until then, Astrophil had hid 'his golden head.' In attacking Spenser at the same time that he pulls the manuscript of *Astrophil and Stella* into the busy term-time print marketplace, Nashe reconfigures the socially and politically oppositional stance of the sequence.

Nashe's attempt to wrest the sonnet sequence away from a coterie audience to a print community purposefully masks another, much more important, dislocation. Arthur Marotti has reminded us that Sidney 'crafted a sonnet sequence as a form of mediation between socio-economic or socio-political desires and the constraints of the established order', and that 'he was the first Englishman to use a Petrarchan collection for this purpose'.[11] But Marotti's own very important analysis tends to shy away from Sidney's inauguration in *Astrophil and Stella* of a tradition of proxy political suitorship, performed by allegory. Just as Musidorus woos Pamela in *Arcadia* by making love to Mopsa, Sidney feigns a (concealed) love for Penelope Rich, while all the time shooting directly at the princess of his main intent, Elizabeth. The sonnets conceal this object as a way of revealing it, a strategy that was transparent to their earliest readers and imitators, and one that, as we have seen, Nashe bettered. So Daniel in 1595 followed both Sidney and Nashe in dedicating his own collection,

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[9] 'Somewhat to read for them that list', sig. A4r.
[10] 'Somewhat to read for them that list', sig. A4r.
[11] Arthur Marotti, ' "Love is Not Love": Elizabethan Sonnet Sequences and the Social Order', *ELH*, 1982, 396–428 (399).

Delia, to the Countess of Pembroke, while also taking a swipe at Spenser; so too Giles Fletcher writes, in the preface to his *Licia*:

> If thou muse what my LICIA is, take her to be some Diana, at the least chaste, or some Minerva, no Venus, fairer farre; it may be shee is Learnings image, or some heavenlie woonder, which the precisest may not mislike: perhaps under that name I have shadowed Discipline. It may be, I meane that kinde courtesie which I found at the Patronesse of these Poems; it may bee some Colledge; it may be my conceit, and portende nothing . . .[12]

Fletcher has by 1593 so internalized the running joke of the Sidneian sequence that he admits any construction at all, so long as it is not the erotic (Venus); the poems may mean anything but love, and so disown their manifest desire. Fittingly, Fletcher dedicates his sequence to 'the Innes of Court, and some Gentlemen like students in both Vniversities', who 'onelie are fittest to write of Love'.[13] In just this way, sonnet sequences from Sidney's to Shakespeare's all made a theatrical point of turning away from a court readership – and from a royal patron – as a way of foregrounding the poets' courtly ambition and desire for laureate status; as Sidney writes, 'O absent presence . . .' In this context, Nashe's joke – that he prefers the patronage of the powerful noblewoman from whom he has just stolen the sonnets to the purses of the common buyers for whom he is now endorsing them for publication – makes perfect sense, as a parody of Sidney's own strategy. English writers of sonnet sequences after Sidney read the conventional dislocation of the sequence as politically charged, and, almost inevitably, the main current of erotic lyric composition increasingly flowed, as a result, from the Inns of Court.[14]

Marotti has demonstrated convincingly that the sonnet sequence in English begins, in Sidney's hand, as a politically invested form; and its politics, very much like those of Sidney's other favoured genre, pastoral, are oppositional. The dislocation that I have been discussing is precisely parallel to that disingenuous pastoral ploy – hiding state matter 'under the pretty tales of wolves and sheep' – and, like the pastoral, the erotic lyric achieves more sincerity in its political argument the more vigorously it professes its indifference to a political construction. The fundamental political (though not artistic) problem of Sidney's sequence is that, as Nashe noted, it can never break out of its self-defeating 'tragicommedy': Sidney must always exist in an ironic relation to the sequence, just as Astrophil must always adopt a hypocritical attitude to the beauty he so desires to go on desiring. Spenser, by contrast, produced in *Amoretti and Epithalamion* a much more positive vision both of the lyric courtship

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[12] Giles Fletcher, 'To the Reader', from *Licia, or Poemes of Love, in honour of the admirable and singular vertues of his Lady, to the imitation of the best Latin Poets, and others. Whereunto is added the Rising to the Crowne of Richard the third* (Cambridge: John Legat, 1593), sig. B1r.

[13] Fletcher, 'To the Reader', sig. A4v.

[14] It is to this identification of lyric address with a legal context that the exactly contemporary satires of John Donne (Satire 2) and John Davies (*Gulling Sonnets*) are addressed.

game, and of the political reality it mirrors. His sequence plays adeptly on the same structures of dislocation and political opposition that the Sidneian sequence made conventional, but revises their terms so that, instead of concluding in stagnating impasse, his sequence may instead conclude in rapturous integration – to a point. For in the carefully deployed diction and images of *Amoretti and Epithalamion*, a precise legal argument lurks that, in the hands of Donne and Shakespeare, would continue to energize oppositional lyric for another ten to twenty years. In what follows, I will consider the legal positioning and the language of the *Amoretti* in 1595, and its influence on Donne and Shakespeare, as a way of assessing the afterlife and effect of Spenser's verbal experimentation in *The Faerie Queene*.

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LOVE'S LEAGUE:
CONTRACTUAL SOVEREIGNTY IN
AMORETTI AND EPITHALAMION

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Spenser introduced his own sonnet sequence into an environment already accustomed, by 1595, to the sonnet's associations with complaint, and to its coterie, print, and Inns of Court patronage connections. The *Amoretti* continue this tradition of disingenuous, dislocating play in a way that fuses the oppositional character of the English sonnet tradition with the legal interest of Spenser's work in *The Faerie Queene*. Spenser achieves this oppositional tone in a number of ways, some explicit (e.g., repeated apologies in the sonnets for his supposedly private theme, and by dedicating the volume to an Ulster captain and court petitioner, Sir Robert Needham), and others less direct: by carefully situating his own sonnets within the narrative, conceptual, and linguistic context of the latter books of *The Faerie Queene*, as I have been discussing them in previous chapters, Spenser reconfigured the Sidneian dislocation of the English sonnet sequence, pushing it decisively away from its coterie roots and into a print marketplace associated with the 'termers'. The legal diction of the collection creates a recurring metaphorical lexis – easily the most dominant linguistic strain of the poems – that helps to cast the *Amoretti* as an expansion of and meditation on the constitutionalist themes energizing the later books of *The Faerie Queene*. This language both reinforces the oppositional tone of the poems, and offers an optimistic view of how that opposition might be overcome. Registering its operation and effect in the *Amoretti* will also help us to see how later poets took up Spenser's postures – in different attitudes, to be sure, but with a common method.

Spenser was keen to locate his own sonnets in relation to his ongoing epic project and, given the attacks he had already sustained from Nashe and Daniel,[15] this makes sense: despite Spenser's spectacular self-ejection from

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[15] See sonnet 50 in Samuel Daniel, *Delia. Containing certaine Sonnets: with the complaynt of*

court after the publication of *Complaints* in 1591, *The Faerie Queene* I–III had become the poetry of the centre, and Spenser was in 1595, for all that it seems not to have suited his temperament, still a 'poet laurall'. Love-complaint was the basic mode of the Sidneian sonnet, a mode largely unavailable to Spenser in his epic genre, but one which, as we have seen in earlier chapters, was well suited to the kinds of political stances to which the allegory of the second half of *The Faerie Queene* would allude. In an interim space between the two halves of *The Faerie Queene* in 1595, Spenser seems deliberately to have written from a curiously medial position: he wrote as the poet of the 1596 edition of *The Faerie Queene*, to an audience that initially knew him only as the poet of the 1590 edition; and, by inscribing his completion of the first six books of the poem into the *Amoretti*, he made sure that neither contemporary nor future readers could forget this positioning. Thus in sonnet 33, Spenser addresses his friend and colleague in Irish secretarial business, Lodowick Bryskett, with a poem that represents the work of *The Faerie Queene* as unperformed:

> Great wrong I doe, I can it not deny,
> to that most sacred Empresse my dear dred,
> not finishing her Queene of faëry,
> that mote enlarge her living prayses dead . . . (33.1–4)

This poem encourages us to assimilate the voice of the narrator of the sequence directly to that of Spenser himself; as a confessional poem that, unlike Sidney's pretences of confession, actually gives us historical names and events, this sonnet leads us to identify the project of the *Amoretti* as a personal and sincere one. But in this sincerity, curiously, the poem recruits the very language ('my dear dred', 'mote', 'aread', 'simple head', etc.) that, in its archaism, had characterized as artificial the narrative voice of *The Faerie Queene*. Spenser does not indicate where in the composition of the epic poem we ought to situate this sonnet, but the obvious association of the final line ('or lend you me another living brest') with Priamond, Diamond, and Triamond (*FQ* IV.ii–iii) seems calculated to invite us to assume that Spenser was, still, in the thick of it. By contrast, the sense of physical relief that sighs bodily from sonnet 80 matches its opening declaration that Spenser has completed the first six books of his epic poem. The effect of this sonnet upon our interpretation of the sequence as a whole is to reinforce, again, the conceit that these sonnets are confessional and sincere expressions of Spenser's own state of mind as a poet; but it is also to associate the achievement of Spenser's love within the sequence (something that has only recently, by sonnet 80, been accomplished) with the experience

Rosamond (London: J. C. for Simon Waterhouse, 1592), sig. H1v ('Let others sing of Knights and Palladines . . .'). Shakespeare similarly sends a sonnet Spenser-wards, with his criticism (in no 106) of the 'antique pen' that writes of 'fairest wights', 'in praise of ladies dead, and lovely knights'.

of concluding the first half of *The Faerie Queene.* In other words, Spenser's positioning of sonnets 33 and 80 within the sequence, alongside his disarmingly artful disavowals of artfulness, seems to suggest a parallel narrative for the second half of *The Faerie Queene* and the *Amoretti*; the sonnets are positioned as a kind of diary of the poet of *The Faerie Queene.*

This becomes more interesting when we begin to recognize the ways in which the *Amoretti* import some of the material of the epic poem, and particularly from its later books, reimagining as Spenser's own experience the narrative episodes and images of his allegorical fiction. There are many such points of contact, from the early allusion to Errour in sonnet 2, through the allusion to Priamond, Diamond, and Triamond already mentioned, to the reference, in sonnet 76, to 'the bowre of blisse'. But the most important of these imports is the construction of the courtship scenario throughout the *Amoretti* as a retelling of the Mirabella episode from Book VI, cantos vii and viii of *The Faerie Queene.* This allusiveness structures the entire sequence, beginning in the opening sonnets, where Spenser writes of his mistress as a 'proud' and 'soverayne' lady:

> But if in presence of that fayrest proud
>   thou chance to come, fall lowly at her feet . . . (2.9–10)

> The soverayne beauty which I doo admyre,
>   witnesse the world how worthy to be prayzed . . . (3.1–2)

'Pride' and 'rebellious pride', likewise, are the subjects of sonnets 5 and 6, but it is in the tenth sonnet that the predicament of the lover and beloved, in *Amoretti*, comes most clearly into focus as a retelling of the Mirabella narrative:

> Unrighteous Lord of love what law is this,
>   That me thou makest thus tormented be:
>   the whiles she lordeth in licentious blisse
>   of her freewill, scorning both thee and me.
> See how the Tyrannesse doth joy to see
>   the huge massacres which her eyes make:
>   and humbled harts brings captives unto thee,
>   that thou of them mayst mightie vengeance take.
> But her proud hart doe thou a little shake
>   and that high look, with which she doth comptroll
>   all this worlds pride bow to a baser make,
>   and al her faults in thy black booke enroll:
> That I may laugh at her in equall sort,
>   as she doth laugh at me and makes my pain her sport. (10)

The appeal to Cupid, the characterization of the beloved as a 'Tyrannesse', the reference to her 'scorning' of Love and the lover, and the explicit mention of Cupid's 'black booke' (cf. Cupid's 'roules . . . in which the names of all loues folke were fyled', in *FQ* VI.vii.33) all point to a parallel – and perhaps an

identification – between the narrative of Mirabella and that of *Amoretti*. This identification is rehearsed again in sonnet 19, and picked up with even more force in sonnet 70, where Spenser returns to the same explicit confluence of the two narratives with another reference to Cupid:

> Bid her therefore her selfe soone ready make
> to wayt on love amongst his lovely crew:
> where every one that misseth then her make
> shall be by him amearst with penance dew. (70.9–12)

Here, again, Spenser recruits the tradition of Cupid's court in such a way that the language itself echoes the Mirabella episode in *The Faerie Queene* ('crew', 'penance'). It is important to recognize that this overlap was not by any means inevitable: the language of bondage, imprisonment, rebellious pride, tyranny, and subjugation that dominates the psychological landscape of both the Mirabella episode and the *Amoretti* is a distinctive departure from Petrarchan convention, and even from Sidney's unattainable Stella.[16]

The recurrent legal diction of the sequence, in its focus on captivity, bondage, and imprisonment, helps to make sense of the repeated intertextual associations with the Mirabella episode of *The Faerie Queene*. The opening sonnets establish the political allegory of the poems, with their reference to royal attributes and faculties ('*presence*', '*pardon*', '*grace*', '*graunt*', '*soverayne*', '*titles*'). The dominant verbal tone of the sequence turns on the ideas of captivity and freedom (e.g. '*captives*', '*hostages*', '*yield*', '*captiving*', 'cruell *bands*', '*enlarge*', '*release*', '*thrall*', '*pledge*', '*restrayne*', '*constrayned*', '*liberty*', '*bond*', '*bondage*', '*bands*', '*constraynt*', '*league*', '*bound*', '*servile bands*', '*prison*'), which in their repeated rehearsals invoke the same legal-constitutional issues at stake in the political reading of Mirabella's plight, and more largely in the approach of Book VI to the exercise of prerogative power.[17] The lady who abuses her '*licentious* blisse' becomes a '*tyrannesse*', and cannot be reconciled to love, and thus achieve true sovereignty, unless she subdues her pride and gives herself into bondage. The paradoxical process by which this enlarged sovereignty can be achieved is spelled out in sonnet 65:

> The doubt which ye misdeeme, fayre love, is vaine,
> That fondly feare to loose your liberty;
> when loosing one, two liberties ye gayne,
> and make him bond that bondage earst dyd fly.
> Sweet be the bands, the which true love doth tye,

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[16] Astrophil does refer to himself as a 'slave-borne *Muscovite*' (2), and concludes the sequence with a reference to the 'iron doores' that keep him from the 'use of day' (108); but his characterization of imprisonment is, in comparison with Spenser's, fleeting, nor does Stella revel, like Spenser's beloved, in the pride and power of her tyranny.

[17] See chapter 6, *supra*, esp. pp. 170–74.

> without constraynt or dread of any ill:
> the gentle birde feeles no captivity
> within her cage, but singes and feeds her fill.
> There pride dare not approch, nor discord spill
> the league twixt them, that loyal love hath bound:
> but simple truth and mutuall good will
> seekes with sweet peace to salve each others wound.
> There fayth doth fearlesse dwell in brasen towre,
> and spotlesse pleasure builds her sacred bowre. (65)

In giving up her '*liberty*', she will by some mystery achieve both it, and the lover's, back again; by giving herself into bondage, she will make a '*bond*' of him who till now has fled captivity. The solution to this paradox is plainly set out in the sixth line, where the lover notes that the offered bondage is freely volunteered 'without *constraynt*': this self-willed surrender of the will reflects precisely that peculiarly English constitutional settlement (which I have considered already in relation to Mirabella in the sixth book of *The Faerie Queene*), whereby, as Bracton has it, the king should 'bestow upon the law what the law bestow upon him, namely, rule and power'.

The final couplet of this sonnet pictures the birdcage simultaneously as a tower of faith and a bower of pleasure. The importance of this connection in the representation of Spenser's legal-political thought might be easily over-looked, and only becomes apparent when it is placed next to Bodin's work on sovereignty in the *Six livres*. The 'brasen towre' here recalls not only that of Una's parents in the first book of *The Faerie Queene*, but the more famous tower of brass that stands behind it, that built by Acrisius to protect his daughter Danaë from fornication. Acrisius' tower is the subject of the well-known Horatian ode against political corruption,[18] which supplies the main current of its force here: Elizabeth can achieve the security of Danaë's tower without sacrificing the pleasure of a bower, in Spenser's promised formulation, implying that her reign will be free from corruption if she only accedes to the government of the law. But the 'sacred bowre' that 'spotlesse pleasure' will enjoy instead refers to a different kind of source, which is clear from chapter 8

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[18] See the '*turris aënea*' in Horace, Ode 3.16, in e.g., *Odes and Epodes*, trans. C. E. Bennett (Cambridge: Harvard University Press, 1914), pp. 232–35. This is the source for Spenser's rehearsal of the Danaë myth at *FQ* III.xi.31, where he also mentions her 'brasen towre'. Horace's political reading of the Danaë myth depends on an association of *aënea*, 'bronze', with the bronze giant of classical tradition, Talos, whose rigorous law protected the island of Crete. While Spenser always characterizes his own version of Talus, in Book V of *FQ*, as an iron man, he doubtless knew the source in Apollodorus, who calls him a χαλκοῦς ἀνήρ, or 'brazen man'; see *The Library*, 1.9.26. It is worth noting that Danaë's brazen tower had also recently been recalled by Michel de Montaigne, in his essay, 'That our desires are encreased by difficultie' (trans. Florio, 2.15); Montaigne's citation of Ovid's rather more erotic reading of the brazen tower (*Amores*, 2.19.27) helps to explain the important tension between the erotic and the political in Spenser's allusion in *Amoretti*.

of the first book of Bodin's treatise, in a passage whose influence on Spenser I have considered already. Having denied that a sovereign king can bind himself or his successors by his own laws, Bodin argues that this principle subsists in the standard form of words ('*plaisir*') used by princes to enact decrees and laws:

> Wee see also in the end of all edicts and lawes, these words, *Quia sic nobis placuit* [*car tel est nostre plaisir*], Because it hath so pleased vs: to giue to vnderstand, that the lawes of a soueraigne prince, although they be grounded vpon good and liuely reasons, depend neuerthelesse vpon nothing but his meere and franke good will.[19]

Quod principi placuit – what pleases the prince – here rears its head for the first time in Bodin's work on sovereignty; and he stands by it straight through the difficult and precise investigation of the *marques* of sovereignty enumerated in the tenth chapter of his work. In the context of the political theory of sovereignty circulating in northern Europe in the 1590s, Spenser's reference to 'pleasure' in the final line of this sonnet rings particularly resonantly: Elizabeth may achieve her 'pleasure' if, and only if, she agrees to bind that pleasure by submitting her will to law.

Two other words from this sonnet become particularly important, in relation to Bodin's theory of sovereignty. Bodin writes in the *Six livres* that, though a prince is not bound to observe his own laws, yet he is bound to observe his own contracts:

> But further question may be, Whether a prince bee a subiect to the lawes of his own countrey, that he hath sworne to keepe, or not? wherein wee must distinguish. If the prince sweare vnto himselfe; That he will keep his law: hee is no more bound to his law, than by the oath made vnto himselfe . . . But if a soueraigne prince promise by oath to keep the lawes which he or his predecessours haue made, he is bound to keepe them, if the prince vnto whome hee hath so giuen his word haue therein any intrest; yea although he haue not sworne at al: But if the prince to whom the promise was made haue therin no intrest, neither the promise nor the oath can bind him that made the promise. The like we say, if promise be made by a soueraigne prince vnto his subiects.[20]

The distinction Bodin draws here is very fine: a prince is never bound to observe his own laws, or the laws of his predecessors; but he is bound to observe any contracts into which he entered, as a private man, with any individual subject, of whatever status.

> We must not then confound the lawes and the contracts of soueraigne princes, for that the law dependeth of the will and pleasure of him that hath the

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[19] Jean Bodin, *The six bookes of a common-weale*, sig. I iiijr–I iiijv.
[20] Bodin, *The six bookes of a common-weale*, sig. I iiijv.

soueraigntie, who may bind all his subiects, but cannot bind himselfe: but the contract betwixt the prince and his subiects is mutual, which reciprocally bindeth both parties, so that the one partie may not start therefrom, to the the preiudice, or without the consent of the other. In which case the prince hath nothing aboue the subiect.[21]

The crucial test case, then, for Bodin becomes that monarchy in which the estates – in England, the houses of Parliament – require of the sovereign an oath at his or her coronation. Bodin immediately recognizes that England will be the exception proposed against his theory of sovereignty, and spends nearly the rest of the chapter defending himself procataleptically against the imagined objections. Whether or not he is ultimately successful – he is, but only by making some questionable assumptions about English legal history and Elizabethan parliamentary practice – is of less importance here than the general issue he raises: is the legal relation between monarch and people, as it existed in England under Elizabeth, one defined by sovereignty, or one defined by contract? Spenser's use of the words 'league' (Fr *ligue*) and 'mutual' in sonnet 65 make it absolutely clear that, in his representation of the relation, the English monarch is joined to her people by a contract. The 'brasen towre' of the giant Talus will defend Elizabeth's 'pleasure' if and only if she consents to a 'mutual' 'league'.

The succeeding three sonnets each take up the voluntary submission of the monarch to the subject: the first in an acknowledgment of the '*disparagement*' of marriage between a 'princes pere' and one of 'lowly state', which ends in a metaphor based on light and reflection, the next with the conceit of the hunt, and the third by reference to the equalizing love of fellow Protestants. The image of the wearied deer that submits voluntarily to captivity in sonnet 67 rewrites Wyatt's famously politicized account of Petrarch's hind in 'Whoso list to hunt'; where Wyatt (like Sidney) had figured political power in a female form beyond his reach, Spenser's lover imagines the deer submitting herself, his use of 'goodwill' here answering his use of 'freewill' in sonnet 10. No less politicized is the thrust of sonnet 68, which seems to suggest (in the spirit of forward Protestant thinking) the complete levelling of social and political distinctions ('all lyke') between fellow believers: 'So let us love, deare love, lyke as we ought, / love is the lesson which the Lord us taught.' (68.13–14) Each of these three sonnets figures the 'stouping' of the beloved to the lover as a positive concession that will, paradoxically, redouble her value – in terms of honour, of agency, and of godliness.

But the greatest demonstration of the power of Spenser's paradoxical formulation of constitutional sovereignty in *Amoretti* comes – as one might expect in a sonnet sequence written at the height of the Elizabethan 'cult of chastity' – in the vision of marriage in *Epithalamion*. The most shocking thing

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[21] Bodin, *The six bookes of a common-weale*, sig. I vr.

about this marriage-hymn is also its most obvious departure from the sonnets that precede it: the beloved of *Epithalamion* has been transformed into a meek, modest, submissive maid, no longer capable of the tyrannical rebelliousness attributed to her in the eighty-nine sonnets of *Amoretti*:

> Her modest eyes abashed to behold
> So many gazers, as on her do stare,
> Upon the lowly ground affixed are.
> Ne dare lift up her countenance too bold,
> But blush to heare her prayses sung so loud,
> So farre from being proud. (ll. 159–64)

This transformation reflects the complete submission effected in the pivotal sonnets of the *Amoretti* sequence, and makes the beloved 'seeme lyke some mayden Queene' (l. 158). In the movement toward the 'league' of marriage, the bride must assume the role of submissiveness; and the *Epithalamion* can only celebrate 'the triumph of our victory' (l. 243) when at last the pride, rebelliousness, and 'will' has been suppressed.

But the representation of the beloved's humility in *Epithalamion* only supplies half of the picture. It is 'that which no eyes can see' (l. 185) – the 'inward beauty' – that truly marks the beloved as transformed, in terms that closely echo the central stanzas of *Amoretti*:

> There dwels sweet love and constant chastity,
> Unspotted fayth and comely womanhood,
> Regard of honour and mild modesty,
> There vertue raynes as Queene in royal throne,
> And ***giveth laws*** alone.
> The which the base affections doe ***obay***,
> And ***yeeld*** theyr ***services*** unto her will,
> Ne thought of thing uncomely ever may
> Thereto approch to tempt her mind to ill.
> Had ye once seene these her celestial threasures,
> And unrevealed ***pleasures***,
> Then would ye wonder and her prayses sing,
> That al the woods should answer and your echo ring. (ll. 191–203)

This, the eleventh stanza of the hymn, presents the culmination of the lover's description of the bride; his gaze has moved from her attitude (stanza 9), to her physical beauty (stanza 10), and then here, finally, to her inward qualities. Upon the completion of this stanza, the doors are thrown open to the temple, and the marriage itself takes place. It is no accident, then, that the vision of the beloved culminates, in stanza 11, with a careful subordination of the beloved's affections and will to the lawgiving power of virtue; if the soul of the 'queene' is ordered in her 'royal throne', the state of the body without – here not only the beloved's body, but that of the commonwealth – will be governed justly. The final line before the refrain, again turning on the importance of 'pleasure' to

late sixteenth-century theories of sovereignty, is crucial: these 'pleasures' remain 'unrevealed'.

