Why Iago Dissuaded Othello from Using Poison: A Legal Theory

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Criminal law offers an interesting frame for examining Shakespeare, while the plays offer in return some interesting thought experiments for examining criminal law. My focus here is Othello, for which legal analysis bears fruit for resolving some interpretive questions in the play, especially the reason Iago dissuades Othello from using poison to kill Desdemona.

Of course, the law of England would not have applied literally to the events in Othello, given that they occurred entirely outside England among non-English subjects. But we still might imagine that the English audience for whom Shakespeare wrote might have interpreted the characters’ actions based in part on their understanding of legal categories, which might have influenced how Shakespeare structured the action. And the starting point for the audience’s understanding would be the English law of the period. Moreover, some readers claim that Shakespeare, like other educated non-lawyers of his day, knew a fair amount about the common and ecclesiastical law, and “used that knowledge in his plays to create dramatic situations in areas of then current controversy.” If so, we might think it more than coincidence that his plays pose interesting legal questions and expose flaws in English legal doctrine, as I claim is true of Othello. At the very least, a legal analysis may show us how legally trained members of the original audiences interpreted the play.

The play’s driving force is Iago’s scheme to induce Othello to kill Desdemona, and we can understand this scheme better by seeing how Iago’s precise plan stood to exploit deficiencies in the English law of the period. Specifically, Iago minimized his legal liability by his decision (1) not to be present at the scene of Desdemona’s killing and (2) to dissuade Othello from using poison to kill her. His liability avoidance tactics may reveal yet another layer to his devious brilliance.

Here is the critical passage (4.1.201–05):

OTHELLO: Get me some poison, Iago; this night: I’ll not expostulate with her, lest her body and beauty unprovide my mind again: this night, Iago.

IAGO: Do it not with poison, strangle her in her bed, even the bed she hath contaminated.
On the surface, Iago’s advice against poison is odd for three reasons. First, poison seems like a good choice for avoiding detection. It worked well in *Hamlet*, where Claudius’s poisoning of his brother, the king, goes undetected. It is the method King Leontes in *The Winter’s Tale* plans for killing King Polixenes, whom he suspects of an adulterous affair with his wife. An English audience would accept poison as a useful way to conceal a murder.

Second, the many references to poison in *Othello* seem to foreshadow its use in killing Desdemona. Iago first connects poison to jealousy when referring to his own

(2.1.293–95):

*For that I do suspect the lusty Moor
Hath leap’d into my seat; the thought whereof
Doth, like a poisonous mineral, gnaw my inwards.*

Later, Iago notes his success with Othello by saying (3.3.328–29): “The Moor already changes with my poison: / Dangerous conceits are, in their natures, poisons.” Others refer to poison both literally and figuratively.4

While we can understand what Othello means by the “justice” of strangling Desdemona in the “bed she hath contaminated,” Shakespeare has more obviously prepared Iago to see the poetic logic in the use of poison. Having been poisoned with jealousy, Othello should now infuse Desdemona with his poison, literally as well as metaphorically. Moreover, English society regarded murder by poison as “the most detestable of all, because it is most horrible, and fearfull to the nature of man,” which seems the entirely apt tool for Shakespeare’s greatest villain.

But the strongest argument for using poison is the one Othello gives: he fears he will not be able to go through with a means of killing that requires face-to-face, body-to-body contact with Desdemona. Since becoming convinced of her infidelity, he has once before been with Desdemona and failed to kill her (3.4). He needs poison to kill her at a distance, “lest her body and beauty unprovide [his] mind again.” Iago, in turn, does not want Othello to fail. As he says (5.1.128–29): “This is the night / That either makes me or fordoes me quite.” His plan is all about timing—getting Othello to strike before the truth is discovered. An abandoned attempt on Desdemona’s life could lead her to ask questions that uncover the falsity of Othello’s suspicion, to the ruin of Iago.1 If Desdemona learns that Othello is contemplating her murder but survives the night, there is danger that she and Emilia will ask questions that unravel Iago’s deception. So why does Iago counsel against the method of killing that is most likely to succeed?

The puzzle would be less acute if Iago had manipulated Othello so as to ensure his own presence at the scene of the killing. Even if there is good reason for Iago to recommend strangulation, Iago could be confident that Othello would go through with this means of killing Desdemona only if Iago himself were there to whip up Othello’s fury. Of course, as the murder scene is written, Othello kills Desdemona without any ongoing support from Iago. But in Act IV, when Iago counsels against poison, there is no reason for him to be confident that Othello will be able to go through with it. In the exchanges preceding the lines quoted above, Othello repeatedly follows up each of his expressions of anger toward Desdemona with some statement of her positive attributes. For example, he begins (4.1.178–79) “Ay, let her rot and perish and be damned / tonight, for she shall not live” and ends (180–82) “O, the / world hath not a sweeter creature; she might lie by / an emperor’s side and command him tasks.” Each time his fury subsides, it is Iago who provides exactly the right words to refocus Othello’s anger. When Othello refers to Desdemona’s being “of so gentle a condition” (4.1.190), for example, Iago jibes “Ay, too gentle” (4.1.191), meaning too yielding and compliant. Without that constant manipulation, Iago should fear that Othello will, as he predicts, waiver again when he meets Desdemona. Thus, if Iago is going to dissuade Othello from using poison, why does he not create a plan where (before or after killing Cassio) he will be at least nearby to ensure that Othello goes through with it? Why needlessly risk failure?

There is a legal explanation. Both the use of poison and his presence at the scene of the killing would have greatly increased Iago’s legal liability. Because Iago was *not* present at the scene of the crime he encouraged, he would, under the English law of the period, be considered only an

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“accessory” before the fact to any crime that occurred there, rather than a “principal.” The principal includes the one who commits the criminal act by his own hand and also one who aids or encourages that actor and is also present at the scene of the crime. Thus, had Iago been present at the scene of her killing, perhaps even lurking outside the bedchamber as a lookout, his presence would have made him a principal in the crime.

For two reasons, Iago stood to gain considerably from staying on the accessory side of the principal-accessory line. First, at most, accessories could be convicted of the same crime as a principal. Some commentators have suggested that Othello’s crime is merely manslaughter, rather than murder, because he killed Desdemona out of a jealous rage. The sudden discovery of adultery might negate the “malice forethought” required for murder, as this factual setting later becomes a recognized category for the provocation mitigation, which mitigates murder to manslaughter. I am not convinced by this claim, given that we observe Othello act with great deliberation in the killing, as where he offers Desdemona time to pray. But the claim is plausible if we consider only the evidence available to the authorities within the play. There being no living witnesses to the killing except for Othello, he might persuade a jury that, contrary to fact, he acted in a momentary rage, without malice forethought.

If so, Iago would benefit greatly by being an accessory rather than a principal. If Othello were guilty of only manslaughter while Iago were present as a principal, Iago could nevertheless be convicted of murder. As a principal, his crime would stand on its own footing; as Iago was clearly not acting out of a momentary jealous rage at the discovery of his wife’s adultery (Desdemona is not his wife and he knows there is no adultery), he would be guilty of murder. By contrast, if Othello committed manslaughter and Iago were merely an accessory, he would be guilty of no crime. Under the law at the time, there was no accessory before the fact to the “sudden” crime of manslaughter.

The courts apparently reasoned that if one who encourages the crime had time to leave the scene before the killing, the crime could not be sudden enough to be manslaughter. Conversely, if the crime was sudden enough to be manslaughter, there could be no accessories before the fact who were no longer present at the scene.

“Shakespeare and the Law” Conference

Last spring Professor Martha Nussbaum, Judge Richard Posner, and Professor Richard Strier (from the Department of English) hosted the conference “Shakespeare and the Law” at the Law School. This interdisciplinary conference brought together scholars from law, literature, and philosophy to investigate the legal dimensions of Shakespeare’s plays. Participants explored the ways in which the plays show awareness of law and legal regimes and commented on a variety of legal topics, ranging from general themes, such as mercy and the rule of law, to highly concrete legal issues of his time. Other papers investigated the subsequent influence of the plays on the law and explored more general issues concerning the relationship between law and literature. Among the distinguished participants were Justice Stephen Breyer of the Supreme Court, Judge Robert Sack of the Second Circuit, and our very own Seventh Circuit judges, Frank Easterbrook and Diane Wood.

Justice Breyer was asked to choose his favorite plays for a keynote panel discussion with the conference hosts. Scenes from those plays were performed in the Weymouth Kirkland Courtroom. Here, Lucio (Guillaume Briant, LLM ‘09) exhorts Isabella (Professor Rosalind Dixon) to plead harder for her brother’s life in Measure for Measure, Act II, Scene 2.
There is a second advantage to Iago remaining on the accessory side of the line. The period law had a strange and dysfunctional limitation: an accessory could be convicted for a crime only if the principal (or a principal) was convicted. Anything that prevented conviction of the principal also blocked conviction of the accessory. Viewed ex ante, there was a chance Othello would not be convicted for killing Desdemona. One possibility is that he has an insanity defense. Again, given all that the audience knows, I am skeptical of this outcome, but given that Othello is the only surviving witness to the killing and that he suffers from seizures, it is possible. As before, if Iago is present and therefore a principal, he cannot avoid criminal liability based on Othello’s reduced offense. But if Iago is merely an accessory, Othello’s insanity defense prevents Iago’s conviction even though Iago personally lacks the defense. And there are other ways in which Othello could avoid conviction, including the actual events of Act V: Othello commits suicide before trial. Because Othello’s death bars conviction of Othello, it also bars conviction any accessories. The same would be true if Othello had been killed resisting arrest.