As in the elaborate games with dislocation and allegory that Sidney played in *Astrophil and Stella*, and that Nashe recognized and reiterated, Spenser here affects to address his sequence, and epithalamion, not to the queen but to another reader altogether. The assimilation of the lover's voice to Spenser's own biography reinforces the apparent authenticity of this dislocation, making it seem as if his sequence, with its marriage hymn, really is a private labour of love. And yet the legal diction of the poems, with their careful integration with the Mirabella episode from Book VI of *The Faerie Queene*, runs pointedly against this reading; in fact, it comes to seem, rather, that Spenser's biographical life is an allegorical projection emanating from his fiction, so seamlessly has he inlaid the voice, diction, conceits, and arguments of *Amoretti* with those of *The Faerie Queene*. In the closing stanzas of *Epithalamion*, the meaning of this division between the approach to a 'dear dred', on the one hand, and the courtship of a 'handmayd of the Faery Queene', on the other, becomes clear. As at last the lover lies with his beloved, in consummation, at the end of the marriage hymn, he sees a light penetrating the sanctity of the inner room:

> Who is the same, which at my window peepes?
> Or whose is that faire face, that shines so bright,
> Is it not Cinthia, she that never sleepes,
> But walkes about high heaven al the night?
> O fayrest goddesse, do thou not envy
> My love with me to spy:
> For thou likewise didst love, though now unthought,
> And for a fleece of woll, which privily,
> The Latmian shephard once unto thee brought,
> His pleasures with thee wrought. (ll. 372–81)

Any reader of Spenser's poetry in 1595 (the same year in which he published *Colin Clouts Come Home Againe*) would know that 'Cinthia' was the name by which Ralegh had personated Elizabeth in his own pastoral complaints, a reference to which Spenser includes in *A letter of the Authors* of 1589, and which he repeats and expands in the pastoral narrative of *Colin Clouts Come Home Againe*.[22] The moment at which Cynthia's envious eye is shut out of the marriage chamber in *Epithalamion* is a politically very sensitive one, referring back to all the other delicate moments in which Spenser had previously pardoned himself for singing 'one minime of thy poor handmayd' (*FQ* VI.x.28); but also shadowing his occasional apologies for courtiers who, like Ralegh, attempted to preserve their own private affections distinct from their political protestations of love for the queen.[23]

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[22] See *CCCHA*, ll. 164ff.
[23] I have argued elsewhere for the importance of bodies and privacy to Spenser's representation

The importance of the reference to Cynthia in *Epithalamion* lies in the way it fractures the regal and disembodied 'goddesse' of the representation of Elizabeth – her allegorized self – from a much more physical, present, and – after all – attained love by the same name. It is as if, in this late stanza of the marriage hymn, one of Elizabeth's two bodies were attempting to look in on the other, the regal and figured body upon the physical and mortal body. This bifurcation in the representation of the queen's person draws, of course, on the medieval legal-mystical theory of the king's two bodies, as formulated by Edmund Plowden in his *Reportes*, and discussed by Marie Axton in her enduring study, *The Queen's Two Bodies*;[24] but what is interesting about Spenser's use of the popular legal tradition in this instance is that it figures perfectly, again, the conditions of personal obligation subsisting in the private contract by which, Bodin conceded, even an absolute monarch would be bound. Spenser shuts Cynthia decisively out of the consummation of the 'league' in *Epithalamion* because this union is to be effected not between a sovereign and her subject, but between two mutually interested subjects. The goddess has no place in the constitutional vision with which Spenser concludes his celebration of the 'marriage' of queen and country, because that marriage is founded – as all early modern marriages were – on a mutual exchange of promises: a contract.

SHAKESPEARE AND DONNE:
OPPOSITION, PROHIBITION, AND SUCCESSION

Spenser was not the only poet in the late sixteenth century to tamper with the Sidneian tradition of the sonnet sequence. Shakespeare and Donne, in very different ways, both radically revised their model – Donne by doing away with the form almost altogether, and playing havoc with the idea of the beloved, with the idea of the sequence, and with the conventions of virtue and beauty that structured even Spenser's thought; and Shakespeare, most obviously, by substituting a boy for the traditional mistress.[25] But both of these poets,

of Ralegh's and his own poetry in this period of Ralegh's disgrace; see my 'Getting it Back to Front in 1590: Spenser's Dedications, Nashe's Insinuations, and Ralegh's Equivocations', pp. 189–92.

[24] The clearest formulation of Plowden's recension of the medieval theory is given by Ernst Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton: Princeton University Press, 1957), ch. 1 ('The Problem: Plowden's Reports'). For Marie Axton's contextualization of the theory in relation to the succession crisis, see her *The Queen's Two Bodies: Drama and the Elizabethan Succession* (London: Royal Historical Society, 1977).

[25] I am not here naively arguing for the integrity of Donne's *Songs and Sonets* as a 'sequence' in the usual sense: this was not a collection of poems he gathered, or ordered, under this title, nor do we even know for sure that he considered his lyric poetry to form a coherent whole in any sense. And yet, in drafting these poems in the context of the Elizabethan sonnet tradition,

despite the ways in which they developed and in some ways destroyed the sonnet sequence as a genre, also took away an important influence from Spenser's experimentation in the *Amoretti*: both poets worked their ways through the erotic lyric with a strong emphasis on legal language and conceits. One might argue that to Donne this was only natural, as he was performing poetically for a coterie audience rooted in his formative association with Lincoln's Inn;[26] and for Shakespeare that his intelligence was too restless to avoid the possibilities of legal metaphor. But both Shakespeare and Donne conspicuously advertise in their own works their debts to Spenser's sequence, and their complete disengagement of the form from its traditional object – though, depending on the date of some or all of the poems, it may owe some-thing to the death of Elizabeth and the accession of James VI and I – also returns repeatedly, and with renewed vigour, to Spenser's contractual thinking.

The debts of both poets to Spenser, when reading alertly, are easy to spot. Donne takes to its logical extreme the emphasis on the private body that concludes Spenser's sequence; though where Spenser makes this union licit and lawful, the lover of Donne's *Songs and Sonets* repeatedly imagines it as casual and illicit, or at the best unlicensed by social or legal solemnization, and where Spenser is able to use this union as a figure for political union, in Donne (at least partly because of the changing political context) it constitutes a complete rejection of political life. But the debts are also specific: Donne's 'The Sunne Rising', for example, very explicitly mirrors Spenser's conceit, already discussed, of attempting to shut out the prying gaze of the moon from the marriage bed, and to a similar effect. Where Spenser had overgone Sidney in assimilating the lover's persona to his own biography, Donne in turn appears to give the reader the most intimate access to the private moments of his life: longing, coition and ecstasy, betrayal, disgust, revenge. Shakespeare, too, pays both general and specific debts. Where the recurring psychology of Spenser's

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Donne's decisions not to stick to a fixed form, and not to order the poems – like his decision, above all, to circulate them in manuscript, rather than formally presenting (and fixing) them in a published edition – make the *Songs and Sonets*, if not a sequence, then an anti-sequence. I consider them as a group under the 1633 title on this basis. Similar editorial problems beset Shakespeare's 'sequence' of poems, to which I will refer in what follows as a 'collection'; the meticulous reader will notice, however, that I make implicit, limited claims for an ordering to these poems.

[26] Donne joined Thavies' Inn, an Inn of Chancery, in 1592, and was admitted to Lincoln's Inn a year later; while he seems to have been in residence only a short time – partly due, no doubt, to the plague in London in those years – his biographers agree that the Inns exerted a strong pres-sure on his subsequent career and intellectual development. David Colclough puts it succinctly: 'Although Donne was never called to the bar, nor practised the law professionally, its language and modes of thought remained crucial to him throughout his life, and lend much of his writing its distinctive character.' See David Colclough, 'Donne, John (1572–1631)', *ODNB*.

Amoretti stresses the lover's insignificance and inferiority to the beloved, Shakespeare, likewise, makes this humility and 'disparagement' a central focus of his poems. Again, like Donne, Shakespeare's sonnets take the Spenserian turn toward biography to an extreme: the urgency and interiority of Shakespeare's sonnets have often been remarked upon,[27] especially for the way in which they create an apparent subjectivity more compelling, even, than Donne's occasional verse. More specifically, Shakespeare both acknowledges Spenser (in, e.g., sonnet 106), and imitates him, as in the sonnets punning on 'will' (e.g. 135), which take up Spenser's play on the same word in *Amoretti* 41 and 46. These debts suggest that both Donne and Shakespeare were consciously imitating Spenser, or the new oppositional lyric conventions of which Spenser was a leading example, when they began to compose their own politically invested erotic poetry; and in concluding this study with a brief look at representative poems from *Songs and Sonets* and *Shake-speares Sonnets*, I will demonstrate not only the fact of Spenser's influence, but the ways in which both Donne and Shakespeare responded, critically, to that influence.

Donne, like Shakespeare, took from Spenser above all a habit of mixing legal language and conceits with lyric address. The general legal character of Donne's erotic lyrics is perhaps so well known, and apparent, as not to require discussion; but critics have done Donne a disservice by tending to assume that, at worst, this legal language was the inevitable and superficial consequence of Donne's fashionable wit, or at best, that it suited the culture and concerns of his coterie audience.[28] In fact, the patterns of Donne's usage are consistent and consistently pointed, and contribute to the generally oppositional political character of his poetry. Generally speaking, Donne's erotic poetry is marked by its disillusionment: though there are poems of ecstatic fulfilment, their pride and elation are short-lived, and they are dwarfed in number by those poems that, from a position of betrayal real or imagined, sulk in disaffection. The cynical and disillusioned stance of many of the poems combines with their mutable subjects, conceits, verse forms, and attitudes to confer on Donne's *Songs and Sonets* a sense of alienation and opposition; these poems enact dissolution. In this general context, the frequent appeals to legal language and

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[27] See e.g. the work of Joel Fineman, *Shakespeare's Perjured Eye: The Invention of Poetic Subjectivity in the Sonnets* (Berkeley and Los Angeles: University of California Press, 1986). Although I agree with Fineman's conclusions about Shakespeare's play with subjectivity, I see this element of his work as a development of nascent trends in the work of his predecessors, including Sidney, Spenser, Daniel, and Donne.

[28] Editors and critics have tended in this to follow Donne himself, whose second satire, in its merciless lampoon of 'Coscus', seems to deride any poet whose words can be drawn 'within the vast reach of th'huge statute lawes' (l. 112). A notable recent exception is the ground-breaking chapter by Jeremy Maule, 'Donne and the Words of the Law', in *John Donne's Professional Lives*, ed. David Colclough (Cambridge: D. S. Brewer, 2003), pp. 19–36. With Maule, I take as granted that Donne sought to achieve more by his use of legal language than a simple affiliation to a social 'set'.

conceits become ideologically fixing: the poems announce themselves as the property of readers whose *lingua franca* or dialect is such a hodgepodge of intellectual allusion and legal process; and the ideals and political stances characteristic of that community become indelibly associated with the poems themselves.

In the years that Donne might have been composing the erotic lyric poems of his *Songs and Sonets* – anywhere from about 1592 to 1615, by various scholarly estimates – political life in England was dominated by the increasing centralization of sovereign executive power in the hands of the monarch. The ascendancy of Whitgift and Bancroft as Archbishops of Canterbury was marked by the introduction of the notorious High Commission and its oath *ex officio*, as the Church attempted to purge itself of nonconformity;[29] the controversy over monopolies at the end of Elizabeth's reign registered the dissatisfaction of Parliament with her (and the Privy Council's) tightening grasp over the economy; the 'revolt' of the Earl of Essex in 1601, like the Nine Years' War prosecuted against the queen by the Earl of Tyrone in Ireland in these years, pointed to the increasing stranglehold of the Cecil faction on political power; and the emergence of the antagonism between the common law courts, latterly led by Sir Edward Coke, and the Chancery, led by Sir Thomas Egerton (later Baron Ellesmere), focused London's attention on the rupture between an absolute monarch and England's 'ancient liberties'. The tension between the royal courts and the Chancery – which would become a personal struggle, after 1606, between Coke and Ellesmere – was already in full grind in 1598, when Egerton referred to the assembled judges of the realm in the Exchequer Chamber the case of *Finch v Throgmorton*. In many ways, this case (reported in Coke's *Third Part of the Institutes of the Laws of England*, mischievously under the title of 'Praemunire') defined the terms under which the constitutionalists would come to blows with the prerogative councillors and judges over the next twenty years, and beyond. As Coke records both case and decision, Throckmorton attempted by a bill in Chancery to reverse 'upon apparent matter of equity' an earlier Exchequer decision against him; following a petition to Elizabeth herself, seeking stay of the proceeding, the matter was referred to the judges of England for discussion in Exchequer Chamber:

> . . . they all after divers hearings, and conferences, and considerations had of the laws and statutes of the Realm, unanimously resolved, that the Lord Keeper could not after judgement given relieve the party in equity, although it appeared to them, that there was apparant matter in equity. And amongst others, the Judges gave this reason, that if the party against whom judgement was given, might after judgement given, against him at the Common law, draw the matter

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29 For an account of the constitutional havoc threatened by Whitgift's and Bancroft's purges in these years, see Patrick Collinson, *The Elizabethan Puritan Movement* (Oxford: Clarendon Press, 1967).

into the Chancery, it would tend to the subversion of the Common law, for that no man would sue at the Common law, but originally begin in Chancery, seeing at the last he might be brought thither, after he had recovered by the Common law . . .[30]

Egerton referred the case to the Exchequer Chamber (a court where the judges could consult over issues of law, and decide difficult and momentous cases in a unified body) because, as J. H. Baker notes, the disagreement between the common law judges and the prerogative courts had already caused 'some bad feeling'. But though the common law judges were patently victorious in *Finch v Throgmorton*, the debate continued, and continued – after Coke's elevation to the Common Pleas in 1606 – to focus on the issues of prohibition and praemunire under which Coke would ultimately deal with the 1598 decision in his *Institutes*.

The tension between prerogative and law in the mediation of love and loyalty preoccupies Donne in many of his erotic poems, and, in the shadow cast by Spenser's use of legal language, makes good sense as part of an oppositional approach to court positions on sovereignty and power. The conceit of 'The Prohibition', for example, follows closely the rupture between the common law courts and the spiritual jurisdictions, and ultimately Chancery. Its dense set of technical legal connections between prohibition, tenure, and conquest invokes the *Finch v Throgmorton* case, as well as the Parliamentary debates raging between 1598 and 1601 (as Egerton's secretary and an MP, Donne personally witnesed both) over the crown's prerogatives. The stream of technical terms Donne deploys (prohibition, forbade, repair, waste, frustrate, victory, officer, retaliate, conqueror, conquest, perish, decay) turns on the title that the beloved and the lover hold in one another; so, in the first stanza, Donne's narrator warns the beloved not to love him, lest her title to him, by his death from too much joy, be defeated:

> Take heed of loving me;
> At least remember, I forbade it thee;
> Not that I shall repaire my'unthrifty waste
> Of Breath and Blood, upon thy sighes, and teares,
> By being to thee then what to me thou wast;
> But, so great Joy, our life at once outwears,
> Then, least thy love, by my death, frustrate bee,
> If thou love mee, take heed of loving mee. (ll. 1–8)

Editors annotating this poem uniformly fail to understand the technical process that Donne is here describing. Donne's narrator has committed 'waste' like an unthrift upon an estate of which he temporarily has possession;

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30 Sir Edward Coke, *The Third Part of the Institutes of the Laws of England* (London: M. Flesher for W. Lee and D. Pakeman, 1644), cap. 54, pp. 124–25.

'waste' is here the legal practice of converting the material assets of an estate into commodities, and selling them off (what we might now call asset-stripping).[31] The 'sighs, and tears' that he has 'wasted' are the beloved's, not his own; and these he does not promise to 'repair', or restore in value – i.e. by sighing and crying for her. In fact, he tells her, he will love her so much that, consumed 'at once' by joy, he will die; and this, consequently will 'frustrate' (i.e. 'defeat', 'make void') her title to his breath and blood. The second stanza works by the same logic, though this time with a military metaphor, relating to 'conquest':

> Take heed of hating mee,
> Or too much triumph in the Victorie.
> Not that I shall be mine owne officer,
> And hate with hate againe retaliate;
> But thou wilt lose the stile of conquerour,
> If I, thy conquest, perish by thy hate.
> Then, least my being nothing lessen thee,
> If thou hate mee, take heed of hating mee. (ll. 9–16)

Because the lover will not resist the conquest, the force of hate will, like the force of love, be all-consuming; and, having destroyed the thing conquered, the beloved will lose not only the lover, but the renown of having conquered him. The paradoxical solution, delivered in the third stanza, is for the beloved to both hate and love the lover at once, leaving him to live as the 'stage' whereon the tension between love and hate will be represented. This poem, as a result of the legal language running through it, is readily intelligible as yet another version of the constitutional paradox set out by Spenser – though here transformed from a diction of mutual consent and subordination to one of valorizing love and destructive hate. I have been using the terms 'lover' and 'beloved' freely in constructing the persons implicated in the relationship, but in fact the poem does not seem to propose a definite erotic relationship at all, but rather to concern love and hate as generalized actions conveying honour or disdain.[32] If this be so, Donne's poem in its paradoxical negotiations between respect and disrespect (as of, e.g., the prince for the laws) takes on the same allegorical force as Spenser's. With this in hand, the title – 'The Prohibition' – comes into clearer focus; as the issue over which the royal (i.e. common law) courts and the conciliar courts were currently focusing their struggle for ascendancy, the status of the prohibition is precisely what is at stake in the

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[31] See, e.g., Cowell, *The Interpreter*, sig. Bbbb2r: 'Waste (*vastum*) commeth of the French (*gaster*.i.*populari*. It signifieth diuersly in our common lawe, first, a spoile made, either in houses, woods, gardens, orchards, &c. by the tenent for terme of life, or for terme of anothers life, or of yeares, to the preiudice of the heire, or of him in the *Reuersion* or *Remainder*.'

[32] Here the now obsolete use of 'stage' to mean 'degree of honour' is operative, in association with 'triumph' (L *triumphus*); see *OED*, 'stage', *n.*, 3a.

relation of love to hate. The question of where a prohibition might lie – against the spiritual courts, against the lesser conciliar courts, or, as Coke would come to argue, against Chancery itself – was the point of comity facing the king and his judges during this period. The negotiation of a solution between love and hate in Donne's poem addresses that problem: let them (love and hate, but also perhaps the common law and conciliar courts) prohibit one another.

The relation of prerogative to law is, beyond 'The Prohibition', one of the regularly recurring preoccupations of Donne's *Songs and Sonets*. Dispensation from, or suspension of, the common order is the mechanism by which the voice of his private poems asserts their subjectivity, and the legal formulation of this dispensation takes the place of a prerogative intervention. Thus in 'Love's Exchange', the lover makes a point of refusing supplication for grace, in his complaint against Cupid, in terms that strongly evoke the parliamentary struggles over the queen's prerogative between 1598 and 1601:

> I aske no dispensation now
> To falsifie a teare, or sigh, or vow,
> I do not sue from thee to draw
> A *non obstante* on natures law,
> These are prerogatives, they inhere
> In thee and thine; none should forsweare
> Except that hee *Loves* minion were. (ll. 8–14)

A *non obstante* was, in the legal-political parlance of the day, a clause inserted into statutes when they were passed, by the sovereign's prerogative, reserving from the application of the law some special instance or particular person. Donne's lover, having now at length been struck by Love with 'this face', cannot 'condition' or 'article for grace', because for too long he has been a rebel to Love's law; but, equally, he argues in the passage quoted above that only '*Loves* minion' should enjoy the prerogative dispensation from the natural response to such beauty – though, paradoxically, this very privilege would obviously vitiate the allegiance. The paradoxical problem of privilege that Donne posits here is precisely that of 'The Prohibition', and in the context of the poems more largely, it works to the same effect: prerogative only exists to be forborne.

Shakespeare, like Donne, turns to legal language, metaphor and conceit, and argument throughout his sonnet sequence. Like Donne, too, the voice of his sequence retreats ever inward to the most intimate reflections on the particulars of his love, jealousy, and betrayal. But where Donne's 'collection' of erotic lyric poems are dominated (if not completely preoccupied by) their disillusionment, Shakespeare's are, by contrast, largely apprehensive, restless, and searching. Typical of the mood (and the legal preoccupation) of the collection is sonnet 61, which imagines the jealousy of the beloved probing the lover's idle moments in the night, as if it were some lord performing an inquest to determine the true extent of his lands and 'tenures'; typical of the collection,

too, is the *volta*, through which the lover decides that it is not the beloved's jealousy keeping him awake, but his own – a resolution that, instead of quieting the mood of anguish and insomnia, rather redoubles it. It is no surprise, in the context of a sonnet like this, to find the language of the law plainly in the foreground of many sonnets (e.g. nos 4, 6, 35, 46, 58, 74, 87, 120, 125, 134, 152), and also providing a restless and dissatisfied undertone – often of complaint – in many others (e.g. 1, 2, 9, 10, 13, 18, 20, 26, 28, 30, etc.). Shakespeare, like Donne and Spenser, uses legal language, then, in a pervasive and ideologically fixing way: the diction and argument of *Shake-speare's Sonnets* place them, like Donne's and Spenser's lyric poetry, at a further remove from the court than Sidney's coterie displacement. Through their experimentation with legal topics like tenure, right, possession, obligation, waste, use, imprisonment, and bail, Shakespeare's sonnets situate his thought in a culturally and politically oppositional attitude, one that explores the status and rights of the individual in relation to an equal subject, again through the structure of a formal legal relation, or bond.

A couple of brief examples will give a sense of the importance and depth of Shakespeare's legal play, and how it continues in the spirit of Spenser's *Amoretti*. The opening group of fourteen sonnets exhorts the 'tender churl' to breed an heir, and so by succession make his beauty perpetual; the five ensuing sonnets vary the same theme, now mixing with it the promise of the beloved's immortality in verse. The novel address of these sonnets to a male beloved, the emphasis on reproduction and succession, and the constant reiteration of the beloved's legal and moral obligation may seem rational enough now, but would have appeared, to an Elizabethan, injudicious in the extreme.[33] Elizabeth had cultivated by the 1590s a monopoly on lyric address; to divert the subject's gaze from its proper object was comparable to turning one's back while in presence. This convention of the royal monopoly on lyric subjectivity is apparent across a wide range of texts and even historical events. Spenser, for example, delivers elaborate apologies – postures, to be sure, but necessary postures – in *The Faerie Queene* and in the *Amoretti*, in *Colin Clouts Come Home Againe*, and elsewhere, for those moments where the epideictic gaze of his speaking eye turns to the celebration of some subject other than the queen. But if Shakespeare's total avoidance of the beloved mistress might have seemed a serious innovation, his categorical rejection of the association between virtue and chastity (still implicit in Donne's libidinous self-loathing) seems perhaps

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[33] Whether or not these sonnets were in fact written during the 1590s – as Francis Meres's reference to Shakespeare's 'sugred sonnets' in 1598 might suggest – is basically unimportant; the conventions of the English sonnet sequence were fundamentally Elizabethan, insofar as the chaste desire *topos* that structured them depended on the superimposition of political and erotic address in the courting of a maiden queen. In other words, Shakespeare's attention to succession still would have seemed offensive to Elizabethan assumptions, even when being read by a Jacobean reader of 1603–10.

even more novel; the appeals in the opening sonnets to 'use', 'succession', 'maintenance', and 'waste' are delivered in a richly amplified financial and legal diction that confronts the beloved, and the reader, directly with the political and economic consequences of chastity, and imagines the obligation to provide for an inheritance not as the duty of, or to, a sovereign chastity, but in direct competition with, or opposition to, that chastity.

In these opening sonnets, too, Shakespeare both receives and traverses another important convention, this time one associated with one of his sources, Marlowe's erotic epyllion *Hero and Leander*.[34] In his opening sonnets Shakespeare rewrites Marlowe's oration in praise of sex by stripping it of all its Ovidian sensuality, and replacing all the tactile, aromatic, and above all visual metaphors with urgings of the beloved's obligations; we remove from a material world of things to an immaterial world of relationships, duties, and responsibilities. Where Marlowe's Leander seduced Hero with commonplace talk of 'rubbing', 'hand to hand', 'untouch'd' strings wanting fingering, rammed-up gates, and the rich wearing of robes, Shakespeare – while resorting to many of the same metaphors – stresses in the sonnets a poetry not of *aesthesis* but rather *prosthesis*: chiding the beloved for his 'contract' with his 'own bright eyes', Shakespeare's lover tries to turn him away from this spectacular engagement, a chaste looking-on or witness, and toward an engagement, not to himself, but toward others. Standing behind the metaphors, the obtrusive and load-bearing diction, and the innovatory persons of these opening sonnets lurk small words little regarded, but crucial to Shakespeare's rewriting of love in the sonnets as not an aesthetic experience, but an ethical engagement, framed in terms of legal and financial obligation: due, asked, answer, audit, judgment.

In the context of the altered address, and conspicuous reconfiguration of the Ovidian commonplaces so wittily deployed by Marlowe, the emphasis in these opening sonnets upon the obligations of 'succession' must have teetered, no less dangerously, on sedition: Elizabeth's privy council adopted a policy throughout the 1580s and 1590s of suppressing public discussion (and private, manuscript circulation, where it could be located) relating to the succession to the crown. The initial wave of intense political debate over the succession question occurred in the 1560s, in the months leading up to, and in the years following, the parliament of 1563. The most debated question was the legitimacy of Mary Queen of Scots, whose claim to the throne turned upon her alien status; the statute *De natis ultra mare* (25 Edward III), which established the legal position of Englishmen born overseas – and thus out of the allegiance of the crown of England – might seem to have barred Mary's claim. Although the question was officially silenced by the 1563 parliament, at least one important

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34 See Christopher Marlowe, *Hero and Leander* (London: Adam Islip for Edward Blunt, 1598), ll. 199–284 (sig. B4r–C1v).

legal treatise, a manuscript dialogue on the statute *De natis ultra mare* probably written by William Fletewoode, was composed sometime in the 1570s, and continued to circulate in the Inns of Court during Elizabeth's reign, and long after Mary's death; one contemporary copy is dated 1601, and many of the prominent lawyers of the period, including Sir Edward Coke and Matthew Hale, had copies. The continuing interest in the question of Mary's alien birth was motivated, of course, by the claim of her son James, whose right of accession depended on the same point. The fact of the circulation of manuscripts of this kind – beyond the specific and often highly dangerous arguments that they contain – within the Inns of Court, provides an important context for the opening sonnets of Shakespeare's sequence. 'Succession' was a topic that could be discussed, even had to be discussed, within the closet- and chamber- spaces of the closed confraternties of lawyers in London; debate on this topic had to and could be tolerated within such communities because, as Elizabeth's privy council tacitly recognized, any change in monarch had to be carefully managed and prepared, possibly even with legal polemics at the ready. If the accessions of Mary Tudor and Elizabeth had been anything to go by, recent experience, even where heirs of the blood were available, required careful legal finessing. Shakespeare's address to a male beloved, encouraging him to breed sons who will inherit and maintain unbroken the supply of his beauty to an external, obliging, and 'common' world, participates in this tension, answering Elizabeth's chastity by refusing to praise it, and showing contempt for the public gag order on royal succession by focusing on personal succession. The concentration on succession in Shakespeare's opening sonnets is consonant with the legal character of the sonnets generally, then, and even identifies and advertises the collection's Inns of Court situation; its focus on primogeniture, as a riposte to the Elizabethan cult of chastity, is likewise politically explosive.

The 'private' status of these opening sonnets further insists on the closed, coterie community in which both lover and beloved – in clear distinction to the actors of earlier sequences – move. Shakespeare follows the first nineteen sonnets on the male succession with a short group of five poems that emphasize the inwardness of the 'heart' in contrast to the words, shows, acted parts, and other outward forms associated with political ambition and civic life. In three of these poems, Shakespeare's lover makes statements that seem to oppose a private, manuscript-based coterie environment to the court-centered lyric context of Sidney and Daniel. 'So is it not with me as with that Muse', the lover asserts in 21, 'stirred by a painted beauty to his verse':

> Who heaven itself for ornament doth use,
> And every fair with his fair doth rehearse,
> Making a couplement of proud compare
> With sun and moon, with earth, and sea's rich gems,
> With April's first-born flowers, and all things rare
> That heave't air in this huge rondure hems. (21.3–8)

Shakespeare's lover explicitly rejects, with an almost agoraphobic piety, the hyperbolic ornamentation of the outer world, preferring a 'fair' of truth, a 'bright' not of suns and moons, but of candles, a report not of 'hearsay', but one that he can 'write'. The final line of the sonnet makes complete Shakespeare's dissociation from the erotic praise of the sonnet writers following Sidney: 'I will not praise, that purpose not to sell'. Shakespeare's sonnets will continue to resist the Petrarchan convention of *blason*, concentrating not on the conventional catalogues of beauty, but on the negotiations of relation and obligation subsisting between lover and beloved. 25 shows the lover making a similar kind of claim for the inward, refusing 'public honour and proud titles' from which fortune 'bars' him, and preferring to spread in 'leaves' 'where I may not remove, nor be removed'. The emphasis in these two sonnets on writing – like the eloquence of 'my books' in 23 – goes hand in hand with their turn inward into the candle-lit chamber; it also takes in its train an unassuming litany of nearly subaudible legalisms: plead, recompense, writ, hear, bars, remove. If the opening group of sonnets has implicitly turned away from the court and the celebration of its chaste beauty, Shakespeare's lover clearly positions himself, in the next handful, within an architectural and coterie space defined not by self-interested transaction, but by reading, writing. It is an environment characterized not by the liberty of the hyperbolic skies, but by the regulated relations of constraint, argument, and judgment. It is, in short, a judgment chamber.

The moral and political obligation of the beloved to perpetuate beauty by succession unfolds, after the explosive exposition of sonnet 1, as the legal and financial duty sustained by an heir, legatee, or debtor. It is typical of Shakespeare to recruit, as the two main metaphors of this part of the sequence, two parallel ideas, structurally congruent but ethically in tension: tenure and usury. Though both the landholder in a tenurial relationship and the usurer in a financial transaction are charged with, or charge themselves with husbanding, maintaining, and developing their assets, these two custodians of property work within diametrically opposed systems of interest: the landholder seeks to preserve his estate and to develop it to the benefit of his heir or reversioner, while the usurer seeks to maximize the return on a loan for his own enrichment. One system was theorized in the Renaissance as conspicuously disinterested in the self, and the other as conspicuously defined by its self-interest; though of course the investment in and cultivation of an estate to be passed on to one's heirs, though a translation of interest from oneself to one's succeeding heirs, is not far from a straightforward self-interest. The quickening equivocation of Shakespeare's emphasis in these sonnets on a turning away from one kind of self-interest to the cultivation of another kind, of course, exactly mirrors this conflation in the metaphorical currents of landholding and loansharking.

The keystones bridging these two currents are the words 'use' and 'waste'. 'Use' no longer carries today, for most of the lay public, any of the extensive

legal associations basic to the sixteenth-century understanding of the word. As a legal term, its origin lies in the feudal legal traditions of manorial tenure, largely obsolete by the sixteenth century, but nonetheless preserved – in form and language if not in chivalric spirit. Because the forms of the English common law were so resistant to innovation and change – and at no time more so than the sixteenth century – language and even legal processes no longer consistent with real practice tended to survive long past the scope or period of their original devising or enactment. As John Cowell simply defines it in *The Interpreter*, 'Vse (*vsus*) is in the originall signification, plaine enough: but it hath a proper application in our common lawe, and that is the profit or benefit of lands or tenements.'[35] Cowell's recording of the simplicity of the word is important, both because it was, in its 'originall signification', a simple concept, and because, even in its legal construction, the term was so well and widely known that it hardly required definition. To a modern eye, though, the 'profit or benefit of lands or tenements' might seem to be, when placed next to outright ownership, a superfluous distinction: if one owns land, one is entitled to the profits and benefits deriving from that land – that is, in a sense, what title means. But for the sixteenth-century lawyer's understanding of title to land in a tenurial context (rather than a context of outright ownership), the 'beneficial ownership' and the 'legal ownership' of land were two very different things. The distinction between legal and beneficial (*ad opus*) ownership of land had arisen in the fourteenth century after a statute of 18 Edward I (1290), usually known as *Quia emptores terrarum*, made it possible to purchase lands freely, without payment of the customary fine to a feudal superior. This in turn had encouraged feudal tenants to evade feudal 'incidents', or fines, by conveying the legal ownership of their lands to a group of trustees; this functionally permanent and immortal corporation of trustees could pass the 'use' of the land, without formal change of ownership, between father and son, or between buyer and seller. While this universal medieval practice was decisively termi-nated by the Statute of Uses in 1536, the idea of the use, or the 'beneficial ownership' of land, survived, not only to describe genuine trusts in land (such as that of a lord for his ward), but also to describe the relationship between lessors and lessees in a lease arrangement, and even to describe the relationship between individual landholders and the heirs or reversioners who would enter into the estate upon their death or forfeiture.[36] The trust relation subsisting between the 'legal owner' and the 'beneficial owner' of an estate in land, then, defines the use in opposition to the predatory self-interest of an act of 'waste'.

[35] Cowell, *The Interpreter*, sig. Zzz 3r–Zzz 3v.
[36] I am indebted primarily to Baker, *IELH* (pp. 248–58) for the basic outlines of this account of *Quia emptores terrarum* and the use; for further discussion, see A. W. B. Simpson, *History of the Land Law*, pp. 173–92; J. L. Barton, 'The Medieval Use', *Law Review Quarterly*, 81 (1965), 562–77; and E. W. Ives, 'The Genesis of the Statute of Uses', *English Historical Review*, 82 (1967), 673–97.

The beauty of Shakespeare's youth has, by sonnet 13, become just such a use:

> O that you were yourself; but, love, you are
> No longer yours than you yourself here live.
> Against this coming end you should prepare,
> And your sweet semblance to some other give.
> So should that beauty which you hold in lease
> Find no determination; then you were
> Yourself again after your self's decease,
> When your sweet issue your sweet form should bear. (13.1–8)

The string of legal terms in the second part of this octet – 'lease', 'determination', 'decease', and 'issue' – retrospectively figures the 'give' of line 5 as a legal endowment, a 'frank gift' or free endowment of another with title to lands. Because the youth's beauty is not his own, but a 'lease' given him by nature, his obligation is to 'use' the lease in such a way that he can pass it on in the same, or better condition than that in which he received it – a 'use' of beauty that is in his own interest, as well as his heir's. The 'house' of line 9 thus becomes not only a physical house, or estate, but a 'line' of progenitors and descendants:

> Who lets so fair a house fall to decay,
> Which husbandry in honour might uphold
> Against the stormy gusts of winter's day
> And barren rage of death's eternal cold? (13.9–12)

The responsibility to preserve and maintain beauty's estate against the ravages of both winter and the eternal winter – a connection between estate management and seasonal hardship that will recur in the famously short date of 'summer's lease' in 18 – figures the youth's reproduction as an obligation to nature, the chief lord who has enfeoffed him in beauty. The 'sweet semblance' that the beloved will give to 'some other' is here a frank gift (of love) from the beloved to his lover, and a more conservative, self-interested gift (his likeness) from the beloved to his heir, born of that lover.

The term of the beloved's estate in beauty – 'so long as you here live' – is carefully spelled out as an estate lasting the period of the beloved's life. *Littletons Tenures* defined the understanding and negotiation of English estates in land for the entire Tudor period: the *Tenori Novelli* went through more than forty Latin editions in the sixteenth century, and more than twenty editions in English, making it one of the most popular legal handbooks of the age. In a typical English edition published by Richard Tottel in 1576, Littleton's text provides this account of an estate 'for terme of lyfe':

Tenaunt for terme of life is, where a manne letteth landes or tenementes to a man for terme of life of the lessee, or for terme of life of another man. In suche case the lessee is tenaunte for terme of life. But by common language, he that holdeth for

terme of his owne lyfe, is called tenante for terme of life, and hee that holdeth for terme of an other mans life, is called tenaunt for terme of an other mans life. And it is to be vnderstande, that there is feoffour and feoffee, donour and donee, lessour & lessee. The feoffour is properly where a man enfeoffethe an other in anye landes or tenementes in fee simple, he that maketh the feoffement is called feoffour, & hee vnto whom the feoffement is made, is called feoffee, and the donoure is properly where a manne geeuethe certaine landes or tenementes to an other in the taile, he that maketh the gifte is called donour, and he to whom the gift is made is called donee. And lessoure is proprely, where a man letteth to an other certayne landes or tenementes for terme of lyfe, for terme of yeres, or to holde at will, he that maketh the lease is called lessour, & hee to whom the lease is made is called lessee, and euery one that hathe estate in landes or tenements for terme of his owne life, or for terme of another mans life, is called tenaunt of free holde. And none of lesse estate maye haue free holde, but theye of greater estate may haue free holde, for tenant in fee simple hath free holde, and tenant in the taile hath also free holde.[37]

It is worth considering Littleton's exposition of tenancy 'for terme of lyfe' in full because he raises a number of important issues for Shakespeare's use of the legal metaphor. A lease for term of life is the least degree of freehold; but Shakespeare's sonnet effectively posits the conversion of a lease for term of life into a full fee simple – an estate in beauty, by succession, is thus made perpetual. But the idea of 'gift' is also very much at play in Shakespeare's formulation of the tenurial metaphor of beauty, as he argues that the youth should 'give' his 'sweet semblance' to some other in order to make the lease perpetual. Rather than confounding an array of subtle distinctions in possessory rights, Shakespeare here uses the degrees of possession in freehold as an argument to the youth: by magnanimous gift, he can convert his lease of beauty into a fee simple, and, as his own heir, enjoy it perpetually.

The slippage in this argument between self-interest and interest in the heir, or reversioner, resurfaces in the other structuring idea of these opening sonnets, 'use'. The optimistic reference to 'use' in sonnet 2 is remembered, and much tarnished, two sonnets later:

> Unthrifty loveliness, why dost thou spend
> Upon thyself thy beauty's legacy?
> Nature's bequest gives nothing, but doth lend,
> And being frank she lends to those are free:
> Then, beauteous niggard, why dost thou abuse
> The bounteous largess given thee to give?
> Profitless usurer, why dost thou use
> So great a sum of sums yet canst not live? (4.1–8)

Here the 'legacy' that should be set aside as a gift for the heir or reversioner is

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[37] Sir Thomas Littleton, *Tenures in Englishe* (London: Richard Tottel, 1576), sig. B iiiir–B iiiiv.

rather appropriated for the youth's own 'use'. This form of 'use' – not a holding in trust, that would preserve capital or an estate to guarantee a perpetual return – amounts to nothing more than waste. For this reason Shakespeare associates it with usury (the practice of lending out money at interest), because both usury and short-term expenditure of capital represent risk-averse ways of consuming wealth now, rather than preserving it for the uncertain future. The rehabilitation of this usury-use is almost immediately performed in sonnet 6, as Shakespeare continues to urge the youth away from a narrow self-interest toward a more expansive and magnanimous self-interest in reproduction.

The verbal play of these opening sonnets, in its theme-and-variation approach to tenure, use, and the tension between the rights of the tenant and those of the heir or reversioner, opens up the kind of ethical and political inquiry into the subject (or monarch?) and his estate (or kingdom?) that we have come to expect from the legally inflected English sonnet tradition after Sidney. The carefully structured, though sometimes unobtrusive, deployment of legal diction in Shakespeare's sonnets, as in the erotic poetry of both Donne and Spenser, marks these poems off as coterie, Inns of Court texts, both oppositional and politically engaged, while the particular legal subjects – like the conceits turning on prerogative in Donne's poetry, or the return to contract and matrimony in Spenser's – make these poems constructively topical, serious interventions in the practical political philosophy of the day. What Donne and Shakespeare seem to have taken from Spenser's influence – as well as from other sources and promptings – was a recognition of the political possibilities of the lyric form, when approached through its language, and a clear sense that a legal lexis would both position their poetry on an oppositional axis, and allow them to move with the light step of allegory between psychological, ethical, and political meanings. Clearly Spenser, Donne, and Shakespeare must have intended to open sundry channels of thought in their erotic poems, but attention to the ways in which they all recruit legal language demonstrates how central the moral-political was to this genre, and to the age.

Chapter 9

AFTER WORDS

> Now all resistance is impossible, and to love is beautiful only as long as
> resistance is present; as soon as it ceases, to love is weakness and habit.
>
> Søren Kierkegaard, 'The Seducer's Diary', from *Either/Or*

THIS STUDY has sought to achieve a double aim: to restore to our reading
of early modern English poetry the kinds of word-based interpretative
strategies that characterized the theory and practice of humanist hermeneutics
in the period; and to recover in the poetry of Spenser and some of his closest
contemporaries an innovative and significant strain of legal expression,
thought, and argument. In modern criticism of the works of Spenser, the
breadth and depth of his legal interest have gone almost entirely unremarked;
readers have engaged productively with the political theory of Book V of *The
Faerie Queene*, and have lately taken up isolated issues with legal connections –
such as complaint and conveyance – but the pervasive and consistent influence
of legal language and thought on Spenser's allegorical project in *The Faerie
Queene*, and in the poems that immediately followed its 'completion' in 1595,
has till now remained, as E. K. feared, passed 'in the speedy course of reading'. I
hope that the recognition and exploration of Spenser's meticulous verbal
artistry, on the one hand, and his committed political engagement, on the
other, will help to restore a properly historical basis to our understanding of
this pioneer of a literary English, and of the influence he exerted on his first
readers.

As I draw this study to a close, I would like to return briefly to two
outstanding issues, raised explicitly in the first and second chapters, and
implicitly in nearly all the exemplary discussion since. The first concerns the
relation of pleasure to utility in Spenser's poetry. Spenser's works have
suffered in the literary and academic marketplaces for their heavy commit-
ment to topical political allusion: the Ridolfi plot, the Armada, the execution
of Mary Queen of Scots, the apostasy of Henri IV, the New English wars in
Ireland – these are just a few of the historical events that have occupied the
attention of historicist critics of Spenser, and in turn provoked the censure of
others. A strong current in literary criticism, perhaps most eloquently

articulated by C. S. Lewis, takes this aspect of Spenser's poetry to be non-literary, at best a valuable historical curiosity embedded in the works; although there is a wide spectrum of responses to the relation of the historical to the literary in Spenser's poetry, most experienced readers of his work recognize the authority and pressure of this extreme view, and worry about it. The sense that a literary text might be instrumental, rather than an end in itself, always presents a problem for its interpretation, as it does for the interpretation of any artwork; but Spenser's poetry is particularly susceptible, for the iconoclastic Protestant poetics that underpin it seem, to some readers at least, to invite an assumption of instrumentality. Archimago becomes the dominant poet-figure of *The Faerie Queene*, Una's captivity among the satyrs an allegory of irreligious reading, and the painted walls of the House of Pride a deadly warning to those who fail to push beyond beauty to use. Occasionally, in the history of Spenser studies, on one side or the other of this debate someone produces a cogent and compelling reason for privileging, or ignoring, these elements in his work. Mostly we seem to allow these opposed perspectives simply to play tug of war.

I originally undertook this study of legal language and ideas in Spenser's poetry because I anticipated that Spenser's interest in the law, like his interest in ethics, might help us to understand the apparently paradoxical relationship in his writing between the pleasures of reading, seeing, and understanding, on the one hand, and the value of right or just action on the other. Both ethics and the law, as prisms through which to interpret a work like *The Faerie Queene*, would seem to require from the poetry a firm commitment to instrumentality at the expense of pleasure. But approaching Spenser's poetry as if it were moral philosophy in verse has substantial limitations that a legal approach does not necessarily share. The discussion of simply moral precepts tends to shift more readily to the didactic than the legal because the landscape in which a moral edifice might ultimately be built is an integral, uniform, and discrete one; by contrast, the landscape in which the law operates is not integral, uniform, or discrete. The comparative fluidity and heterogeneity of the political sphere compromised early modern attempts to harmonize the macrocosm of the *polis* with the microcosm of the self: *autopolis* is as distant as Utopia. Western political philosophy, from a very early date, responded to the heterogeneity of practical political life by introducing the idea of equity. As Aristotle writes in the *Nicomachean Ethics*, justice in the general sense embraces all of virtue, and equity is a necessary concept in the study of justice because laws, and societies, are not always perfect.[1] The result of the attempt to fit any perfect virtue, or law, to any particular subject, or situation, will always be an injustice, or an accommodation – a residual (which in some special cases produces tragedy). Equity, as the attempt to mediate between something absolute and something

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[1] See Aristotle, *Nicomachean Ethics*, 5. 1–2, 10.

particular, in a sense embraces the entire function of law, and would seem to cope with – perhaps even erase – the problem of the residual. The other work in which Aristotle discusses the relation of universals to particulars – as any English poet writing after Sidney well knew – is the *Poetics*, in which short treatise Aristotle celebrates the ability not of equity, but of poetry to bridge the gap between τὰ καθόλου and τὰ καθ᾽ ἕκαστον.[2] If in the Aristotelian tradition in which Spenser was working, poetry and equity accomplished an equivalent mediation between rules and instances, it seemed to me, in beginning with this project, that Spenser's thought about the legal, and particularly about equity, might run to the core of the way he construed the final cause or causes of his poiesis.

Spenser makes it clear in *A letter of the Authors . . . to Sir Walter Raleigh* that at least one of the final causes of *The Faerie Queene* is the moral education of a gentle reader. Whether or not one accepts the scheme advertised there for the organization of the books in the projected twelve-book poem, or the idea that a poem about 'public' virtues would follow the poem concerning 'private' virtues, we cannot escape the fact that, in introducing the equitable as a central element in his representation of justice in Book V of the poem, Spenser irrevocably committed his work to a political rather than a moral construction of justice, and hence of virtue generally. It might just have been possible to have read the various psychomachiai of the allegory as mental events, had not equity been introduced into the poem; but once Spenser had given so prominent a place to this concept – not only calling Artegall the judge of equity, but bringing Britomart through Isis Church – the representation of all the other virtues, which are comprehended in justice in the general sense, became modified by the thought: but what happens if I express this temperance, holiness, chastity, friendship, justice, or courtesy in relation to another person? In another state, or language? In a county where children inherit as equal partners? While I am standing adjacent to a man who is beating a woman? Where an innocent child has been corrupted?

In the second chapter I suggested that we ought to consider the possibility – one that E. K. and Spenser present to us forcefully in their paratextual situations of *The Shepheardes Calender* and *The Faerie Queene* – of interpreting *The Faerie Queene* as a *lex*. By this I meant that we ought to assume, on faith, that there is a meaning encoded in the text, and that it is our job to discover and retrieve it, and to apply it. In performing this sequence of actions, we would be doing exactly what judges do in reading the law, passing a judgment on its meaning, and delivering sentence accordingly. We would be doing exactly what Richard Hooker suggests the good Christian does, when contemplating the world in search of God's natural laws: assuming on faith that some

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[2] See Aristotle, *The Poetics*, ed. Doreen C. Innes (Cambridge: Harvard University Press, 1995), c. 9 (pp. 58–63).

principles or reasons inform all of creation, the Christian of Hooker's polity sets out, in approaching the state of an angel, to learn what those principles are, and how to live by them.[3] The problem attending that judgment about the status of the text of *The Faerie Queene*, I acknowledged there, was that it reduced it entirely to *utilitas*, making it an instrument and not an end in itself – not an artwork. The introduction of equity into our thinking about virtue and just action in a reading of *The Faerie Queene*, however, suggests something residual in the movement from judgment to application. I called this, then, the gap between significance and signification. Quintilian calls it *accommodatio*. (Imoges tells Posthumus Leonatus in the final scene of *Cymbeline* that it is like being thrown from a rock.)