Thus far, I have explained only why Iago would not want to be present at the scene of the crime he encouraged (not even constructively present standing lookout outside the door). But given that he won’t be around to urge Othello on, why does he discourage the use of poison? There are two legal reasons. First, the law considered the use of poison sufficient to demonstrate the “malice forethought” required for murder. Thus, poison would have eliminated the chance that Othello’s killing was manslaughter rather than murder. If the killer uses poison, we don’t need a witness to the killing to reject the claim of sudden rage. By contrast, Iago’s recommended method—strangulation—would be consistent with the kind of impulsive killing that constituted manslaughter, for which Iago, as a mere accessory, could not be convicted.

Second, there was a special complicity rule just for poisonings. It is an exception to the basic rule that presence is required to be a principal. Sir Edward Coke states the rule: “In case of poysoning, albeit the delinquent be not present when the poison is received, yet is he principall, and so the principall and accessarie may be both absent.” For this point of law, Coke cites one pertinent precedent:

Angelo (Professor Tom Ginsburg), at first unmoved by Isabella’s pleas, starts to doubt his own resolve. During the second run of these scenes, Professor Richard McAdams took on the role of Angelo in this scene.

In the famous Closet Scene from Hamlet (Act III, Scene 4), Polonius (Judge Posner) scolds Queen Gertrude (Professor Nussbaum) for not being able to control her son, Hamlet. Later in the conference, Judge Posner presented a paper on The Merchant of Venice, wherein he decided an imagined appeal by Shylock against Antonio, Bassanio and Portia.
Thus, if Othello had used poison, then the fact that Iago was not present at the scene of Desdemona’s murder would not guarantee that Iago was merely an accessory. If Iago had supplied the poison, he might be liable for murder as a principal. If he were a principal, rather than an accessory, then none of the previously discussed limitations on Iago’s liability would apply despite his absence: Iago could be convicted of murder even if Othello was guilty only of manslaughter and Iago could be convicted even if Othello is not convicted because he has an insanity defense or dies before trial. Thus, steering Othello away from poison was tactically brilliant, putting Iago in a far stronger legal position.

As the judges feared in *Vaux’s Case*, Iago “would be guilty of such horrible offense, and yet should be unpunished.” Of course, even with the poison exception, it is not certain that Iago would have been considered a principal. The exception to the presence requirement need not make everyone involved in a poisoning a principal, but only says that one can be a principal without being present at the time and place the poison is consumed. With a rigid application of the presence requirement, there would be no principals to convict for murder by poison. So the exception permits individuals to be charged as principals despite being absent from the point when and where the victim ingests the poison.

In that case, William Vaux was convicted for giving his victim Nicolas Ridley a substance—“cantharides,” a preparation from the blister beetle, then understood as a male aphrodisiac as well as a poison—that Vaux said would help him bear a child with his wife Margaret, but which caused him to die. The 1604 report of that case, also written by Coke, notes: “It was agreed *per Curiam*, that Vaux was a principal murderer, although he was not present at the time of the receipt of the poison, for otherwise he would be guilty of such horrible offence, and yet should be unpunished, which would be inconvenient and mischievous.”

The logic of the rule is obvious: killing by poison does not require that anyone involved in the poisoning be present at the time and place the poison is consumed. With a rigid application of the presence requirement, there would be no principals to convict for murder by poison. So the exception permits individuals to be charged as principals despite being absent from the point when and where the victim ingests the poison.
time and place of the poisoning. Yet the basic point remains. The law drew a sharp and clear line that a person could not be a principal if he was absent and the killing involved any means but poison. For poisonings, because the law eliminates the element of presence from the definition of a principal, there is no clarity in the distinction between the principal and the accessory. Thus, a person planning to be absent from the murder (and especially one hoping that the primary actor will die before conviction) would have a strong reason to prefer the use of some means other than poison, to guarantee staying on the accessory side of what is then a very clear line. Finally, if Iago had provided poison, he could not be certain that Othello would not attempt to involve him in the placement of the poison, by being present at the scene where the poison was placed or by otherwise distracting Desdemona or Emilia while Othello placed the poison. At that point, Iago could not easily have refused and his participation in placing the poison would have made him a principal.