The six chapters intervening between that thought and this have tried to demonstrate how analytical attentions to language, when recombined in a subsequent act of reading, can lead to enhanced judgment and pleasure. The problem facing us was that as judgment improved, pleasure would necessarily wane; we would become lodged in the 'brasen towre' at the finally full cost of 'pleasure's bowre'. I hope it will be obvious that law does not, in fact, force us to choose between the two. Unlike ethics, law entertains paradox, and does so because of the infinitude of experience that occasions the need for equity. It was only in the previous chapter that I raised the example of *Amoretti* 65; but the same principle of the residual in law appears, too, in Mutability's moment of terrified recognition that she has lost her suit; in Calidore's inability to contain the Blatant Beast; in Artegall's restraint of Talus; in the *consideratio*; and in the difference between Errour and an error. In fact, it does not seem to me unlikely that one of the central final causes, or fore-conceits, with which Spenser began his work on *The Faerie Queene* was the representation of this painful gap between the finite particular and the infinite universal. He knew it as *imitatio* and exemplarity.

With this in mind, it seems to me unfortunate that literary criticism has, generally, struggled with the place of the historical and instrumental in its materials. Spenser's reception and use of legal thought and language in *The Faerie Queene* seems to me, on the evidence of the foregoing readings, to suggest the interdependency of significance and signification. As Moses Maimonides writes in *The Guide of the Perplexed*,[4] and as John Calvin also

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3 See Richard Hooker, *Of the Lawes of Ecclesiasticall Politie* (London: John Windet, 1593), pp. 49, 57 (1.2, 1.5). 'God alone excepted, who actually and euerlastingly is whatsoeuer hee may be, and which cannot hereafter be that which nowe he is not; all other things besides are some-what in possibilitie, which as yet they are not in act. And for this cause there is in all things an appetite or desire, whereby they inclyne to something which they may be: and when they are it, they shall be perfected then nowe they are. All which perfections are conteyned vnder the generall name of *Goodnesse*.' (p. 57)

4 Maimonides's treatise is the source of the *via negativa*, the tradition that the essence of God can only be represented by negation. See *The Guide of the Perplexed*, ed. Schlomo Pines, 2 vols (Chicago: University of Chicago Press, 1963), I, pp. 134–37. 'Glory then to Him who is such

writes at the opening of the *Institutes of the Christian Religion*,[5] it is by experiencing the pain of our insufficiency that we come to realize the existence and the extent of the divine; where the physical ends, the metaphysical begins. The play of case and rule in *The Faerie Queene*, as Gordon Teskey has observed in slightly different terms, is painful: the moment where Guyon and Shamefastnesse come face to face is not merely weird, it is horrible – or maybe beautiful. For upon the authenticity, the materiality, and the humanity of the historical the equity of the universal law depends. If *The Faerie Queene* were the same in every respect except that we believed its characters and agents to be robots – or bronze or iron giants – it would be a work of despair. But as the poem is written, its every episode, by a total but also insufficient allusiveness to the real, figures the equitable relation that, in Isis Church, we come to recognize as the special power of interpretation.

This in turn brings me to the second of the two issues left outstanding through this weary work. If one of the fore-conceits driving the creation of *The Faerie Queene* was the painful infinitude of the universal *regula*, another I suppose to have been its opposite: the easy familiarity – even identity – of the habitual. That is to say, the idea of the fore-conceit may have driven Spenser inexorably forward, but the form that that forward-faring took (its formal cause) was its *ethos*. I turned to the legal in Spenser's work in an effort to understand more fully how instrumentality made concessions to pleasure; but the habitual, or *ethos*, is where we must look if we are to understand how the pleasure of Spenser's work makes concessions to its instrumentality.

> The waies, through which my weary steps I guyde,
>   In this delightfull land of Faery,
>   Are so exceeding spacious and wyde,
>   And sprinckled with such sweet variety,
>   Of all that pleasant is to eare or eye,
>   That I nigh rauisht with rare thoughts delight,
>   My tedious trauell doe forget thereby;
>   And when I gin to feele decay of might,
> It strength to me supplies, and chears my dulled spright. (VI.Pr.1)

Medieval and early modern common law was defined, as St German noted in *Doctor and Student*, by the competing 'rewles and groundes' on which it was based. It was a *jus non scriptum*, deriving at least as much from habit, or

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that when the intellects contemplate His essence, their apprehension turns into incapacity; and when they contemplate the proceeding of His actions from His will, their knowledge turns into ignorance; and when the tongues aspire to magnify Him by means of attributive qualifications, all eloquence turns into weariness and incapacity!' (p. 137)

[5] See John Calvin, *The Institutes of the Christian Religion*, ed. John T. McNeill and trans. Ford Lewis Battles, 2 vols (Philadelphia: The Westminster Press, 1960), I, pp. 35–39 (Book 1, chapter 1).

custom, as from prescriptive law. The sense of identity that Spenser invokes in the opening stanza of the proem to Book VI is one that any reader will be familiar with – a sense of self suddenly rediscovered in, or recovered from, a 'nigh' ravishment. The legal metaphor that Spenser recruits here, as he reaches for the etymological sense of 'abduction' (literally 'leading away') through the early modern tradition of *ravissement de gard*, points obliquely toward the problems of agency that this topic always invokes. The predicament in which he finds himself – being led by the end in view, constantly working wearily toward a mark – is cheered and supplied by a near but not total loss of that purpose because that loss of purpose, in some sense, is more authentic than the duty that draws him forward. Ways (forms) suddenly occlude ends (purposes). Which should take priority?

It will be clear that the relation of *ethos* to *telos* in Spenser's powerful stanza is governed by the same reciprocity that mediates *voluptas* and *utilitas*, or pleasure and instrumentality, the 'brasen towre' and 'pleasures bowre'. What I want to remember is that the analysis and interpretation that Spenser demands of his readers only has value insofar as it is complemented by the synthesis, or intelligence, of the work. Spenser's legal habit creates the self of the reader through the course of reading the poem, both by impelling her toward the poem's meaning, and by recognizing as meanings the states through which she passes: custom balances rule, and formal final cause. It is peculiarly the practice of law to join forms of action to universal principles, and of English law to believe that these relations exist as legitimately in what has been done, as in what ought to be done.

GLOSSARY OF SELECTED LEGAL DICTION
IN *THE FAERIE QUEENE*

Notes on use

This glossary is intended as a reference, and not a research, resource; the entries are consequently brief and only sparely documented. For reasons of economy, it has not been possible to include all the legal diction appearing in *The Faerie Queene* or in Spenser's shorter or prose works; nor do these entries supply much information about non-legal meanings for the glossed terms. The glossary thus aims to provide a relatively comprehensive but not fully exhaustive picture of the legal semantic qualities of Spenser's poetic diction, but it should not be used as a reference for Spenser's language generally, or even as a complete reference for the terms presented here.

The close connection between English legal diction and Latin and Law French terms in the medieval and early modern periods suggests the importance of including, in every case, relevant etymologies and, in a few cases, cognates; in instances where these etymologies are apparently superfluous, they have nonetheless been included, if only to demonstrate the absence of any more interesting semantic or morphological connections.

A number of standard abbreviations have been used throughout: L (Latin), Gr (Greek), OF (Old French), AF (Anglo-French), MF (Medieval French), LF (Law French), F (French), OE (Old English), ME (Middle English), ON (Old Norse), N (Norse), Ir (Irish). The male third-person pronoun is used throughout for 'one', for the historical reason that, in the sixteenth-century legal relations here described, men were most commonly if not uniformly the actors.

abandon, v. f. OF *abanduner*, f. phrase *à bandon*, 'to put in bands'. 1. to subjugate, reduce to absolute control. 2. to give up, surrender, forsake (absolutely). 3. to banish, proscribe, cause to abjure.

abase, v. f. OF *abaisser*, 'to lower'. 1. to humble, lower in rank or authority. 2. to 'debase' currency; to lower in value or price.

abate, v. f. OF *abatre*, 'to beat'. 1. to demolish, raze to the ground (in legal use). 2. to end, void, nullify (a writ, a law) (*trans*); to become void (*intrans*). 3. to enter forcibly into possession of an estate between the death of the tenant and his heir.

abet, v. f. OF *abeter*, f. *à beter*, 'to bait'. 1. To incite or provoke to a crime or offence. 2. To maintain, defend (Sp. coinage in positive sense).

abide, v. See **aby**.

abolish, v. f. F *abolir*. 1. to end, annul, void.

abridge, v. f. L *ad-* and *breviare*, 'to shorten'. 1. to shorten, epitomize (esp. a legal *count*, or declaration). 2. to reduce in scope or authority, to debar from. **abridgement**, n. 1. a

reduction in scope or authority. 2. a summary or epitome. 3. the formal reduction of a plaintiff's claim, leaving the writ good for the remainder.

abuse, n. f. L *abusare*, 'to misuse, to disuse'. 1. the action of using up, exhausting. 2. Improper use, corrupt practice. 3. Deceit, imposture. 4. Injury, offence. 5. Sexual violation. 6. Defamation, slander. v. 1. To misuse, make a bad use of. 2. To use falsely, to deceive. 3. To injure, do wrong to. 4. to ravish, defile. 5. to defame, slander.

abusion, n. f. L *abusio*, 'an abuse'. 1. misuse, misapplication. 2. deceit, imposture. 3. violation of law, custom, or right, an outrage, wrong. 4. defamatory language, insult.

aby, v. f. OE *a-* and *bycgan*, 'to buy'. 1. buy, purchase. 2. redeem, atone for, pay the price for (trans. and absol.) **abide** v. because of confusion with the past tense of 'aby' in the medieval period, some senses of these words became mingled.

accept, v. f. L *accipere*, 'to take up'. 1. to receive as valid delivery of a writ. 2. in various formal legal and political uses, to take, ratify, recognize oneself to be bound by (some writ, act, bill, receipt, invoice).

accompany, v. f. F *accompagner*. 1. to escort, go in convoy with, safeconduct, as with a retinue or officer.

accord, v. f. OF *acorder*, f. L *ad-* and *cor, cordis* 'heart'. 1. *trans.* to bring to agreement, reconcile, compose, settle. 2. to agree, resolve a matter, make a treaty. n. 1. reconciliation, agreement. 2. formal agreement, treaty. 3. an extrajudicial resolution to a pending legal dispute, barring further action on the matter. 4. assent to petition, a grant. See Rastell, 'accorde': 'Accorde is an agreement between ij. at the least, eyther to satysfie an offence, that the one hath made to the other: Or else, it is a contracte, wyth dyuers articles, to bee done, some on the one part, and some on the other, where there shalbee one thinge for an other &c.'

account, n. f. OF *acunt, acont*, f. L *comptum, computum*, 'a calculation'.1. counting or enumerating, generally. 2. a reckoning of money, payments, or debts, or the giving of such a reckoning. 3. an answer or justification for one's actions. 4. a writ or action (i.e. of 'account') requiring a reckoning from an officer who, though charged by their position to deliver a reckoning, has not done so. The frequent early modern form **accompt** derives from the Latin etymology.

accrue, v. f. OF *acreue, acrewe*, 'growth', f. L *accrescare*, 'to grow'. 1. to fall to one's possession as a growth or increment, to arise as an increase (as of value), esp. of interest on money. Translates the medieval legal Latin term *accrescare* and the Law French *acreistre*; see Baker, 'accrestre'.

accuse, v. f. OF *acuser*, f. L *accusare*, 'to call to account', f. *ad-* and *causa*, 'cause, reason, account'. 1. To charge with a crime or fault; to blame, indict. 2. to betray, reveal.

achate, n. f. OF. *achat*, 'purchase'. 1. the act of buying; a bargain. 2. *pl.* things purchased.

achieve, v. f. OF. *achever*, f. *à chief (venir)*, f. L *ad caput venire*, 'to bring to a head, finish'. 1. to accomplish, perform, finish. 2. to attain, gain (a property, possession). **achievement**, n. 1. a victory. 2. an armorial sign or escutcheon, granted in recognition of some achievement.

acknowledge, v. f. *knowledge*, f. OE *cnawan*, 'to know'. 1. to recognize or admit as true, to own. 2. to recognize the authority of (someone), to recognize (someone as something).

acquit, v. f. OF *acquiter*, f. L *quietare*, 'to settle'. 1. to settle, pay a claim or debt (for oneself or another). 2. to discharge a duty or office. 3. to pay back, requite. 4. to liberate, free. 5. to free from blame, to exculpate.

act, n. f. L *actum*, 'thing done'. 1. the performance of a thing, as distinguished from the intention or preparation to do it. 2. the resolution of a council or legislative body, a decree; a written record of the same. **action**, n. 1. the process or state of acting, an act (in various senses; incl. 2 above). 2. the prosecution of a suit at law, of right or wrong; the right to prosecute such a suit. 2. a suit at law. **actor**, n. 1. a pleader (often the plaintiff or complainant) in a suit at law (L *actor*).

addeem, v. Sp. coinage from **deem**.

address, v. f. L *ad-* and *drictiare*, 'to make straight', f. L *drictum*, 'straight'. 1. to make right, redress (a wrong). n. 1. formal rhetorical approach to a sovereign, judge, or lady.

adjoin, v. f. L *ad-* and *jungere*, 'to join'. 1. to unite (as in matrimony) or annex or attach (property).

adjudge, v. f .L *ad* and *iudicare*, 'to judge'. 1. to decide judicially, determine. 2. to pronounce by decree or edict. 3. to try, pass sentence upon. 4. to award, grant, settle upon by judicial order.

adjure, v. f. L *adiurare*, 'to swear to'. 1. to put (someone) to oath, to bind by oath or as if by oath.

admit, v. f. OF *admetre*, f. L *ad* and *mittere*, 'to send'. 1. to permit to enter, spec. in Law an heir into possession of an estate. 2. gen., to allow or recognize as lawful. 3. to confess to be true.

adultery, n. f. L *adulterium* in the same sense. 1. violation of the oath of marriage by fornication. 2. fornication generally.

advance, v. f. OF *avancer*, f. L *ab*, 'away' and *ante*, 'before'. 1. to move forward in time, hasten (as of a date of repayment). 2. to lend money. 3. to promote (someone) in office, rank, or dignity. 3. to provide financially for a child in anticipation of a bequest. **advancement**, n. 1. promotion in rank, office, rank, or dignity. 2. the financial provision for a child in anticipation of a promised bequest.

advantage, n. f. F *avantage* in the same sense. 1. financial profit on a loan, interest.

adventure, n. f. L *adventura*, 'a thing about to happen'. 1. a chance, fortuitous occurrence, an accident (in legal use). 2. a trial of chance, or a risk of danger or loss, jeopardy (in financial use). 3. a financial speculation, an investment. v. 1. to risk financially, stake, make an investment. **adventurer**, n. 1. a financial backer, one who invests in a risky financial scheme or enterprise (cf. 'merchant adventurer'). **adventrous merchandise**, cmpd n. 1. hazardous trade, risky financial dealing.

advise, v. f. L *ad-* and *visum*, 'seen', f. *videre*, 'to see'. 1. to consult, take counsel, deliberate on. 2. formally to offer counsel or caution. 3. to give formal notice (of something), to inform (someone of something). **advice**, n. 1. counsel or consultation, esp. a legal opinion. 2. information or intelligence supplied in some formal capacity (as of a witness or other party in a suit), testimony. **advisement**, n. 1. deliberation, consideration, chiefly in legal usage. 2. the resolution of such deliberation: an order or instruction.

advocate, n. f. L *ad* and *vocare*, 'to call'. 1. a pleader or intercessor in a court of law, counsellor or counsel (trans. L *advocatus* in the same sense). v. 1. to refer to a higher court; cf. 'avocate', 'avoke'.

affairs, pl. n. f. OF. *à faire*, 'to be done'. 1. business between two persons, esp. commercial business. 2. public business.

affiance, n. f. OF *afier*, L *affidare*, 'to trust'. 1. a troth-plighting, contracting of marriage. v. 1. to promise in marriage, as by spousals.

afford, v. f. OE *geforthian*, 'to further'. 1. to have means competent, enough. 2. to be able to sell at a given price. 3. to yield, grant.

affray, n. f. OF *esfrei*, 'to disturb, alarm'. 1. a noisy disturbance or tumult, esp. a breaking of the peace, riot.

affront, v. f. L *affrontare*, 'to confront'. 1. to contemn openly, to disrespect. 2. to defy.

affy, v. see **affiance**.

aggravate, v. f. L *aggravare*, 'to load'. 1. to put to someone's charge. 2. of crimes or offences, to make more serious or severe.

aggrieve, v. f. OF *agrever*, 'to make severe', f. L *aggravare*, as prec. 1. to trouble, distress. 2. of crimes or offences, to make more serious, to aggravate.

agree, v. f. OF *agreer*, f. L *aggratare*, 'to make agreeable'. 1. to consent, accede to, grant. 2. to make an accord, to bargain. **agreement**, n. 1. an accord, covenant, treaty. 2. a formally binding contract.

aid, n. f. L *adjutare*, 'to help'. 1. help in defending a case at law. 2. an extraordinary tax. 3. a fine or exaction levied on a tenant by a feudal lord.

allegiance, n. f. OF *lige*, f. L *ligius*, 'feudal superior'. 1. feudal lordship. 2. the bond tying a feudal inferior to his lord. **allegeance**, n. f. OF *alégance*, f. L. *allegantia*, 'allegation'. 1. an allegement, an allegation.

ally, v. f. OF *alier*, f. L *ad-* and *ligare*, 'to bind'. 1. to combine, as in marriage or by a political treaty. n. f. prec. 1. a connection by marriage. 2. a partner in treaty or agreement. **alliance**, n. f. prec. 1. union by marriage. 2. confederacy between agents for a political objective.

allot, v. f. OF *aloter*, f. *à* and *loter*, 'to divide by lots'. 1. to share out in portions. 2. to assign (someone something).

allow, v. f. L *allaudare*, 'to praise' and L *allocare*, 'to place', fused in OF *alouer*, 'to grant, permit, assign'. 1. to permit, license. 2. to allot, bestow. 3. to remit or deduct from a bill of charge, account. **allowance**, n. f. prec. 1. the crediting to one's account of a sum; the sum so placed. 2. a sum of money allotted to meet one's expenses; a marriage allowance, dowry.

alms, pl. n. f. Gr ἐλεημοσύνη, 'compassion'. 1. tenure by alms; 'free alms' = *frankalmoigne*.

amend, v. f. OF *amender*, f. L *emendare*, 'to clear of faults'. 1. to correct an error in legal process; to correct a legal instrument. 2. to make satisfaction for an offence. **amends**, pl. n. f. prec. 1. monetary satisfaction for an offence (rendering L. *poenae*), reparations. **amendment**, n. f. prec. 1. correction in a legal writ or process.

annex, v. f. OF *annexer*, f. L *annexare*, 'to tie to'. 1. to join an estate or parcel of an estate to a contiguous holding. 2. to affix (as of a seal, signature, or other mark of authenticity).

answer, n. f. OE *answaru*, cog. with OE *swerian*, 'to attest, swear'. 1. the defendant's answer to the count or declaration, a legal defence. v. f. prec. 1. to make formal answer to a charge. 2. to satisfy or quit a monetary claim; to discharge a debt.

apay, v. f. L *ad* and *pacare*, 'to please'. 1. to requite, discharge.

appeach, v. f. OF *empechier*, f. L *impedicare*, 'to catch by the foot'. 1. to charge with a crime. 2. to give evidence against.

appeal, v. f. OF *apeler* f. L *appellare*, 'to address, call on'. 1. to call (someone) to appear before a judge, to answer for a crime (esp. treason). 2. To refer a matter, or cause a matter to be referred, from an inferior to a superior court, to redress a perceived fault

of judgment. n. f. prec. 1. a charge or accusation, esp. of treason. 2. the removal of a suit or matter from an inferior to a superior court, in order to reverse or amend an adverse judgment.

appear, v. f. OF *apareir*, f. L *apparere*, 'to appear'. 1. to present oneself formally before a court, esp. as the representative of another. **appearance**, n. f. prec. 1. the formal presentation of an appellour or defendant before the court in a trial.

appease, v. f. OF *apeser*, f. *à* and *pais*, f. L. *pax*, 'peace'. Cf. **apay**. 1. to pacify, settle (a disturbance). 2. to meet or answer a demand or complaint.

appellation, n. f. L *appellatio*, 'appeal'. 1. an appeal to a superior court against the judgment of an inferior. Cf. **appeal**.

appertain, v. f. OF *apartenir*, f. L *ad* and *pertinere*, 'to belong to'. 1. to belong as possession, right, or title to (someone).

apply, v. f. OF *aplier*, f. L *applicare*, 'to apply'. 1. to bring to bear or implement a law, rule, or principle upon a matter or facts; to put a law or rule into practice in a given context.

appoint, v. f. OF *apointer*, f. *à point*, 'to the point'. Cf. L *appunctare*. 1. to ordain, establish, determine (judicially). 2. to decide and/or declare the title to any specific property. 3. formally to ordain or nominate a person to an office, dignity, or function. **appointment**, n. f. prec. 1. the assignment or limitation of a specific property to a person. 2. the nomination or designation of a person for an office, dignity, or function.

appose, v. f. OF *oposer*, f. L *opponere*, 'to oppose, argue against'. 1. to examine, interrogate (a person). 2. to examine, audit (accounts).

apprentice, n. f. OF *aprendre*. 1. a barrister-at-law of less than sixteen years' experience.

approve, v. f. OF *aprover*, f. L *approbare*, 'to certify'. 1. to prove, attest, demonstrate (a thing). 2. to confirm or sanction a statute or law. **approvance**, n. f. prec. 1. approof, approval, sanction.

argument, n. f. L *argumentum*, 'argument'. 1. proof, evidence; the basis for a claim or contention.

arraign, v. f. OF *araisnier*, f. L *ad* and *rationare*, 'to reason'. 1. to call (someone) to account, to indict on a charge.

arrest, **arret**, v. f. OF *arester*, f. L *ad* and *restare*, 'to remain'. 1. to capture or apprehend by legal authority. 2. to seize or impound goods or lands by legal authority. 3. to take in pledge or as security.

arrogate, v. f. L *arrogare*, 'to ask or claim'. 1. to claim a right or title without justification.

ascribe, v. f. OF *ascrir*, f. L *ad* and *scribere*, 'to write'. 1. to add to a legal document, subscribe (a signature, certification, etc.). 2. to enter (something) as a credit into an account, to attribute (to someone).

assault, v. f. OF *asauter*, f. L *ad* and *saltare*, 'to leap'. 1. to make an unlawful attack upon (a person or place). n. f. OF *asaut*. 1. an unlawful attack (upon a person or place).

assembly (dismiss), n. f. OF *asembler*, f. L *ad* and *simul*, 'together'. 1. A gathering or convocation with deliberative or legislative powers.

assent, v. f. OF *asenter*, f. L *ad* and *sentire*, 'to feel, perceive'. 1. to express the concurrence of one's will (to a proposal, petition), esp. of a monarch; to come to an agreement, decide, as over a proposal or treaty. n. f. prec. 1. Official or judicial declaration of agreement or consent; sanction; approval.

assign, v. f. OF *asigner*, f. L *ad* and *signare*, 'to make a sign'. 1. to allot, apportion as a

share in something. 2. to transfer or convey title to personal property. 3. to appoint or depute (someone) for an office or duty. n. see **assignee**, n. f. prec. 1. one appointed to act on another's behalf, a deputy. 2. one to whom title in (personal) property is transferred.

assoil, v. f. OF *asoldre* f. L *absolvere*, 'to absolve'. 1. to absolve or forgive. 2. to acquit, set free, discharge.

assuage, v. f. OF *asouager*, f. L *assuaviare*, 'to sweeten'. 1. to mitigate or moderate the effect of (a harsh law, etc.). **assuagement**, n. f. prec. 1. the act of assuaging.

assure, v. f. OF *aseurer*, f. L *ad* and *securus*, 'safe'. 1. to certify title to property, often by conveyance. 2. to make sure in marriage, to betroth or affy. 3. to pledge, guarantee by oath. **assurance**, n. f. prec. 1. a promise or pledge, guarantee. 2. a marriage engagement, spousal. 3. the securing of title to an estate by deed, usually by means of conveyance. 4. the securing of the value of property or life, insurance.

astray, adj. f. OF *estraié*. Cf. **estray**.

attach, v. f. OF *atachier*. 1. to arrest or seize by legal warrant. 2. to indict.

attain, v. f. OF *ataindre*, f. L *attingere*, 'to touch on'. 1. to catch or apprehend in an offence; to convict. Cf. **attaint**. 'attained intent'

attainder, n. f. OF *ataindre*, as prec. 1. the action of attainting. 2. the prescribed consequences for defendants convicted of treason or felony (forfeit of titles and property, corruption of the blood, etc.).

attaint, v. f. OF *taindre*, f. L *tingere*, 'to steep, stain'. 1. to convict in a trial, prove guilty. 2. successfully to contest the false verdict of a jury. 3. to subject to attainder (incl. penalty of death, surrender of estates and property, corruption of the blood, etc.). n. 1. the conviction of a jury for the giving of a false verdict; the process of contesting an allegedly false verdict. 2. attainder.

attempt, v. f. OF *attempter*, f. L *attemptare*, 'to strive for, try'. 1. to attack by force, assail. 2. to seduce, try to force or ravish (e.g. a woman).

attend, v. f. L *attendere*, 'to pay attention to'. 1. to wait upon (a king, a nobleman or noblewoman). 2. to present oneself, to assist, at court or a court. **attendance**, n. f. prec. 1. the fact of being present, in answer to a command or summons from a court or authoritative officer or personage.

attent, see **attempt**.

attest, v. f. OF *atester*, f. L *ad* and *testari*, 'to bear witness'. 1. to bear witness, certify, serve as evidence for.

audience, n. f. L *audientia*, 'audience'. 1. a judicial hearing.

authority, n. f. OF *autorité*, f. L *auctoritas*, 'authority'. 1. power to compel action; moral or legal command. 2. such power, delegated and conferred.

avail, v. f. OF *valoir*, f. L *valere*, 'to be worth'. 1. to be profitable, advantageous. n. pl. 1. profits, returns.

avoid, v. f. OF *ésvuidier*, 'to empty out, banish'. 1. to make void or of no effect. 2. to invalidate or quash (a judgment, agreement, etc.). 3. to banish, proscribe.

avoure, n. Coinage. 1. avower, legal answer.

avow, v. f. OF *avouer*, f. L *advocare*, 'to call upon'. 1. to declare, affirm, maintain, swear. 2. to admit or confess. 3. to justify or excuse (an act performed).

badge, n. orig. unkn. 1. a cognizance, mark of livery; sign of office, employment.

baffle, v. poss. f. OF *befe*, 'mockery'. 1. to disgrace publicly or judicially.

bail, v. f. OF *baillier*, f. L *bajulare*, 'to bear, carry; to supervise, ward'. 1. to deliver something (e.g. goods) in trust. 2. to yield a prisoner into the custody of a guarantor, in return for securities pledged that he will be redelivered for trial. 3. more generally, to act as security or pledge for (someone). n. f. OF *bail*, 'custody, jurisdiction'. 1. power, jurisdiction. 2. custody, esp. that of a surety charged with guarding the body of a prisoner pending his presentation at trial. 3. the release of a prisoner from imprisonment, into the custody of a guarantor, in return for securities pledged that he will be redelivered for trial. 4. the securities or pledges so presented; spec. the person acting as surety or guarantor for a prisoner so released.

bailiff, n. f. OF *baillif*, f. L *bajulivus*, 'administrator'. 1. municipal authority, esp. the chief officer of a hundred. 2. the executive officer serving under a sheriff, responsible for writs, licences, arrests, distraints, etc. 3. factor or steward to a lord of the manor, superintendent of an estate.

bait, n. f. ON *beita*, 'to entice, cause to bite'. 1. a lawyer's fee.

balance, n. f. OF *balance*, f. L *bilanx*, 'double-plated'. 1. used as a symbol for the office or function of a judge; the scales of reason by which competing claims may in justice be weighed.

ban, v. f. OE *bannan*, 'to summon'. 1. to curse. n. f. the v. 1. a proclamation or edict. 2. a formal denunciation, prohibition. In pl. **banns**, n., the proclamation of an intended marriage.

band, n. f. OE *bindan*, 'to bind'. 1. a mutual obligation or agreement, bond. 2. the pledge or security given in respect of an agreement.

banish, v. f. OF *banir*, f. L *bannire*, 'to make proclamation'. 1. to condemn or sentence to exile.

bank, n. f. OF *banc, banque*, 'bench'. 1. a legal bench, as those of Westminster Hall. 2. a moneylender's table or counter. 3. a sum of money. 4. an organization for the depositing, care, and trade of sums of money.

bar, n. f. OF *barre*, 'bar'. 1. a rail enclosing the judge's seat in a court, from which barristers plead and at which prisoners stand to await sentence. 2. by extension, the (entire) court itself. 3. a rail or division in the hall of one of the Inns of Court, to which students of sufficient standing were called to participate in moots. 4. an objection or argument at law, fatal to an action or claim. TL 'Barre is when the defendant in any action pleadeth a plea which is a sufficient answer, and that destroyeth the action of the plaintife for ever.' v. f. the n. 1. to prevent, impede, or stop a person or action at law, by means of an objection or counterclaim.

base, adj. f. OF *bas*, 'low'. 1. of tenures or services, servile or villein, rather than free. 2. bastard, illegitimate.

battery, n. f. OF *battre*, 'to beat'. 1. an unlawful or menacing assault.

battle, n. f. OF *battaile*, f. L *battuere*, 'to beat'. 1. the legal trial of a matter of right, by single combat.

behest, n. f. OE *behatan*, 'to promise, vow'. 1. a promise. 2. a command.

benefit, n. f. L *benefactum*, 'good deed'. 1. a formal, even legal, grant, e.g. of office, pardon, dignity. 2. legal or pecuniary advantage. 3. a legal exemption of various kinds, e.g. benefit of clergy.

benevolence, n. f. L *benevolentia*, 'well-wishing'. 1. an extraordinary forced loan, or tax, levied directly by the crown.

bequeath, v. f. OE *be-* and *cweðan*, 'to say'. 1. formally to assign or make over title to property or land; esp. after death, to leave by will.

bestow, v. f. ME *bestowen*, 'to place', f. OE *stow*, 'place'. 1. to settle or give (a woman) in marriage. 2. to spend or make formal gift of (a sum of money, or property).

betroth, v. f. ME *be-* and *treuðe*, 'truth'. 1. to pledge (a woman) in marriage, to affiance. 2. to pledge or assure oneself to something, more generally.

bill, n. f. L *bulla*, 'boss, seal'. 1. a formal petition or appeal. 2. a draft parliamentary statute submitted for approval to the sovereign. 3. a written declaration submitted by a plaintiff to a court (e.g. Chancery) for the commencement of an action at law. 4. a statement of account owing; a list of charges to be paid. 5. a charge written upon a creditor for the supply of money to the bearer; a promissory note.

bind, v. f. OE *bindan*, 'to bind'. 1. to perfect an exchange or agreement, to certify a contract. 2. to limit or constrain someone by oath or agreement, or by legal authority, to the performance or non-performance of some action. 3. to subject someone to the observance of a law or ordinance; to make someone liable for a debt or obligation. 4. formally to engage an apprentice or servant to a master.

birthright, n. f. *birth* and *right*. 1. rights due by birth, inheritance.

blame, n. f. OF *blame*, f. Gr βλασφημία. 1. a charge or accusation. 2. culpability, responsibility for some crime. v. f. OF *blâmer*, f. Gr βλασφημεῖν. 1. to accuse, to find fault with, to assign responsibility or culpability to.

blasphemy, n. f. OF *blasphemie*, f. Gr βλασφημία, 'slander'. 1. criminal impiety, particularly by speaking irreverently of divine things.

blazon, v. f. MF *blasonner*, 'to blazon'. 1. to describe or depict by heraldic representation. 2. to proclaim or publish. Also **blaze**.

bodrag, f. Ir *buaidhreadh*, 'disturbance'. 1. an unlawful incursion or raid.

bondage, n. f. AF *bondage*, 'bondage'. 1. the tenure or service of a feudal villein, serfdom. **bondman**, n. f. OE *bonda*, 'peasant, householder'. 1. peasant, serf, slave, **bondslave**.

boot, n. f. OE *bot*, 'advantage, good'. 1. advantage, profit. 2. the right of tenants to wood or other resources from the landlord's estate, to use for repairs or maintenance to the estate fabric. 3. rescue, relief. 4. compensation for a crime. **bootless**, adj. f. prec. 1. incapable of relief or compensation.

bound, n. f. OF *bodne*, 'bond'. 1. a legal limit or perimeter enclosing a territory or estate, etc. ppl. adj. see **bind**.

breach, n. f. OE *brice*, 'breach'. 1. the breaking of a moral or legal obligation, spec. in breach of contract, promise, etc.

break, v. f. OE 1. to violate or transgress a law, agreement, treaty, or promise. 2. illegally to enter or intrude on a closed perimeter, as of a house. 3. to escape from confinement or imprisonment.

bribe, n. f. OF *bribe*, 'piece of bread'. 1. a reward or incentive given to a magistrate or judge in order to pervert fair dealing or judgment. v. f. the n. 1.

call, v. f. ME *callen*, f. the N. 1. to proclaim, summon, convoke.

canon, n. f. Gr κανών, 'rule'. 1. a rule or order of the Church. 2. a (non-ecclesiastical) law or edict.

capias, n. f. L *capias*, 'you may take'. 1. a wit issued to a sheriff or other officer, authorizing him to arrest or seize the person named in the writ; esp. *capias ad respondendum*, a writ issued to enforce the named person's attendance at court.

captain, n. f. L *capitanus*, 'headman', f. *caput*, 'head'. 1. used in the sixteenth century to translate the Irish *taoiseach*, the leader of a native Irish family or sept.

carriage, n. f. OF *cariage*, 'carriage'. 1. commercial transportation. 2. a feudal service of carrying.

case, n. f. L *casus*, 'fall, chance'. 1. the state of the facts in a suit at law; so, the suit itself or an account of the suit. 2. a form of process at common law ('action on the case'), based on the second statute of Westminster.

cause, n. f. L *causa*, 'cause'. 1. the fact(s) moving or occasioning an action or, in legal use, crime; a motive. 2. the matter of a suit at law; the suit itself. 3. the charge or ground alleged against the defendant in the suit.

cease / cess, v. f. *assess*, 'to levy (a fine)'. 1. to fix the rate of a tax; a tax or fine. 2. in Ireland, to impose the maintenance of soldiers on a local community.

chaffer, v. f. OE *ceap*, 'sale', and *fearu*, 'going'. 1. to trade, bargain, make exchange; to negotiate and agree sale.

challenge, v. f. OF *chalenge*, f. L *calumnia*, 'trickery, artifice'. 1. accusation, charge; claim; defiance, both chivalric and legal. 2. an exception taken at law, esp. to one or more nominated members of a jury in a trial. v. f. L *calumniare*, 'to accuse (falsely)'. 1. to accuse, impeach; to summon or defy, in battle and in court. 2. to make exception at law, esp. of one or more nominated members of a jury. 3. to claim, assert title or right to.

change, v. f. L *cambiare*, 'to change, exchange'. 1. to exchange, trade. n. f. L *cambium*, 'change'. 1. a reciprocal exchange, trade, commerce. 2. the place or building where merchants meet to transact their business, a market.

charge, v. f. OF *charger*, f. L *carricare*, 'to load'. 1. to 'load' with guilt or accusation, to accuse or blame. 2. to put to the burden of taxation, obligation, command. n. f. 1. a pecuniary burden, debt; commercial expense. 2. an order or command (laid on someone); duty, responsibility; the thing or person for which or whom someone is responsible. 3. formal or legal instruction, as of a judge to a jury. 4. an accusation.

chevisance, n. f. OF *chevir*, 'to bring to a head'. 1. raising funds by borrowing against a surety. 2. lending money at profit. v. f. prec. 1. to borrow money, or raise funds, by pledging surety. 2. to lend money at profit.

chief, n. f. L *caput*, 'head'. 1. in phrase 'in chief', trans. L *in capite*, holding directly from the chief lord in feudal tenure. Also used adjectivally in legal compounds 'chief-pledge', 'chief-rent', 'chief-tenant'.

chivalry, n. f. L *caballarius*, 'horse-rider'. 1. tenure by knight's service. 2. a martial court, presided over by the Earl Marshal.

civil, adj. f. L *civilis*, 'civil'. 1. in legal usage, opposed to 'criminal'; the branch of law dealing with common actions. 2. 'civil law', trans. L *ius civile*, was the law of Rome inherited by many western European states during the medieval period; and is thus distinguished in the early modern period from 'common law' (customary English law) and 'canon law' (the law of the Roman Church).

claim, v. f. OF *clamer*, f. L *clamare*, 'to cry out'. 1. to demand or assert recognition of a title, right, possession, etc. n. f. prec. 1. an assertion of property, right, etc.; or the right to make such an assertion.

clear, v. f. L *clarum*, 'bright, pure'. 1. to free from blame or guilt. 2. to settle an account, or discharge a debt.

clemency, n. f. L *clementia*. 1. mildness in the execution of power; leniency in the implementation of a judgment or sentence.

clergy, n. f. OF *clergie*, f. L *clericus*, 'clerk'. 1. the privilege, enjoyed by clergymen (later,

any literate person), of exemption from trial for felony in a secular court, on the first offence.

clerk, n. f. L *clericus*, 'clerk'. 1. an administrative officer in a court or public office.

cognizance, n. f. OF *conisance*, 'knowing'. 1. a heraldic or other device by which a lord's retainers or servants can be distinguished. 2. the right of a judge or court to hear a suit at law; the taking notice of a suit, or trying of it. 3. the formal acknowledgment or recognition of a fact in law (e.g. a fine). 4. a plea in answer to a writ of replevin, by which the defendant acknowledges possession in right of another, as his bailiff.

coignye / coine, n. f. Ir *coinnemh*, 'billeting, entertainment'. 1. the forced billeting of Irish kern on a local population, or tax levied for the maintenance of such forces.

color, n. f. OF *color*, f. L *colorem*, 'colour'. 1. a legal fiction, under pretence of which a suitor may, e.g., avoid (otherwise necessary) legal bureaucracy, secure the (otherwise improper) cognizance of a preferred court, or move the decision on the suit from the jury to the judge(s).

combat, n. f. OF *combattre*, 'to combat'. 1. a trial by arms of a question of right; see **battle**.

comfort, v. f. OF *conforter*, 'to comfort'. 1. to provide aid or support, to abet; in legal use. n. as prec. 1. aid or support; in legal use.

command, v. f. OF *comander*, f. L *com-* and *mandare*, 'to commit'. 1. to order or enjoin, by superior authority; to decree. **commandment**, n. 1. an order, decree. 2. executive authority, political sovereignty. 3. a criminal incitement of another to break the law.

commence, v. f. OF *comencer*, f. L *com-* and *initiare*, 'to begin'. 1. in legal usage, to begin (an action or suit).

commerce, n. f. L *commercium*, 'trade'. 1. exchange of goods between merchants or purchasers; esp. on a large scale.

commit, v. f. L *committere*, 'to entrust, deliver'. 1. to entrust, give to the keeping of; esp. in phrase 'commit administration', the charging of administrators for the execution of a will. 2. to confine in custody or imprisonment.

commodity, n. f. L *commoditatem*, 'fitness, convenience'. 1. a commercial good or ware. 2. some notional ware sold on credit by a usurer to a buyer, who might raise cash by selling the goods on, often back to the usurer, at a lower price.

common, n. f. L *communia*, 'common'. 1. the common people, or estate, as distinguished from the aristocracy or clergy. 2. common, often 'waste', land belonging to a local community. 3. a right to the use and profit of the land or water of another person's estate. 4. in legal phrase, 'tenants in common', where two or more people hold land by distinct titles, but share possession.

compact, n. f. L *compactum*, 'agreement'. 1. a bargain, agreement, or contract.

compel, v. f. L *compellere*, 'to drive together'. 1. to oblige, force, to extort wrongfully by mere power.

complain, v. f. L *com-* and *plangere*, 'to weep, wail'. 1. to register a formal grievance before a judge or court. **complainant**, n. 1. one who complains before a court. **complaint**, n. 1. the matter presented by a complainant before a court.

complot, n. f. OF *complot*. 1. a conspiracy. v. 1. to plot together, conspire.

compose, v. f. L *com-* and *pausare*, 'to lie down together', in confusion with L *componere*, 'to put together'. 1. to make composition, or agreement; to compound politically or financially. **composition**, n. 1. the compounding or settling of a debt or

liability; esp. an agreement where a creditor accepts a payment in lieu of other obligations or greater sums outstanding. 2. an agreement, treaty, contract, compromise.

compound, v. f. OF *compondre*, f. L *componere*, 'to put together'. 1. to agree, settle a dispute or litigation, often by compromise. 2. to settle a debt or account. 3. to bargain, contract. 4. to recompense or pay for an injury or other offence. 5. to pay a settlement to avoid being prosecuted.

conceal, v. f. OF *conceler*, f. L *con-* and *celare*, 'to hide'. 1. 'conceal lands': to falsify the nature, extent, or value of an estate, for the purpose of avoiding feudal duties.

concile, v. see **reconcile**.

conclude, v. f. L *concludere*, 'to shut up closely'. 1. to debar or impede an action at law, to estop. 2. to bind or constrain to an action at law. 3. to decide or bring to a resolution a suit at law.

concord, n. f. L *concordia*, 'unity of heart'. 1. a legal agreement concerning the conveyance of a fine of lands.

condemn, v. f. OF *condemner*, f. L *con-* and *dampnare*, 'to damage, condemn'. 1. to pronounce a judgment against, to convict and sentence.

condign, adj. f. L *condignus*, 'worthy'. 1. appropriate, merited; said esp. (after the wording of Tudor statutes) of punishments.

condition, n. f. OF *condicion*, f. L *condicere*, 'to talk over, agree'. 1. in a contract or other legal document, a provision on which the validity or effect of the contract depends. 2. a treaty on terms.

conduct, n. f. L *conducere*, 'to lead'. 1. in legal usage, provision for conveyance or travel; a document granting licence or safe passage.

confess, v. f. OF *confesser*, f. L *confiteri*, 'to acknowledge'. 1. formally to acknowledge something in a legal suit; esp. 'to confess to': to admit some guilt or culpability imputed in a complaint or during the course of trial. 2. 'to confess and avoid': to admit the facts as alleged by the plaintiff in pleading of a case, but to deny that they constitute a valid legal argument.

confirm, v. f. L *confirmare*, 'to strengthen'. 1. to render valid or legitimate something (e.g. a law, order, etc.) already ordained; to ratify.

conjure, v. OF *conjurer*, f. L *conjurare*, 'to swear together, to conspire'. 1. to form a conspiracy; to conspire. 2. to bind someone to performance of some action by putting him to an oath.

conquest, n. f. OF *conquest* and *conqueste*. 1. the acquisition of real property otherwise than by inheritance; the land so acquired (north. and Scots).

conscience, n. f. L *conscientia*, 'private knowledge'. 1. in legal usage, the principle of natural reason and scruple by which a judge redresses an injustice suffered at the common law.

consent, n. f. OF *consente*, 'consent'. 1. in quasi-legal usage, formal agreement to a proposition, action, etc. v. 1. in quasi-legal usage, to agree, e.g. to a proposal, terms, etc.

consideration, n. f. L *consideratio*, 'consideration'. 1. in legal usage, anything given in exchange for a promise or undertaking, without which the promise or undertaking is not enforceable.

constitution, n. f. L *constituere*, 'to establish'. 1. a law, order, or decree.

constrain, v. f. L *constringere*, 'to tie together'. 1. in quasi-legal usage, to force, oblige, compel, imprison; esp. to force or ravish a woman. **constraint**, n. 1. force, compulsion; imprisonment.

contempt, v. f. L *contemnere*, 'to contemn'. 1. in legal usage, disobedience to or manifest disrespect for a legal authority, esp. the authority of a court or judge during a trial.

contract, n. f. L *contrahere*, 'to contract'. 1. a binding agreement (e.g. to convey land) between two parties, enforceable at law. 2. an exchange of promises effecting betrothal or marriage. v. 1. to agree or covenant, to make a treaty or bargain. 2. to effect a betrothal or marriage, spec. by mutual exchange of promises.

convert, v. f. L *convertere*, 'to turn around'. 1. in legal usage, to appropriate (e.g. property) and use for an unintended or illegitimate purpose.

convey, v. f. OF *conveier*, f. L *con-* and *via*, 'way'. 1. to transfer title to land by deed or other other legal process (e.g. fine).

cost, n. f. OF *cost*, f. L *constare*, 'to stand together'. 1. in legal usage, the charges incurred by parties to litigation, the value of which is sometimes awarded to the successful party as part of the settlement.

counsel, n. f. OF *conseil*, f. L *consilium*, 'advice, consultation'. 1. a group of advisers, esp. in a legal or political context, responsible for determining procedure or strategy in some suit or policy.

count, n. f. OF *conte*, f. L *computum*, 'reckoning'. 1. the English translation of Law French *conte*: the summary statement of a suit at law made by the plaintiff, the declaration; any individual element of this declaration.

counterfeisance, n. f. F *contrefaisant*, 'a counterfeit'. 1. Sp. coinage after the French: counterfeit, fraud. (on the model of **defeat/defeasance**?)

counterfeit, n. f. OF *contrefaire*, f. L *contrafacere*, 'to make in opposition'. 1. in quasi-legal usage, a fraud, forgery, impostor. v. 1. in quasi-legal usage, to forge, to imitate or make a false copy of (e.g. money) with criminal intent.

country, n. f. OF *contrée*, L *contra*, 'against'. 1. used ellipt. for the jury in a trial, esp. in the phrases, 'on the country' (L *patria*, F *pays*), 'by the country'.

court, n. f. OF *cort*, f. L *cohortem*, 'court, yard'. 1. a gathering of judges and officers charged with hearing and determining legal suits; the hall or room where such trials take place.

courtesy, n. f. OF *cortesie*, 'courtesy'. 1. in phrases 'of the courtesy', 'to stand at the courtesy': privilege, favour, indulgence, as of a sovereign prince. 2. a form of land tenure in England, by which a husband may continue to hold lands vested in his dead wife, provided that their union has produced at least one living and legitimate heir.

covenant, n. f. OF *covenant*, f. L *convenire*, 'to agree'. 1. translating L *conventio*, a mutual agreement or compact between two parties, usually under seal, and enforceable at law. 2. particular clauses or conditions in a deed of **conveyance**. 3. the legal arrangement agreed by two parties in a contract, e.g. the wages, rents, or services stipulated therein.

covert, adj. f. OF *covert*, f. L *cooperire*, 'to cover'. 1. in legal usage, referring to the LF *feme covert*, or married woman: under protection or cover.

credit, n. f. OF *crédit*, f. L *credere*, 'to trust'. 1. gen., trustworthiness or reliability, confidence or trust extended to someone, esp. in an official or formal capacity; hence, the charge or trust borne by those in public office, sometimes used for the office itself. 2. in commercial and legal usage, confidence in a purchaser's ability to pay for goods or services at some future time; thus, a merchant's or purchaser's reputation for probity and reliability generally.

crime, n. f. L *crimen*, 'judgment, offence'. 1. an act or offence prohibited and punishable by law. **criminal**, adj. 1. of the nature of a crime, involving a crime.

crown, n. f. OF *coroune*, f. L *corona*, 'crown'. 1. by metonymy, taken for the sovereign or the sovereign's representative in criminal cases, in which the monarch took the part of plaintiff, as one damaged by breaking of the peace.

custody, n. f. L *custos*, 'guardian'. 1. in quasi-legal usage, the keeping of the sheriff, bailiff, jailor, or other officer of the peace; imprisonment.