Now consider two objections. First, even though Shakespeare demonstrated some significant knowledge of law, we might wonder if there is specific evidence that he knew the criminal law I have just reviewed. And did he specifically know of the law in Vaux’s Case? I have located no direct evidence; I can only speculate about what Shakespeare knew, but the timing is interesting. The date of the decision in Vaux’s case is 1591 (Easter term, 21 April to 17 May), during Shakespeare’s career but before he began writing Othello, which was 1601 at the earliest. Apparently the first printed report of the case is Coke’s in 1604, while E.A.J. Honigmann says the play was most likely written from mid-1601 to mid-1602. Aside from the fact that others date the play as late as 1604, however, we know that lawyers circulated their own unprinted reports of cases during this time period, so the legal community could have widely known of the case before Coke’s report. Unless Shakespeare received his legal knowledge strictly from printed works, it is not difficult to imagine his interest...
reason: his fear that he will not go through with the crime if he “expostulate[s]” with Desdemona, exposing himself to “her body and beauty.” So the problem being discussed—why does Iago dissuade Othello from using poison—simply does not exist in the Italian story. Shakespeare created the puzzle to which the legal theory supplies an answer.19

Finally, other differences between Un Capitano Moro and Othello support the legal theory. One of the few major differences in the stories is the very different role that the “Iago” character—the “ensign”—plays in the killing of Desdemona. The ensign proposes to the Moor this scheme: that after they beat Desdemona to death “with a stocking full of sand” that will leave no marks, they should place her in the bed and pull down part of the ceiling on top of her, which will make her death appear accidental. Not only is this manner of death quite different from Othello, but the ensign is the primary actor. The Moor conceals the ensign in a bedchamber closet one night and, when Desdemona is nearby, the ensign jumps out and strikes her repeatedly with the sand-filled stocking, while the Moor merely watches and expresses contempt for Desdemona.

Shakespeare had many good dramatic reasons to make Othello the primary actor, to have him kill Desdemona with his own hands. There are also several narrative advantages to narrowing the death scene to just Othello and Desdemona. But note that Iago would still be a principal in the second
degree—still guilty of murder despite Othello’s insanity defense or suicide—if he had hung quietly in the background of the bedchamber ready to give the necessary words of encouragement or probably even if he had been outside the door keeping watch when the murder occurred. Shakespeare follows Cinthio’s story in many details, but he completely removes Iago from the scene of the crime he worked so hard to bring about. In this choice, Shakespeare made Iago a mere accessory whose liability for Desdemona’s murder ends when Othello commits suicide.

Given these interpretations, the law adds another facet of evil cunning to Iago’s plans. Like a modern writer of legal thrillers, Shakespeare imagines how evil men seeking the “perfect murder” exploit the boundaries of the law. By avoiding presence and poison, Iago maximizes his legal chances under English law. First, because Othello dies before trial, Iago as a mere accessory is immune from prosecution. Second, had Othello lived, a jury might have acquitted him on grounds of insanity or convicted him only of manslaughter. In either case, even though Iago is sane and clearly has “malice forethought” regarding Desdemona’s death, the accessory status again renders him immune from prosecution. The foreigners who populate the play can take Iago away to torture him to death without regard for English law. But for the English audience of the period, the play may have illustrated shocking flaws in their own law.

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1 Richard Helmholz, “Shakespeare and the ius commune” (unpublished manuscript May 2009).

2 Iago tells Roderigo to “poison” Brabantio’s delight (1.1.68). The First Senator in the council-chamber asks Othello (1.3.112-13) “Did you by indirect and forced courses / Subdue and poison this young maid’s affections?” As Othello struggles to know the truth about Desdemona, he lists poison among a list of fatal obstacles (that he would rather face instead of living with continued uncertainty or perhaps that he might use against Desdemona)(3.3.391-93):

“If there be cords, or knives, / Poison, or fire, or suffocating streams,/ I’ll not endure it.”


4 Noting a parallel risk regarding Cassio, Iago says: (5.1.20-21): “The Moor / May unfold me to him; there stand I in much peril: / No, he must die.” If he fails to kill her, the Moor might also “unfold” Iago to Desdemona.

5 Coke, supra note 3, at 137-39 (Cap. 64).

6 See id. at 139.


8 See Coke, supra note 3, at 55 (Cap.8).


10 Coke, supra note 9, at 183.

11 Id. at 51 (Cap.7).

12 Coke, supra note 9, at 183.


14 Id. at 993.

15 E.A.J. Honigmann, the editor of Arden’s third edition of Othello, dates Shakespeare’s writing as mid-1601 to mid-1602, while citing others who give dates as late as 1604.


18 Id. at 383.