custom, n. f. OF *coustume*, f. L *consuetudo*, 'custom'. 1. in legal usage, an established practice of long continuance, which over time has gained the force and status of a legal right; in both general and particular (i.e. local) applications. 2. any customary service rendered or rent paid by a feudal tenant to his superior. 3. a tribute or tax laid on commodities or imports on their way to market, either by the lord or king, or by someone to whom the patent for collecting the duty has been assigned.

damage, n. f. OF *damage*, f. L *damnum*, 'loss'. 1. gen. and quasi-legal, loss or injury sustained to person or estate as the result of a crime or nuisance. 2. the estimated value of the loss or injury sustained as the result of a crime; that value awarded to the plaintiff in a successful suit.

damn, v. f. L *damnare*, 'to condemn'. 1. in early legal use, to condemn (a person); to condemn (a thing), declare illegal, invalid, or unfit for use.

damnify, v. f. OF *damnifier*, f. L *damnificare*, 'to injure'. 1. to cause (legal) injury, to wrong.

darrain, v. f. OF *deraisnier*, f. L *ratio*, 'reckoning'. 1. to dispute, settle, or vindicate a claim of right by wager of battle or judicial combat.

daysman, n. f. *day* and *man*. 1. in quasi-legal usage, an arbitrator, one who effects dayment.

debt, n. f. OF *dete*, f. L *debitum*, 'something owed'. 1. anything owed by one to another, esp. money. 2. financial or legal liability. **debtor**, n. 1. one in debt.

decide, v. f. L *decidere*, 'to determine'. 1. of a judge or jury, to settle or determine a suit at law.

declare, v. f. L *declarare*, 'to make clear'. 1. of a plaintiff in a legal suit, to provide a formal account or summary of the original claim.

decree, n. f. OF *decré*, f. L *decretum*, 'decree'. 1. an ordinance or proclamation issued by a magistrate or other civil authority. 2. an ecclesiastical order, esp. one issued by a council on a doctrinal matter. 3. the judgment of a judge in Chancery, Admiralty, Requests, or other court of civil process or equity (i.e. a judgment *ad personam*). **decretal**, n. a statement of a papal decision on Church government.

deed, n. f. OE *dæd*, 'deed'. 1. a written legal instrument recording or constituting a legal transaction or relation between two parties.

deem, v. f. OE *deman*, 'to judge'. 1. to give judgment, to sit in judgment, to decide. 2. to sentence, award.

defame, v. f. OF *diffamer*, f. L *diffamare*, 'to spread ill report'. 1. to slander, to publish an imputation of some moral or legal offence.

default, n. f. OF *defaut*, f. L *fallere*, 'fail'. 1. failure to perform or discharge some legal obligation, spec. the failure to appear in court on an assigned day. 2. in various phrases, e.g. 'judgment by default': judgment for the plaintiff upon the defendant's failure to appear or respond at or within the appointed time.

defeat, v. f. OF *defeit*, f. L *dis-* and *facere*, 'to make'. 1. to hinder or nullify an action or plan; to render a law or action null or void. 2. to cheat or defraud (of property, money); to dispossess (of an estate). **defeasance**, n. f. OF *defesance*. 1. the making null and void

(of an act, law, right, etc.). 2. a condition or proviso upon the fulfilment of which a correlative deed or instrument becomes void.

defend, v. f. L *defendere*, 'to defend, protect'. 1. of a defendant or his representative, to enter defence, to respond to and contest the claims of the claimant in a suit at law. **defence**, n. 1. the action of the defendant or his representative in a legal trial in contesting the claims of the plaintiff; the written pleadings offered in response to the plaintiff's submissions.

defray, v. f. F *défrayer*, 'to defray'. 1. in quasi-legal usage, to disburse money to meet a charge, to settle; to reimburse or compensate someone.

delate, v. f. L *deferre*, 'to convey, deliver'. 1. to accuse, impeach (esp. Scots); to inform upon for a crime or default.

deliver, f. OF *délivrer*, f. L *deliberare*, 'to set free'. 1. to set free or liberate (someone), to **enlarge**. 2. in legal usage, to transfer formally, to hand over, esp. in the 'livery of seisin' by which a lord invests a tenant with possession of land. **deliverance**, n. 1. a setting free, release, enlargement (of someone). 2. 'delivery' of the gaol; prospective release of a defendant produced to stand trial. 3. in quasi-legal use, the handing over or delivery of something (e.g. property), esp. upon a writ, e.g. of replevin. Cf. 'writ of second deliverance'. 4. in Scots legal practice, a judgment or judicial decree.

demand, n. f. OF *demande*, f. L *demandare*, 'to entrust, commit'; later, 'to demand, require'. 1. to petition for or claim (something, esp. real property) by right or title. 2. in quasi-legal usage, to require to know or be told ('to make demand'). n. f. OF *demande*, 'demand'. 1. a claim or petition by right or title, according to legal form 2. the act of making such a claim or petition. 3. the thing claimed or petitioned for.

demesne, n. f. OF *demeine*, f. L *dominicus*, 'belonging to a lord'. 1. the possession or lordship of an estate. 2. an estate in land possessed absolutely, occupied by the lord himself, and not subinfeudated.

demur, v. f. OF *demourer*, f. L *demorari*, 'to delay'. 1. in a suit at law, to enter a plea of demurrer, admitting the facts but denying that they constitute a valid case at law.

deny, v. f. OF *deneier*, f. L *denegare*, 'to refuse'. 1. to contest the plea, or some element of the plea, of an opponent in a legal suit. **denial**, n. 1. an instance of denying or refusal (e.g. of a contract, plea, etc.); cf. *denier*.

depend, v. f. L *dependere*, 'to hang down'. 1. of an action at law, to remain undecided or undetermined; to be in process.

depose, v. f. L *de-* and *pausare*, 'to cease, lay down'. 1. to put down from a position of authority; of a king, to dethrone; of an officer, to deprive of office. 2. to testify or bear witness in a suit at law.

deprive, v. f. OF *depriver*, from L *privare*, 'to deprive'. 1. to dispossess (someone); to take away (a thing). 2. to remove from (esp. an ecclesiastical) office. **deprivation**, n. 1. dispossession gen., esp. the deposition from an (ecclesiastical) office.

descend, v. f. L *descendere*, 'to come down'. 1. of a right, title, office, or dignity, to pass by inheritance from an ancestor to his heir. **descent**, n. 1. the transmission of title to property from ancestor to the heir(s) without the need to devise by will.

despoil, v. see **spoil**.

detain, v. f. OF *detenir*, f. L *detinere*, 'to keep back, detain'. 1. to hold in confinement, to imprison. 2. to reserve, withhold (e.g. payment on a debt).

detect, v. f. L *detegere*, 'to uncover'. 1. to expose someone's guilt; to accuse of a crime.

detraction, n. f. L *detrahere*, 'to take away'. 1. in quasi-legal usage, slander, calumny, defamation.

devise, v. f. OF *deviser*, f. L *dividere*, 'to divide'. 1. to appoint or instruct; esp. to assign or distribute property (in land or chattels) by will.

diligence, n. f. L *diligentia*, 'attention, assiduity'. 1. in legal usage, the duty and care required of a party to a contract in its observance or fulfilment. 2. in Scots law, the process by which debtors or their possessions are attached to answer a legal claim.

disable, v. f. *dis-* and *able*. 1. to impede or obstruct, in a legal sense; to prevent a person from enjoying the rights, privileges, or possessions otherwise available to him.

disavow, v. f. OF *désavouer*, f. L *disadvocare*, 'to refuse to call or acknowledge'. 1. in quasi-legal usage, to repudiate, to deny knowledge or the validity of something.

discharge, v. f. OF *descharger*, f. L *dis-* and *carricare*, 'to load'. 1. to release (someone) from a duty or office; to dismiss. 2. to enlarge (e.g. a prisoner), to free. 3. to pay off or settle (e.g. a debt); to complete or fulfil (e.g. an obligation).

disclaim, v. f. OF *disclamer*, L *declamare*, 'disclaim'. 1. to relinquish or give up a claim (to something), to make a disclaimer.

discretion, n. f. 1. that part of a judge's power not constrained by positive law; the power to determine incidentals and matters of procedure (e.g. a sentence, or the award of costs or damages) according to conscience.

disinherit, v. f. *dis-* and *inherit*, f. L *hereditare*, 'to inherit'. f. 1. to repudiate an heir; to bar an heir from the promise or possession of a right or title that would otherwise fall to him.

disleal, adj. f. *dis-* and *leal*, f. OF *leel*, f. L *legal*, 'legal'. 1. Sp. coinage, meaning disloyal, illegal.

dismiss, v. f. L *dimittere*, 'to send away'. 1. to discharge oneself from an obligation or burden; to bar oneself from an advantage, privilege, or right. 2. of a case or litigant, to send out of court.

dispense, v. f. OF *dispenser*, f. L *dispensare*, 'to weigh out, dispose'. 1. to mitigate or suspend a law or sentence; to dissolve an oath or contract; to give (someone) dispensation from a law or obligation; also 'dispense with'.

dispose, v. f. OF *disposer*, f. L *dis-* and *pausare*, conf. with *disponere*. 1. to assign, distribute (e.g. property).

dispossess, v. f. OF *despossesser*, f. L *possidere*, 'to hold as property'. 1. to eject someone from possession (of an estate), to **disseise**; to deprive someone from possession (of a chattel).

disseise, v. f. OF *dessaisir*, 'to put out of possession'. 1. to dispossess, esp. tortiously.

dissolve, v. f. L *dissolvere*, 'to loosen, dissolve'. 1. in quasi-legal usage, to annul (e.g. a law), to void (e.g. a contract). **dissolution**, n. 1. the relaxation or voiding of any law, agreement, obligation, or other tie. 2. the formal dismissal of an assembly, esp. parliament.

distrain, v. f. OF *destreindre*, f. L *destringere*, 'to stretch out, occupy'. 1. to compel performance of some obligation or service, or to compel appearance in (esp. a manorial) court, by the seizure and withholding of chattels. 2. to seize chattels or other property; to levy a distress.

distress, n. f. OF *destrece*, f. L *distringere*, 'to stretch out, occupy'. 1. the practice or action of distraining; the seizure of chattels in order to compel the performance of some obligation, or the payment of some sum (esp. a rent). 2. the chattels seized in the distraint.

disturb, v. f. 1. in legal usage, to disrupt the peaceful enjoyment of (e.g. an estate, an office).

divorce, n. f. L *divortium*, 'separation'. 1. the legal annulment of a marriage. v. 1. to dissolve a marriage contract.

dominion, n. f. L *dominium*, 'property, ownership'. 1. sovereignty, absolute legal rule. 2. the land or territory of a feudal lord. 3. ownership, property (= L *dominium*).

doom, n. f. OE *dom*. 1. a judicial determination or decree, a judgment.

dower, dowry, n. f. OF *douaire*, f. L *dotem*, dower. 1. that part of a deceased husband's estate allowed to the wife for term of her life. 2. money or real property brought to a marriage by the bride. 3. a bride-price, *maritagium*.

due, adj. f. OF *deü*, f. L *debitum*, 'something owing'. 1. owing, as an enforceable debt. 2. obtaining as by right. n. 1. something due, a debt or obligation; an outstanding payment, tax, fee, or other enforceable charge. **duty**, n. 1. in quasi-legal usage. the attitude or behaviour expected of an inferior to a superior, homage, respect. 2. a payment or other financial obligation either owed or discharged.

durance, n. f. OF *durance*, 'duration'. 1. constraint, imprisonment, duress.

easement, n. f. OF *aisement*, 'easing'. 1. a convenience; in law, the right to make use of another's property, as for right of way.

elect, v. f. L *eligere*, 'to choose'. 1. in legal parlance, to choose; esp. to make choice by conference or vote of an officer or magistrate. **election**, n. 1. a formal legal choice, as of an officer or magistrate by vote. 2. spec. the choice of one of two mutually exclusive legal rights.

eloin, v. f. OF *eloignier*, f. L *exlongare*, 'to distance'. 1. to remove (property, a person) out of a given legal jurisdiction; to carry off.

embar, v. f. OF *en-* and *barre*, 'bar'. 1. to impede or estop a claim, action, or title.

embrace, v. f. OF *embraseor*, 'kindler, inciter'. 1. to attempt to corrupt a jury member, as by bribes. **embracement**, n. 1. an instance of such corruption.

empeach, v. see **impeach**.

encheason, n. f. OF *encheson*, f. L *occasio*, 'occasion'. 1. reason, motive.

encroach, v. f. OF *encrochier*, 'to seize'. 1. to intrude on or unlawfully to seize (property, a right or privilege). 2. spec. 'to encroach a rent': to compel excess payment from a tenant. **encroachment**, n. 1. the surcharging (in rents or services) of a tenant by an unscrupulous lord.

encumber, v. f. OF *encombrer*, f. L *in-* and *combrus*, 'obstacle'. 1. to burden with duties or obligations; spec. to charge an estate with debts or liabilities, e.g. by a mortgage. **encumberment, encumbrance**, n. 1. a claim or liability attaching to an estate, e.g. a mortgage.

endamage, v. f. OF *endamagier*, 'to injure'. 1. to injure (a person), prejudice (a cause or action), or spoil (an estate).

enfranchise, v. f. OF *enfranchir*, 'to make free'. 1. to set free, physically (as from imprisonment) or in law (i.e. from feudal subjection). 2. to make free or deliver an estate from financial obligation. 3. to admit a person or corporation to political freedom or privilege. **enfranchisement**, n. 1. delivery from feudal bondage or imprisonment. 2. the admission of a person or corporation into political freedom or privilege.

engage, v. f. OF *en-* and *gage*, 'pledge'. 1. to offer or commit (property or money) as a pledge or security. 2. to offer (oneself or another) as security for the performance or

non-performance of some action. 3. to bind (oneself) by a promise or oath; to contract oneself in spousals.

enlarge, v. f. OF *enlarger*, 'to extend, set free'. 1. of an estate, to convert from a limited tenancy to a fee simple or fee tail. 2. of a person, to set free or release from captivity or bondage. **enlargement**, n. 1. freedom from bondage or imprisonment.

ensample, n. f. OF *essample*, 'example'. 1. a precedent.

enter, v. f. OF *entrer*, f. L *intrare*, 'to go in'. 1. of a tenant, to take possession of an estate. 2. to bind oneself to an obligation, debt, contract, etc. 3. to place (a name, a fact, a sum) in an account or official record, to record. 4. spec. in law, 'to enter an action or writ': to bring a declaration or writ to the cognizance of a judge or court. **entry**, n. 1. the physical possessing of an estate, or assertion of title, often by setting foot upon it. 2. the taking up of an office, esp. the accession to the throne of a new monarch. 3. the action of placing (a name, fact, or sum) in an account or official record (also **entrance**).

equity, n. f. L *aequitas*, 'fairness'. 1. an appeal to natural or rational principles in the correction or mitigation of the law. 2. a system of English law (from the sixteenth century based primarily in Chancery) to which a common law litigant might appeal for redress 'in conscience'.

error, n. f. OF *error*, f. L *errare*, 'to wander'. 1. a mistake in matter of law in a court of record; spec. in 'writ of error', the writ commencing a trial to review an alleged error.

escheat, n. f. OF *escheoir*, f. L *excidere*, 'to fall to (a person)'. 1. a feudal incident, whereby an estate in land reverted to a feudal lord upon the death without heir of the tenant. 2. an estate so escheated. 3. the writ procured to assert right to an escheated estate. v. 1. to pass into the possession of a feudal lord as an escheat. 2. to forfeit (north. and Scots).

escuage, n. f. OF *escu*, f. L *scutum*, 'shield'. 1. a common form of feudal tenure, requiring forty days of 'shield-service' in every year. 2. a money payment in lieu of this service.

essoign, n. f. OF *essoignier*, f. L *ex-* and *soniare*, 'to make excuse'. 1. to submit a formal excuse for absence from a court (when summoned). n. 1. the allegation of such an excuse; the excuse itself.

establish, v. f. OF *establisser*, f. L *stabilire*, 'to make firm, to establish'. 1. to settle or enact (e.g. a law, ordinance). 2. to endow (someone) with or settle property or title upon (someone). 3. to set up or institute (e.g. a foundation, an organization, a custom).

estate, n. f. L *status*, f. *stare*, 'to stand'. 1. one of the three classes in the traditional hierarchy of socio-political organization in western Europe (i.e. commons, clergy, and nobility). 2. an interest in lands, tenements, or other property both real and personal; in various compound locutions. 3. broadly, possessions, wealth.

estray, n. f. OF *estraier*, f. L *extravagare*, 'to wander away'. 1. a stray and unclaimed animal, forfeit under prescribed conditions to the finder.

estreat, n. f. OF *estraite*, f. L *extrahere*, 'to draw out'. 1. an exact copy or transcript of a court record, particularly of fines, etc., made for the bailiff or other executive court or officer. 2. the fines so copied. v. 1. to copy out the original record of such a fine, etc., in order to submit it to the Exchequer or commit it to a bailiff for implementation.

estrepement, n. f. *estreper*, f. L *extirpare*, 'to root up'. 1. the wasting or spoiling of an estate by a tenant, to the prejudice of the reversioner. 2. the right of estrepement, particularly that enjoyed by the king over the lands of convicted felons.

evidence, n. f. L *evidentia*, 'evidence'. 1. information either testimonial or material

supplied in a court, or to an inquest, tending to justify or contest a suit at law. 2. a witness or witnesses in a trial. 3. a document or documents by which a legal claim might be established; esp. title deeds.

examine, v. f. L *examinare*, 'to weigh, try'. 1. to interrogate (e.g. a witness or defendant) or test judicially; occas. to interrogate under torture.

execute, v. f. L *executare*, f. *exequi*, 'to follow out'. 1. to carry out or perform an intention. 2. spec. to implement or apply a law, order, or will. 3. in phrase 'to execute the estate' or 'to execute the use': to convey or assign title of an estate to someone, often in connection with the Statute of Uses (1536). 4. to discharge or perform (an office, etc.). 5. to subject to capital punishment, to put to death by judicial sentence. **execution**, n. 1. the performance or implementation of some motive, law, order, or will. 2. the enforcement of a judicial order or sentence by the sheriff, bailiff, or other officer executive. 3. the carrying out of judicial punishment, particularly capital.

expire, v. f. L *exspirare*, 'to breathe out'. 1. of a bond, debt, law, or other order or obligation valid for a definite term only, to become void or invalid, to determine. 2. of an estate, right, title, or privilege, to come to an end, to become extinct.

extinct, adj. f. L *extinguere*, 'to put out'. 1. of an institution, inheritance, law, right, privilege, to die out or determine; esp. in phrase 'tenant after possibility of issue extinct'.

extort, v. f. L *extorquere*, 'to twist out'. 1. to obtain (something from someone) illegally by force, violence, or fraud. **extortion**, n. 1. an unlawful exaction of money or goods from someone by the use of force, violence, or fraud.

farm, n. f. OF *ferme*, f. L *firma*, 'fixed payment'. 1. an annual tax or rent payable in money or kind, for the enjoyment of some property or right. 2. a fixed annual payment made (upon a person or corporation) for the right to collect taxes or imposts (within their jurisdiction). 3. the condition of being let out at lease; the lease itself. v. 1. to lease or hold (the right of customs, taxes, tithes, etc.) in return for a fixed payment. 2. to rent or lease out (customs, taxes, tithes, etc.) in return for a fixed payment.

fealty, n. f. OF *feaute*, f. L *fidelitas*, 'faithfulness'. 1. the obligation of loyalty due from a feudal inferior to his lord; the recognition of this obligation (as evidenced, e.g., in the performance of a stipulated service).

fee, n. f. OE *feoh*, 'cattle'. 1. livestock, moveable property, money. f. OF *fé*, f. L *feodum*, 'fee'. 1. an estate in land held by a tenant of a feudal lord in return for service or a composition in money for that service; at common law, an estate in land. 2. a heritable right or office held of a feudal lord in return for service. 3. the money payable to an officer for the provision of his services; ext. to the payment made to a lawyer, physician, or other professional. 4. a prize, spoil.

felon, n. f. OF *felon*, 'felon'. 1. one who has committed felony, orig. an act causing the forfeiture of the vassal's fee. **felonous**, adj. 1. characterized by felony.

fiar, n. f. *fee*, f. OE *feoh*, 'cattle'. 1. the owner of an estate in fee.

folkmote, n. f. OE *folc*, 'people' and *gemót*, 'meeting'. 1. a general, formal meeting of the people of a town, city, or county.

forbear, v. f. OE *forberan*, 'to abstain'. 1. to show mercy or clemeny in the mitigation or commutation of a sentence or punishment. 2. to show leniency or restraint in the enforcing of a debt or obligation, to reprieve.

force, n. f. OF *force*, f. L *fortia*, 'strength'. 1. in legal use, unlawful violence; spec. in phrase 'by force and arms', a translation of the legal formula *vi et armis*. 2. of a law, validity or legitimacy. v. 1. to treat violently, esp. to rape a woman. **forcibly**, adv. 1. in legal use, trans. the formula *vi et armis*.

forelent, v. Sp. coinage, f. *fore-* and OE *léan*, 'to loan'. 1. loaned before.

forestall, v. f. OE *forsteall*, 'to waylay, ambush'. 1. to ambush. 2. (illegally) to buy up goods before they reach market, in order to raise the price. 3. to prevent or bar someone from an action. n. 1. an ambush, waylaying.

forgive, v. f. OE *forgiefan*, 'to forgive'. 1. to forbear or remit the payment of a debt or satisfaction of an obligation.

forwaste, v. see **waste**.

foster, v. f. OE *fostrian*, 'to nurse, rear'. 1. to commit a child to fosterage. **fosterage**, n. the practice, and the office, of putting a child into another's care for their upbringing.

franchise, n. f. OF *franc*, 'free'. 1. freedom from servitude or bondage. 2. legal immunity (esp. of a corporation) from oversight by a higher court or administration, or from taxes etc.; the privilege or right to exemption so granted, esp. by a sovereign. 3. freedom from arrest or imprisonment, esp. to those claiming sanctuary; hence, sanctuary. 4. the geographical extent of the administrative or legal power of the individual or corporation enjoying a franchise. v. see **enfranchise**. **franchisement**, n. see **enfranchisement**.

frank, adj. f. OF *franc*, 'free'. 1. free in a physical sense (i.e. from imprisonment) and in a political sense (i.e. from bondage, taxation), esp. in legal formula 'frank and free'. 2. free from the requirement to make payments or discharge other obligations.

free, adj. f. OE *fréo*, 'free'. 1. of an individual, not in feudal bondage; at liberty, not imprisoned or in captivity. 2. of a defendant in a trial, acquitted or cleared of blame. 3. discharged or cleared of obligation or liability (for a debt, etc.). 4. of an estate, property, title, or institution, exempt from the control of some jurisdiction or lordship; esp. of an estate in land, held without service or rent ('freehold'). 5. of an individual, invested with the rights of membership granted by some guild or association. **freedom**, n. 1. the state of being **free** in various senses; see **franchise**.

gage, n. f. OF *gauge*, 'gage'. 1. something pawned or deposited as security for the performance of some action. 2. something thrown down (often a glove) as a pledge of appearance to contest a right by trial of battle. v. see **engage**.

gift, n. f. OE *gift*, 'gift, payment for a wife'. 1. the conveyance of property or title from one person to another, without compulsion and without any significant consideration.

govern, v. f. OF *governer*, f. L *gubernare*, f. Gr $\varkappa \upsilon \beta \varepsilon \rho \nu \hat{\alpha} \nu$, 'to steer'. 1. to rule (a state, city, etc.) as a sovereign power. **governance**, n. 1. the action or state of governing. **government**, n. 1. the action or state of governing. 2. the right or authority to govern. 3. the form or order by which a state (or city, etc.) is governed.

grace, n. f. L *gratia*, 'grace'. 1. indulgence or favour, esp. as the ground of some grant or concession, in distinction to right or obligation. 2. a mark of favour, a legal privilege or exemption. 3. pardon, clemency.

grant, v. f. OF *graanter*, f. L *credere*, 'to believe'. 1. to agree, promise, consent. 2. to bestow or confer, e.g. a possession, office, right, or estate. 3. of estates, to convey real property, usually by deed. n. 1. consent, promise, agreement. 2. a formal dispensation, or conferral of a dignity, right, property, or possession. 3. the conveyance by deed of an estate in land.

grievance, n. f. OF *grever*, 'to harm', f. L *gravis*, 'heavy'. 1. injury or harm, either physically or to an estate or right; the state of experiencing such injury. 2. the grounds of a legal complaint of injury; the complaint itself.

guardian, n. f. OF *guarden*, 'guardian'. 1. someone entrusted with the custody and management of the affairs of an idiot, child, or other incapable; spec. 'guardian by

socage', 'guardian in chivalry', etc.: feudal superiors enjoying the wardship of underage or incapable heirs by feudal right.

guilt, n. f. OE *gylt*, 'guilt'. 1. in legal and general use, culpability for a crime supposed or committed. **guilty**, adj. 1. culpable for the commission of some crime. 2. liable to a penalty or punishment, or to the performance of a vow or promise.

hear, v. f. OE *hieran*, 'to hear'. 1. to listen to as a judge, to try (a case) judicially in a court of law. **hearing**, n. 1. a trial, esp. one held before a judge or officer without a jury.

heir, n. f. OF *eir*, f. L *heres*, 'heir'. 1. one entitled to succeed by right to the property or privilege of another, upon that person's death. **heir apparent**, cmpd n. 1. the specific title of the heir (= 'heir presumptive') until the death of the ancestor, at which point he becomes 'heir-at-law'.

heritage, n. f. OF *hériter*, f. L *hereditare*, 'to inherit'. 1. anything (incl. property, title, office, privilege, etc.) that may be inherited. 2. hereditary succession.

hold, v. f. OE *healdan*, 'to hold'. 1. to be in possession of, to have, keep, and enjoy (e.g. an estate) as a possession; in phrases 'to hold of', 'to hold from': to be in possession of a legal estate at the sufferance of a feudal superior. 2. to keep unbroken a promise or vow.

homage, n. f. OF *ommage*, f. L *homonaticum*, 'what pertains to a man'. 1. in feudal law, a formal pledge of allegiance by the vassal to his lord. 2. an act of homage: the ritual of exchange or payment by which the vassal declares his allegiance.

impair, v. f. OF *empeirer*, 'to make worse'. 1. in legal use, to injure or weaken. 2. to depreciate in value.

impanel, v. f. AF *empaneller*, 'to put in a panel'. 1. to draw up a list of jurors for the trial of a suit at law; to constitute a jury.

impeach, v. f. OF *empechier*, f. L *impedicare*, 'to entangle'. 1. to discredit, challenge, encumber. 2. to charge or accuse, give evidence against. 3. spec. to accuse of treason.

imprison, v. f. OF *emprisoner*, 'to put in prison'. 1. to confine, detain in legal custody.

impute, v. f. L *imputare*, 'to make account of'. 1. to charge with, to attribute or lay upon as owing to.

indict, v. f. AF *enditer*, f. L *indictare*, 'to say, declare'. 1. to accuse a person of something, formally to bring a charge against.

inherit, v. f. OF *enheriter*, f. L *hereditare*, 'to make heir'. 1. to make someone an heir, to put in possession as an heir (of an estate, office, dignity, etc.). 2. to take possession (of an estate, office, dignity, etc.) from an ancestor upon his decease. 3. absol., to succeed as an heir. **inheritance**, n. 1. the right to succession to a heritable estate, office, dignity, etc. 2. the taking possession of a heritable estate, office, dignity, etc. 3. the estate, office, dignity, etc., so inherited; see **heritage**.

injure, v. f. **injury**, f. L *injuria*, 'injury'. 1. to do injustice or wrong to a person, either physically or by impairing their rights, privileges, or possessions. 2. to do wrong to a person in speech, as by slander. **injury**, n. 1. a wrong or wrongful act, a violation of someone's person or rights. 2. slander, calumny.

inquire, v. f. OF *enquerre*, f. L *in-* and *quaerere*, 'to ask'. 1. in legal usage, to make formal search for information relating to a suit or matter at law, as e.g. by interrogatories. **inquest**, n. 1. a formal, legal, or judicial enquiry into the facts attending on a matter at law. 2. the group of jurors or judges appointed to conduct a legal inquiry. **inquisition**, n. an **inquest**.

intend, v. f. L *intendere*, 'to stretch out'. 1. to understand or hold to be true in a legal sense. 2. in legal and general usage, to purpose or design (to do something). 3. to maintain or prosecute an action at law (north. and Scots). **intendment**, n. 1. the sense in

which the law understands something, the meaning or interpretation of a thing at law.
intent, n. 1. **intendment**. 2. a suit in litigation (north. and Scots).

interest, n. f. L *interest*, 'it concerns, it matters (to)'. 1. the fact of legal or financial concern (in something); legal or financial concern, esp. in a title or estate. 2. money paid for the **use** of a principal sum lent, according to an agreed percentage.

invade, v. f. L *in-* and *vadere*, 'to go, walk'. 1. to enter tortiously or intrude on (an estate, right, property, liberty, etc.); to usurp or wrongfully take possession of (an estate, etc.).

issue, n. f. L *exire*, 'to go out'. 1. in legal usage, children or progeny, descendants. 2. a fine, or order for assessing a fine. 3. the material point in contention in a suit at law; the agreed matter, as determined by the process of pleading, upon which the trial will be conducted; esp. in the phrases, 'at issue' and 'join issue'.

jeopardy, n. f. OF *iu parti*, 'divided game'. 1. in legal usage, the risk of loss, danger; so, risk of conviction for a crime.

join, v. f. OF *joindre*, f. L *jungere*, 'to join'. 1. to contract or unite oneself, or two others, in any bond or alliance, esp. marriage or spousals.

judge, v. f. OF *jugier*, f. L *judicare*, 'to judge, determine'. 1. to try a suit at law, to pronounce judicially on a case. 2. to sentence or decree, to award (something). **judgement**, n. 1. the action of hearing a suit at law; the outcome or sentence thereof. 2. the assignment of damages or rewards as the result of a civil trial; the damages or rewards themselves.

jury, n. f. OF *jurée*, 'oath', f. L *jurare*, 'to swear'. 1. a group of twelve men summoned to give a true decision on a matter of fact presented to them as part of a suit in a court of law; also in phrases 'petty jury', 'grand jury', etc.

keep, v. f. OE *cépan*, 'to keep'. 1. to observe, maintain, hold to (a law, custom, promise, etc.).

knightly fee, **knightly service**, cmpnd ns. 1. pertaining to a knight; here, 'knight's fee' and 'knight's service', respectively, both of which refer to the **fee** and **service** appropriate to a knight in feudal tenurial relations.

league, n. f. OF *ligue*, f. L *ligare*, 'to bind'. 1. a military, political, or economic treaty secured for mutual advantage or defence. 2. more generally, any contract or agreement.

lend, v. f. OE *lænan*, 'to loan'. 1. to loan, temporarily give the use of (something); esp. to loan money, often at interest.

liberty, n. f. OF *liberté*, f. L *liber*, 'free'. 1. physical or political freedom, **franchise**. 2. licence or privilege, esp. an extraordinary (political or economic) right conferred by a sovereign. 3. the domain or estate of a lord exempted from royal or regular authority or jurisdiction.

licence, n. f. L *licentia*, 'licence'. 1. the liberty or the privilege of doing something not otherwise legal; the liberty of exemption from something otherwise compulsory. 2. a formal instrument issued by a competent authority to do something, e.g. marry. 3. excessive or vicious liberty. v. 1. in legal usage, to give someone permission, or to permit a thing to be done. 2. to grant a formal or written licence. **licentious**, adj. 1. lawless.

liege, adj. and n. f. OF *lige*, 'liege'. 1. of feudal lords and their vassals, bound by mutual obligation. 2. the feudal lord or vassal. **liegeman**, n. 1. a feudal vassal.

limit, v. f. L *limitare*, 'to limit'. 1. in legal usage, to fix or assign within definite limits, to prescribe. 2. to appoint someone to an office or charge. 3. **limited**, adj. 1. in legal usage, fixed.

lordship, n. f. OE *hlaford*, 'lord', and *–scipe*, 'the state of'. 1. the dignity and political power of a lord, incl. the prerogatives of local sovereignty. 2. the estate belonging to a lord, a seignory.

magistrate, n. f. L *magister*, 'master'. 1. an officer vested with local judicial and administrative power; often a Justice of the Peace.

malengine, n. f. AF *mal engin*, 'deception'. 1. in legal usage, malicious intent, fraud, guile.

malice, n. f. AF *malice*, f. L *malitia*, 'malice'. 1. in legal usage, the intention to harm or cause injury to another person or their rights, property, etc.; esp. in phrase 'malice prepense', the state of mind (i.e. intention to commit a crime) necessary for a defendant to be convicted of certain felonies and torts.

marriage, n. f. OF *mariage*, f. *marier*, 'to marry'. 1. the contract of matrimony. 2. a dowry or *maritagium*. 3. the feudal right and profit of settling the marriage of a ward or heir (= *maritage*).

memorial, n. f. MF *memorial*, 'reminder', 'legal document', f. L *memoria*, 'memory'. 1. diplomatic record or paper summarizing or detailing a matter for negotiation.

merchandise, n. f. OF *marchandise*, 'merchandise'. 1. the practice of trading commodities for profit. 2. the commodities so traded.

mercy, n. f. AF *merci*, f. L *merces*, 'wages, commodity, grace'. 1. clemency or mildness in the execution of legal judgment, esp. the sparing of life after a capital sentence. 2. in phrase, 'at the mercy of': in the absolute power of, under the sovereign direction of, as a vassal. 3. liability to a fine or amerciament.

mischief, n. f. AF *meschief*, 'misfortune, trouble'. 1. harm or injury (*injuria*) suffered by someone, esp. by the normal working of a law or ordinance; esp. in the legal maxim, 'better a mischief than an inconvenience'. **mischieve**, v. f. OF *mischever*, 'to come to grief'. 1. to injure, endamage, abuse; esp. to slander.

misdeem, v. f. OE *mis-* and *deman*, 'to judge'. 1. in quasi-legal usage, to judge wrongly, to form a bad opinion of. 2. to suspect.

misprision, n. f. AF *mesprison*, 'mistake, error'. 1. the mistake or omission of a judge or other public officer. 2. short for 'misprision of treason', a lesser form of treason often supposed to be the undisclosed knowledge of a treasonous intent or act. 3. in phrase 'misprision of the clerk': a clerical legal error. **misprize**, v. 1. to mistake or misunderstand, misconstrue; more broadly, to commit a wrong or offence. n. 1. **misprision**, in various senses (Sp. coinages).

mitigate, v. f. L *mitigare*, 'to alleviate'. 1. to mollify or moderate the severity of a law or sentence; to show clemency in the execution of a judgment. 2. to reduce a price or value.

molest, v. f. AF *molester*, f. L *molestare*, 'to trouble'. 1. in quasi-legal usage, to cause injury to, to annoy.

mollify, v. f. MF *mollifier*, f. L *mollificare*, 'to make soft'. 1. to temper or mitigate the severity of a law, judgment, or sentence, esp. in execution.

monument, n. f. L *monumentum*, 'a reminder, written record'. 1. a legal record or instrument. 2. an information piece of written evidence, esp. an answer to an interrogatory, or a deposition.

muniment, n. f. AF *muniment*, 'document', f. L *munire*, 'to fortify'. 1. a historical document, esp. a deed, that furnishes some evidence of precedent or title.

moot, n. orig. unkn. 1. an assembly, esp. for a disputation or argument. 2. a trial, plea;

litigation. 3. an educational exercise held in the Inns of Court, in which law students debated hypothetical cases before a panel of senior lawyers.

mortgage, n. f. AF *mort gage*, 'dead pledge', f. L *mortuum vadium*. 1. the practice of securing a loan (typically for the purchase of some personal or real property) by offering a fixed-term interest in that property to the creditor, on the condition that the interest will be extinguished on the repayment of the debt with the fixed period.

mortmain, n. f. AF *mort meyn*, 'dead hand', L *manus mortua*. 1. the inalienable tenure of lands or tenements by the Church or some other corporate body. 2. a royal licence to granting permission to alienate title to land into mortmain.

motion, n. f. AF *motion*, f. L *motio*, 'movement'. 1. a proposal or advisement put before a council or court; a legal petition. 2. in legal usage, a motive or occasion (i.e. for an action or crime).

natural, adj. f. L *natura*, 'nature'. 1. in legal usage, native, by inheritance, as in the phrase 'natural subject'. 2. of an estate or title, held or enjoyed by inheritance or birth. 3. of a right or relation, enjoyed or constituted by nature or birth, and not by law (esp. of a bastard's relation to its father). n. 1. in legal usage, an idiot.

neglect, v. f. L *neglegere*, 'to disregard'. 1. in quasi-legal usage, to fail to perform (a duty or obligation); to default through negligence. n. 1. an instance of negligence.

nominate, v. f. L *nominare*, 'to name'. 1. to appoint a person to an office or dignity; to propose a person for election to or selection for some office or duty.

obedience, **obeisance**, n. f. AF *obedience*, *obeisance*, f. L *obedientia*, 'the practice of obeying'. 1. compliance with a rule, edict, or law. 2. the jurisdictional or potential scope of a ruler or government; a dominion. 3. an act of **homage**.

oblivion, n. f. L *oblivisci*, 'to forget'. 1. a formal and legal overlooking of an offence, tantamount to an amnesty or pardon.

observance, n. f. L *observantia*, 'following or keeping a custom or law'. 1. the action of fulfilling a custom or law, or discharging a duty or obligation.

observe, v. f. L *observare*, 'to follow, practise'. 1. to keep a custom or code. 2. to obey or abide by a law, oath, or promise.

offend, v. f. AF *offendre*, f. L *offendere*, 'to strike, to wrong'. 1. to fail in a duty or obligation, to break a law or contravene a customary practice. 2. to wrong (someone).

ordain, v. f. AF *ordener*, f. L *ordinare*, 'to arrange, direct, institute'. 1. to appoint (someone) to an office or duty. 2. to assign or allot some reward or allowance (to someone). 3. to decree or enact, to command. **ordinance**, n. f. L *ordinantia*, 'decree'. 1. the judgment of an arbiter or judge between parties in a trial. 2. an executive decree, command, or order.

ordeal, n. f. Germanic *or-* and *dælan*, 'to deal'. 1. a kind of trial in which the accused is subject to a physical test, the outcome supposedly determined by divine intervention. 2. the right to hold and profit by the fees, etc. of such a trial.

outrage, n. f. OF *ultrage*, 'transgression'. 1. in quasi-legal usage, a gross and egregious wrong or injury, particularly of a riotous or violent nature.

overrule, v. f. *over-* and *rule*, f. L *regulare*, 'to regulate'. 1. to overturn or reverse (a judgment, etc.) by virtue of or appeal to superior authority; to reject or annul.

pardon, n. f. OF *pardun*, 'forgiveness of a fault'. 1. in legal usage, a formal remission of sentence, either freely or conditionally; a document conveying this remission. 2. release or reprieve from the payment of a debt or satisfaction of an obligation.

parley, n. f. OF *parler*, 'conversation, discussion'. 1. a conference between opposing

sides in a dispute or military engagement, for the purpose of negotiating terms or a truce.

partake, v. back-formation from *partaker*. 1. in quasi-legal usage, to take a share in some action or enterprise. **partaker**, n. 1. in quasi-legal usage, a supporter, adherent, maintainer.

partner, n. prob. f. *parcener*, f. AF *parcener*, 'part-owner'. 1. in quasi-legal usage, someone party to some enterprise or action; an accomplice. 2. someone with a shared interest in a commercial or business venture.

party, n. f. OF *partie*, f. L *pars*, 'part, portion'. 1. one of either side in any contestatory action, e.g. a legal dispute. 2. in quasi-legal usage, someone concerned in an action or affair, e.g. an accomplice or accessory to a crime.

patron, n. f. OF *patron*, 'model, pattern', f. L *pater*, 'father'. 1. in feudal law, an overlord or superior.

penance, n. f. OF *penanche*, f. L *poenitentia*, 'penitence'. 1. judicial sentence, esp. the penalty of *peine forte et dure* (i.e. pressing to death with heavy stones).

peremptory, adj. f. AF *peremptorie*, f. L *peremptorius*, 'decisive'. 1. in legal usage, sovereign, decisive, precluding further question or discussion, esp. of an objection, exception, or defence. 2. in phrase, 'peremptory challenge': the right of the defendant to reject without cause up to twenty nominated jurors in a common law trial. 3. of an order, command, or decree, final and absolute. 4. of a day or term prefixed for, e.g., a trial or a repayment: fixed, without possibility of negotiation.

peril, n. f. AF *peril*, f. L *periculum*, 'danger, risk'. 1. in quasi-legal usage, the danger or risk of exposure to injury or violence; the danger of exposure to financial risk.

perjure, v. f. AF *parjurer*, 'to perjure, break one's promise'. 1. to break oath, spec. to lie under oath during a criminal trial. **perjury**, n. 1. swearing by oath to the truth of something one knows to be false, esp. while giving testimony under oath in a legal trial. 2. gen., the violation of an oath or promise, or of a legal undertaking.

permit, v. f. L *permittere*, 'to let go, allow'. 1. in quasi-legal usage, to resign, give up authority or power over. 2. in quasi-legal usage, to allow or give permission for some action. **permission**, n. 1. the act of permitting someone to do something. 2. in legal usage, a document authorizing someone to do something; a licence.

pervert, v. f. AF *purvertir*, f. L *pervertere*, 'to turn around, to distort'. 1. to interfere with, impede, or distort any cause or action, esp. an action at law.

plain, v. f. AF *plaindre*, 'to complain', 'to make complaint', f. L *plangere*, 'to lament'. 1. to make a formal complaint of a grievance, esp. in a court of law. **plaint**, n. f. AF *pleinte*, f. L *planctus*, 'complaint'. 1. an account of a grievance submitted to a court in hope of redress. **plaintiff**, n. f. AF *plaintif*, 'plaintiff'. 1. the party that commences an action at law, by submitting to the court a plaint or grievance. **plaintive**, adj. 1. of or relating to the plaintiff in a legal suit.

plead, v. f. AF *plaider*, f. L *placitare*, 'to litigate'. 1. to argue as or on behalf of either party to a legal action in a court of law. 2. gen., to litigate, to go to law. 3. to put forward a specific argument for or against either party in a law suit, to engage in pleading in the attempt to reach an **issue**. 4. of the defendant in a legal action, to enter a plea (of guilty or not guilty) at the commencement of the suit. **pleading**, n. 1. gen., litigation in a court of law. 2. the practice of exchanging arguments before a judge in the attempt to reach an **issue** upon which the jury might deliberate. 3. the formal written document submitted by either party to a suit setting out the accusation or defence, with its causes and evidences.

pledge, n. f. AF *plege*, f. L *plevium*, 'security'. 1. someone who acts as surety or bail for

another; someone given as surety, a hostage. 2. something put in gage as security for the performance or non-performance of an action. 3. in quasi-legal usage, a solemn promise or oath. 4. something thrown down as a gage or symbol of an intention to try a matter of right by battle. v. 1. to act as surety for, to bail. 2. to commit something in gage or pawn as security for a promise to discharge some obligation, or repay some sum. 3. to undertake solemnly, to promise.

plight, n. f. Germanic base of OE *pleon*, 'to risk, expose to danger'. 1. an undertaking, engagement (esp. with pledge or gage), a venture. v. 1. to pledge, gage, offer surety for an oath or promise. 2. to pledge oneself, esp. in a spousal or marriage.

policy, n. f. MF *policie*, 'government', f. Gr πολίτης, 'citizen'. 1. established political order, the system of government in a city, state, etc. n. f. MF *police*, f. Gr ἀπόδειξις, 'demonstration, evidence'. 1. a document describing or constituting an agreement whereby one party indemnifies the other, in return for a payment, for the loss of or damage to property, etc.

portion, n. f. AF *porcioun*, f. L *portio*, 'share'. 1. a part or share of anything allotted to someone, esp. the share of an estate passing to an heir; a dowry.

possess, v. f. MF *possesser*, f. L *possidere*, 'to hold as property, etc.' 1. to have physical possession of (as distinct from title to, or ownership of). 2. to take or enter into possession of (an estate, office, etc.). **possession**, n. f. AF *possessioun*, f. L *possessio*, 'enjoyment, possession'. 1. power or conspicuous control over something (e.g. an estate, an office, etc.), as distinct from the title to, or ownership of it. 2. something that belongs to or is in the keeping of someone (e.g. property). **possessor**, n. 1. someone who holds or physically occupies land, an office, etc., as distinct from the title or right, or the person with title or right to it.

pray, v. f. OF *preier*, f. L *precari*, 'to entreat'. 1. in quasi-legal usage, to make petition for, to supplicate for.

prejudice, n. f. L *praejudicium*, 'precedent, prejudice'. 1. injury or hardship done to someone by the disregarding of his rights, esp. economic. 2. a previous judgment or pre-judgment, usually to negative effect. v. 1. to affect someone else's interest adversely, esp. economic; to injure, endamage. 2. to judge beforehand, esp. unfavourably; to cause to judge beforehand, to bias, esp. unfavourably.

prerogative, n. f. L *prærogativa*, 'privilege'. 1. a sovereign political privilege, esp. that enjoyed by the monarch (the 'royal prerogative'). 2. gen., the peculiar political privilege of someone or some corporate body.

president, n. f. L *præsidens*, 'governor'. 1. an appointed governor of a city, province, etc.; or of a corporation or guild, etc.; or of a council or advisory board. n. f. L *præcedens*, 'preceding'; now spelled 'precedent'. 1. an earlier judicial decision or statutory authority, that serves as a model or rule for analogous cases.

pretence, n. f. AF *prætensse*, f. L *prætendere*, 'to pretend'. 1. in quasi-legal usage, a claim, the action of setting out a claim. 2. an alleged motive or ground for some action, as asserted, usually merely a pretext.

prize, n. f. OF *prise*, f. L *præhendere*, 'to seize'. 1. something seized in war, booty, spoil; esp. legal capture made under letters of marque or reprisal.

proceed, v. f. L *procedere*, 'to go forward'. 1. to go forward, esp. with a legal suit or process; to litigate. **proceeding**, n. 1. the commencing or continuing of an action at law; any part of the process of the suit, performed by either contestatory party.

proclaim, v. f. L *proclamare*, 'to cry out'. 1. to make formal announcement or proclamation, as of an edict or decree; esp. to 'proclaim a fine'.

proof, n. f. OF *prueve*, f. L *probare*, 'to prove'. 1. evidence submitted to a court or judge

as part of a matter in trial upon which a judgment can be made; the written submissions or records of witness testimony upon which judgment turns. 2. the action of testing or making trial of something, in order to form a judgment about it.

prosecute, v. f. L *prosequi*, 'to follow, pursue'. 1. to commence a legal suit against someone for some offence or crime.

protect, v. f. L *protegere*, 'to protect'. 1. in quasi-legal usage, to defend as a legal protector or guardian. **protection**, n. 1. a document issued by a judicial or administrative authority granting exemption or safeconduct, a passport, licence.

publish, v. f. OF *puplier*, f. L *publicare*, 'to publish, make public'. 1. in quasi-legal usage, to announce publicly (e.g. a will), to promulgate (e.g. a law), to proclaim (e.g. the marriage banns). 2. to proclaim someone as something, e.g. a traitor. 3. to issue a book or writing for general sale.

purchase, v. f. AF *purchacer*, f. L *pro-* and *captiare*, 'to catch, hunt'. 1. to procure, get possession of something; esp. to sue out a writ from Chancery for the commencement of a common law action. 2. to acquire title to land otherwise than by inheritance; to obtain property by payment; to conquer.

purport, n. f. OF *purporter*, f. L *proportare*, 'to extend'. 1. in quasi-legal usage, that which is intended by a legal document or instrument, its import or effect.

quest, n. f. OF *queste*, f. L *quærere*, 'to seek'. 1. a formal, judicial inquiry into some matter; the persons appointed to make such an inquiry; an **inquest**. **question**, n. 1. an interrogatory or forensic examination; spec. the use of torture in such an examination. v. 1. in quasi-legal usage, to interrogate, subject to examination.

quit, v. f. OF *quiter*, f. L *quietare*, 'to make quiet'. 1. to redeem, set free, clear from a charge or obligation. 2. to remit or pay off a debt. 3. to reward or recompense.

ransom, n. f. OF *ransonner*, f. L *redemptio*, 'to buy back'. 1. redemption from imprisonment or captivity by the paying of a fine. 2. the price paid for the release of a captive; a fine. v. 1. to purchase out of captivity by paying a stipulated fine; to redeem.

rape, n. f. L *rapere*, 'to spoil, rape'. 1. violent and felonious seizure of goods or money; the abduction of someone, esp. a woman, by force. 2. a violent sexual assault on a woman. v. 1. to plunder, carry off anything or someone by force. 2. to assault sexually, usually a woman.

ravish, v. f. LF *ravisse*, f. L *rapere*, 'to spoil, rape'. 1. to seize and carry off goods or money, to plunder, spoil; to abduct someone violently, esp. a woman. 2. to violate or assault a woman sexually. **ravishment**, n. 1. the abduction of a person, esp. a woman or an underage ward, often forcibly. 2. referring to a writ, '*ravissement de gard*', sued out of Chancery for the return of an abducted ward.

rebut, v. f. OF *reboter*, 'butt'. 1. in legal pleading, to return a counterclaim to the plaintiff's surrejoinder. **rebutter**, n. 1. in pleading, the defendant's reply to a plaintiff's surrejoinder.

recall, v. f. *re-* and *call*. 1. in quasi-legal usage, to revoke or annul (e.g. a decree, a law). 2. to withdraw a deputy or minister from appointment. n. 1. the withdrawal or removal of a deputy or minister from office.

receipt, n. f. OF *reçoite*, L recipere, 'receive'. 1. a quantity of money or goods taken in a transaction; the taking of such money or goods; occas. the delivery of stolen or illegal goods. 2. a written certification acknowledging delivery of money or goods in some transaction. 3. in legal usage, the admission of a witness's testimony in a suit in which he has an interest; more gen., the admission of a plea or evidence. **receive**, v. 1. to be subject to the imposition of an obligation, order, or law.

recompense, v. f. L *re-* and *compensare*, 'to compensate'. 1. to requite or repay someone, to return equal value in goods or money; to atone, make amends. n. 1. return or requital, equal value in goods or money for some benefit received; in a negative sense, retribution.

reconcile, f. L *reconciliare*, 'to make up (a disagreement)'. 1. in quasi-legal usage, to bring disagreeing parties to a concord, to resolve a dispute.

record, v. f. OF *recorder*, f. L *recordari*, 'to get by heart'. 1. in quasi-legal usage, to bear witness to, to testify to. n. 1. of a legal decision or other point of law, the fact of having been memorialized in writing, as a standard or precedent for subsequent judgments; cf. 'court of record', a court characterized by its reporting or enrolling of judgments for use as precedents. 2. an authoritative account of the proceedings of a court, including full descriptions of suits heard, and judgments given, which functions as a body of precedents for future decisions. 3. witness or other evidence producible in a trial as matter of fact.

recover, v. f. OF *recoverer*, f. L *recuperare*, 'to recover'. 1. to regain (e.g. title, possession) by judgment in a suit at law. **recovery**, n. 1. the regaining of property or title by judgment in a legal suit. 2. the process by which, using a legal fiction, an entailed estate was conveyed; esp. in the phrase, 'common recovery'.

redeem, v. f. L *redimere*, 'to buy back'. 1. to recover mortgaged property, or quit a pledge or gage, by paying the amount due, or satisfying some obligation. 2. to enlarge or ransom a prisoner or captive, esp. by paying a sum demanded. **redemption**, n. 1. the discharging of a debt, or satisfaction of an obligation, by paying the owed money or performing of the required action.

redress, v. f. OF *redrecier*, 'redress'. 1. in quasi-legal usage, to make reparations for, set right an injury or wrong, esp. by compensation or as a result of legal action. n. 1. compensation or reparation for an injury or wrong, esp. that secured by legal action.

reform, v. f. L *reformare*, 'to reform'. 1. in quasi-legal usage, of a political constitution, legal process, or pernicious custom, to improve, rectify, repair.

regrate, v. f. OF *regrater*, 'regrate'. 1. to buy up the market in a commodity for the purpose of reselling it at a profit in the same or a neighbouring market. **regrater, regrator**, n. 1. a retailer, someone who buys up the market in a given commodity, for the purpose of reselling it at a profit.

release, v. f. OF *relesser*, f. L *relaxare*, 'to relax'. 1. to mitigate or withdraw a punishment or sentence; to reprieve; to suspend the levy of a tax or tribute. 2. to surrender a title, estate, office, or other property to someone, to cede possession to another. 3. to make (someone) free of an obligation or debt.

relief, n. f. OF *relever*, 'to relieve'. 1. a feudal payment, made by an heir to his feudal lord upon entry into possession; the formal acknowledgment of feudal tenure made at entry by the new tenant. 2. gen. in legal usage, freedom or delivery from an obligation or injury; remedy. 3. release from the payment of a tax or other obligation. **relieve**, v. 1. in gen. legal use, to free (someone) from legal or financial obligation, or to deliver from injury or wrong; to provide redress. 2. in early use, to enter into or hold a feudal estate from a lord.

remedy, n. f. L *remedium*, 'remedy'. 1. legal redress, relief.

remission, n. f. L *remittere*, 'to send'. 1. pardon or dispensation granted, esp. for a legal offence. 2. release from an obligation or debt. 3. deliverance from imprisonment. 4. in early use, a synonym for 'remise': any transfer of real property.

remit, v. f. L *remittere*, 'to send'. 1. to pardon or forgive a crime or offence; to suspend a sentence or punishment. 2. to surrender or yield possession, right, office, etc. 3. to

forbear a debt, refrain from demanding performance of a service or obligation. 4. to enlarge or deliver a prisoner; to commit a person back to prison. 5. to refer a case from a court of appeal back to an inferior court. 6. to restore a person to a former dignity, title, or possession, by some legal process.

render, v. f. OF *rendre*, f. L *reddere*, 'to give back'. 1. in the legal formula, 'grant and render': to make over a title to property in return to the cognizor in a fine (from whom, in a fiction, it was granted). 2. in quasi-legal usage, to give up, surrender, yield (e.g. a possession or right). 3. to pay as a tribute or tax. n. 1. the second step in the conveyance of a title by fine, in which the cognizee returns the title to the cognizor. 2. money or services yield by a tenant to a feudal superior.

reparation, n. f. OF *reparacion*, f. L *reparare*, 'to repair'. 1. the action of compensating someone or making amends for some injury or wrong; amends, payment in compensation.

repeal, v. f. OF *rapeler*, f. L *re-* and *appellare*, 'to call, address'. 1. to withdraw or revoke a law or order; to withdraw a privilege.

replevy, v. f. OF *replevir*, poss. f. L *replegiare*. 1. to bail or admit to bail. 2. to recover (property) by action of replevin; of a sheriff or bailiff, to restore (property) by action of replevin.

reprieve, v. f. AF *repris*, f. L *reprehendere*, 'to take again'. 1. to send (a prisoner) back to prison. 2. to grant a stay of execution; to release a prison from an impending punishment. n. 1. an act of reprieving; a formal stay of execution and delivery of the accused from impending punishment, often of a capital kind.

requit, v. f. *re-* and *quit*. 1. to repay. **requite**, v. 1. to repay, compensate; to make retribution.

reseize, v. f. OF *resaisir*, 'to reseize'. 1. to take or be put in possession (of a title, estate, office, privilege, etc.) again.

reversion, n. f. L *revertere*, 'to return to'. 1. the return of the title to an estate to the donor or his heirs; the estate that so returns. 2. the right to succeed to the possession of something (e.g. an office) after the death or surrender of the current holder.

revoke, v. f. L *revocare*, 'to call back'. 1. to repeal, withdraw, rescind (a law, ordinance, order, etc.).

right, n. f. OE *riht*, 'right'. 1. the equitable principle guiding distribution of rewards and punishments in civil society. 2. a legal or equitable title to the possession and enjoyment of an estate, office, dignity, etc.; the desert or due of someone.

rigour, n. f. L *rigor*, 'rigour'. 1. severity or extremity, esp. in applying the law.

riot, n. f. OF *riot*, f. unkn. 1. in legal usage, a violent and tumultuous assembly of persons.

safeconduct, n. f. OF *sauf-conduit*, 'safeconduct'. 1. the privilege of travelling free from impediment or annoyance, granted by a sovereign (e.g. to enemies coming to parley); a licence issued for this purpose.

safeguard, n. f. OF *sauve garde*, 'safeguard'. 1. a guarantee of safe passage; a safe-conduct.

satisfy, v. f. L *satis facere*, 'to do enough'. 1. to pay off or discharge a debt, to repay a creditor; to fulfil an obligation. 2. to make reparation, to compensate someone for an offence or injury.

scope, n. f. Gr σκοπός, 'mark for shooting at'. 1. in Anglo-Irish law, a tract of land, an estate.

security, n. f. L *securitas*, 'security'. 1. property or money deposited or pledged, to offset the risk of the performance or non-performance of some action; a hostage or surety.

seisin, n. f. OF *saisine*, 'seisin'. 1. formal legal possession of an estate in land, especially in a feudal context.

seize, v. f. OF *saisir*, 'to seize'. 1. to put another person in formal legal possession of an estate in land, or of an office, etc.; to endow; also in pass. 2. of a feudal lord or a judicial officer, to take possession of someone's property. **seizure**, n. 1. seisin. 2. the act of taking possession of someone's lands or goods, either forcibly and tortiously, or by judicial order.

seneschal, n. f. OF *seneschal*, 'seneschal'. 1. the steward of a great household; hence, a title applied to government and civic officials, and to judicial officers.

sentence, n. f. L *sententia*, 'opinion'. 1. the judgment of a court in a criminal case, corresponding to the decision in civil causes; the judicial punishment assigned the convicted criminal. v. 1. to determine judicially, to pass judgment; to assign a punishment to a convicted criminal.

sergeant, n. f. OF *sergent*, f. L *serviens*, 'one who serves'. 1. a feudal tenant under the rank of knight, holding by 'serjeantry'. 2. an officer of a court, charged with the arrest of prisoners and the summoning of witnesses, and with the execution of sentences and other orders. 3. one of a group of senior lawyers in the Inns of Court, from whom exclusively the royal judges were appointed.

service, n. f. L *servitium*, 'service'. 1. in feudal law, the fealty or particular duties tendered by a tenant to a lord. 2. the action of serving, or fulfilling the terms of, a writ on a person.

slander, n. f. OF *esclandre*, f. L *scandalum*, 'scandal'. 1. the speaking and dissemination of false or injurious statements about another person, with the intention to defame or calumniate. v. 1. to defame, calumniate.

sovereign, n. f. OF *soverain*, f. L *super*, 'above'. 1. the supreme political power in a state; in a monarchy, the monarch. adj. 1. of a power or title, supreme, superior. **sovereignty**, n. 1. supreme political power.

spoil, n. f. OF *espoill*, f. L *spolium*, 'spoil'. 1. goods captured or seized tortiously or in military action; booty, plunder; the act of capturing or seizing goods in this way. v. 1. to seize goods or property tortiously or in a military action.

spousal, n. f. L *sponsalia*, 'spousal'. 1. a ceremony of betrothal, an affiancing.

stablish, v. see **establish**.

statute, n. f. OF *statut*, f. L *statutum*, 'decree'. 1. a law or decree passed by a legislature and approved, in England, by the sovereign. 2. an order passed by a guild or corporation for its government. 3. used elliptically of certain legal instruments (e.g. fines, bonds) derived from statutary authorities.

strain, v. see **distrain**.

subject, n. f. OF *suget*, f. L *subicere*, 'to cast down'. 1. anyone under the allegiance and dominion of an absolute lord or sovereign, benefitting from his protection, and governed by his laws; later, anyone bound to the government of a state and its laws. 2. spec., the vassal of a feudal lord, to whom he owes services and feudal incidents. **subjection**, n. 1. the condition or state of being in dominion, feudal lordship; domination. 2. the condition or state of being a feudal vassal; subordination. 3. homage, submission, and the ceremonies and duties attaching to it. 4. in quasi-legal usage, the condition of liability to any (civil) duty or contract.

submit, v. f. L *submittere*, 'to submit'. 1. to surrender or yield to a political or military

authority. submission, n. 1. a surrender or yielding to a political or military authority; the formal recognition of a political authority. 2. spec. in legal usage, agreement to bide by the judgment of a court or arbiter.

suborn, v. f. L *subornare*, 'to suborn'. 1. to bribe or otherwise corrupt a person, esp. that they might give false testimony or judgment in a legal trial.

succeed, v. f. L *succedere*, 'to go under, to go near'. 1. to take the place of another in the possession of an estate (by descent), in the enjoyment of an office (by appointment), etc. **succession**, n. 1. the system by which one person takes the place of another in, e.g. possession of an estate by inheritance; inheritance; an act of succeeding to a possession, office, dignity, etc.

suit, n. f. OF *sieute*, f. L *sequi*, 'to follow'. 1. in feudal law, attendance of the vassal upon the lord's court; in phrase, 'suit and service': full attendance of the vassal in both court and personal service. 2. a payment made by a feudal tenant in lieu of attendance at the lord's court. 3. the process of suing in a court of law; litigation; a case at law. 4. a petition or complaint to a sovereign power, e.g. the prince, for personal redress.

summon, v. f. OF *somondre*, f. L *summonere*, 'to suggest'. 1. to call together (e.g. a parliament) by authority. 2. to order by judicial authority to attend a court to answer a claim or to give evidence.

suppliant, n. f. L *supplicare*, 'to bend down'. 1. in quasi-legal usage, a petitioner.

surrender, v. f. OF *surrendre*, 'to surrender'. 1. to yield title to an estate to an heir, reversioner, or feudal superior (often in the sixteenth century, esp. in Ireland, for regrant under new conditions). 2. in quasi-legal usage, to yield the possession of any thing (e.g. property, office, etc.) to someone else.

tenant, n. f. L *tenere*, 'to hold'. 1. one who holds land by some form of tenure.

tender, v. f. L *tendere*, 'to stretch, hold out'. 1. in legal usage, to offer or submit (a plea, a declaration, evidence, etc.) according to due form in a court of law. 2. to offer or submit payment or service, according to the manner prescribed, in the discharge or fulfilment of a debt or obligation. 3. of an oath, to present the occasion and form of an oath (to someone). n. 1. a formal legal offer, as of terms in a contract, or a plea in a suit at law. 2. a formal offer of money or compesation, in discharge or satisfaction of a debt or obligation.

testament, n. f. L *testamentum*, 'will'. 1. a formal statement in writing of a person's last will.

testify, v. f. L *testificare*, 'to bear witness'. 1. to give evidence as a witness in a legal trial.

title, n. f. L *titulus*, 'title'. 1. a legal right to an estate, office, or other property; the documents that evidence this right.

toll, n. f. OE *toll*, 'toll'. 1. a charge levied by or in the name of a sovereign or other political authority, esp. for the right to travel, esp. via a turnpike or ford, etc.; or upon goods or monies passing to or from a market, or the profit thereon.

tort, n. f. OF *tort*, f. L *torquere*, 'to twist'. 1. gen., any injury or wrong. 2. spec., the breach of a legal duty causing damage to another. **tortious**, adj. 1. illegal, injurious. 2. of the nature of a tort.

traitor, n. f. OF *traitre*, f. L *traditor*, 'traitor'. 1. anyone unfaithful to the sovereign or sovereign power of his country; also used of wives and servants guilty of 'petit treason'. **traitorous**, adj. of the nature of a traitor.

treague, n. f. ML *tregua*, 'treaty, covenant'. 1. truce (Sp. coinage).

treason, n. f. OF *traïson*, f. L *tradere*, 'to betray'. 1. the breaking of a subject's allegiance

to his sovereign or government ('high treason'); the breaking of a wife's or servant's allegiance to her/his husband/lord ('petit treason'); an act of high or petit treason.

treaty, n. f. OF *traité*, f. L *tractatum*, 'tractate'. 1. a negotiated settlement between two parties; an agreement, concord, compact. 2. esp. such an agreement between states.

trespass, n. f. OF *trespas*, f. L *passare*, 'to pass'. 1. any infringement or violation of the law; spec. one not amounting to treason or felony. 2. spec., an actionable wrong committed against another person or his property; cf. the legal phrase 'trespass on the case': a form of action in which the plaintiff alleges damage as the result of some unlawful act. v. 1. to commit a trespass.

trial, n. f. AF *trial*, f. *trier*, 'to try'. 1. the hearing and determination of a cause in a court of law.

tribunal, n. f. L *tribunal*, 'judgment seat'. 1. a court of justice.

tribute, n. f. L *tribuere*, 'to assign, give'. 1. a tax laid on one state by another, as the price of its security or protection; a rent paid by a feudal tenant to his lord.

trust, n. f. ME *trust*, 'trust'. 1. in trade and moneylending, confidence in the purchaser's or borrower's credit. 2. spec. in legal usage, an estate committed to the legal ownership of a group of trustees, from whom the use is reserved to the benefit of the original owner and his heirs.

try, v. f. OF *trier*, f. unkn. orig. 1. to hear and determine a cause at law; to sit in judgment on.

tyranny, n. f. Gr τύραννος, 'tyrant'. 1. the government of a tyrant; a state ruled by a tyrant. 2. Lawless and licentious abuse of political power. **tyrant**, n. 1. a ruler given to lawless and unfettered abuse of political power.

undertake, v. f. *under* and *take*. 1. to assume as a responsibility, to take charge of, spec. with formal pledge or promise. 2. to give gage or pledge; to offer oneself as a surety for. **undertaker**, n. 1. one of the 'New English' gentlemen who by fiant were awarded appropriated lands in Ireland in the sixteenth and seventeenth centuries.

use, n. f. 1. as opposed to ownership or tenure, the beneficial occupation of land the title to which is vested as a trust in another (often, before 1536, in a group of trustees); the trust itself; the profit accruing from the occupation of the land. 2. the practice of using money borrowed at interest; the interest on such a loan. 3. in legal or quasi-legal sense, a custom of long continuance, either general or local, accorded the force of law.

usance, n. 1. the practice of borrowing money at interest; usury. 2. the interest on such a loan. 3. the period of a loan or bill of exchange, trans. L *mora*.

usurp, v. f. L *usurpare*, 'to seize for use'. 1. to appropriate or seize wrongfully (a possession), to intrude illegally upon (a possession, an estate, office, etc.). 2. to arrogate to oneself or encroach on a right or privilege.

usury, n. f. L *uti*, 'to use'. 1. the practice of lending money at interest; the interest on such a loan.

vassal, n. f. OF *vassal*, 'vassal'. 1. a tenant holding of a lord in fee, by homage and allegiance. 2. **vassalage**, n. the legal condition of a feudal vassal.

verdict, n. f. AF *verdit*, 'verdict'. 1. the decision of a jury, in a trial at law, upon the question of fact submitted to them.

villein, n. f. AF *villein*, 'villain'. 1. a feudal serf, bondman. **villeinage**, n. 1. the legal condition of a villein.

violate, v. f. L *violare*, 'to outrage'. 1. in quasi-legal usage, to break or infringe a law, ordinance, or rule. 2. to assault a woman sexually.

void, adj. f. OF *voide*, f. L *vocitum*. 1. of an office, benefice, etc., empty or without occupant. 2. of laws, ordinances, rules, having no force or validity; null. v. 1. of a law, ordinance, etc., to invalidate, annul, cancel.

wage, v. f. OF *wage*, 'wage'. 1. something or someone given in pledge or as security. 2. money paid for a service; a recompense (also in pl.). **wager**, n. 1. in legal phrase 'wager of law': a defence by oath, requiring the support of eleven compurgators, or oath-helpers.

waif, n. f. AF *waif*, 'waif'. 1. a piece of lost property that, if unclaimed in a year and a day, falls to the ownership of the lord on whose lands it was found.

ward, n. f. OE *weard*, 'ward'. 1. the legal guardianship of a child. 2. in feudal law, the use and profit on the lands of an infant heir by his superior lord; the infant heir. 3. (in pl.) ellipt. for the Court of Wards, established by Henry VIII to administer royal wardships.

warrant, n. f. OF *warant*, 'warrant'. 1. pledge, guarantee; witness. 2. a formal document issued by the sovereign, or an officer or deputy, to license some act, esp. to make arrest, perform a seizure or search, or execute a judicial sentence. 3. a bill or note that authorizes a debtor, officer, or court to release money to a creditor. 4. in legal phrase, 'warrant of attourney': a formal authorization for someone to act on one's behalf. **warranty**, n. 1. a covenant annexed to a conveyance, in which the seller guarantees the security of the title to the lands conveyed. 2. gen., a clause annexed to a contract, in which one of the parties guarantees the goods or services transferred in the agreement.

waste, v. f. OF *waster*, *guaster*, 'to waste'. 1. in legal usage, to spoil or strip the assets of an estate in land illegally, to the prejudice of the heir or reversioner. n. 1. the illegal spoil or destruction of an estate, to the prejudice of the heir or reversioner; also in the 'writ of waste' (*bref de wast*), sued out by an heir or reversioner to inhibit the illegal activities of the tenant.

witness, n. f. OE *witnes*, 'witness'. 1. evidence given in court of justice; the person summoned or admitted upon oath to give evidence. 2. anyone called to observe a transaction, in order to certify its having taken place in such and such a manner. v. 1. in quasi-legal usage, to testify to the truth of something claimed. 2. to give testimony in a court of justice; to act as a witness. 3. to observe and certify some transaction or compact.

wreck, n. f. AF *wrec*, 'wreck'. 1. something cast onto the shore by the sea from a foundered or wrecked ship. 2. the right to appropriate the unclaimed flotsam from a foundered ship, under certain conditions (*wreccum maris*).

writ, n. f. OE *writ*, 'writ'. 1. a legal document or instrument of some kind. 2. spec., a formal written command, sued by a plaintiff out of Chancery, commanding someone in the name of the sovereign to perform or desist in the performance of some action, or answer in a court of law.

yield, v. f. OE *gieldan*, 'to yield'. 1. to give in payment something owed, or to render in service something due, as of a debtor to a creditor, or a vassal to a feudal lord. 2. of property, an office, or a right, etc., to surrender and relinquish possession or the right thereof to another.

SELECT BIBLIOGRAPHY

The following bibliographies of primary, reference, and secondary sources are, to the favour of the preceding glossary, necessarily selective, and are intended as an aid to readers in beginning or continuing their own research. The book's footnotes, searchable via the index, record some of my debts to a wider range of Spenser scholarship, law and literature scholarship, and research on early modern linguistic and historical topics; many other debts remain unrecorded but no less outstanding.

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Studies in Renaissance Literature

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Allegory, Space and the Material World in the Writings of Edmund Spenser

CHRISTOPHER BURLINSON

Christopher Burlinson reassesses Spenserian allegory, in particular that of *The Faerie Queene*, in the light of contemporary historical and theoretical interests in space and material culture. He explores Spenser's ambiguous and fluctuating attention to materiality, objects, and substance, and discusses the way he creates allegorical meaning making use of this material. He suggests that critical engagement with materiality comes through a study of narrative and physical space, and, against this background, he provides a reading of the spatial dimensions of *The Faerie Queene* – quests and battles, forests, castles and hovels – and the spatial characteristics of Spenser's other writings. *9781843840787*

Self-Interpretation in *The Faerie Queene*

PAUL SUTTIE

Re-examination of *The Faerie Queene*'s allegorical method shows what is gained by recognising that the poem's main locus of allegorical self-interpretation – as in the medieval *Quest of the Holy Grail* – is within rather than extrinsic to the story world: Spenser's heroes are poised between rival codes of moral interpretation, in a way that illuminates the relative value of those codes as guides to action. But unlike its predecessor, Spenser's poem addresses an era violently divided on what constitutes true right and wrong. Among the oppositions it grapples with are the ideological conflict in England and Ireland between emergent monarchic absolutism and residual feudalism, the doctrinal division between the Elizabethan and Roman churches, and the Machiavellian challenge to received ideas about political and religious legitimacy. *9781843840879*