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"I Quit This Court.": Is Justice Denied in Arthur Miller's *The Crucible*?

DAVID R. SAMUELSON

"I denounce these proceedings, I quit this court."¹ Thus, at the end of Act Three, the Reverend John Hale punctuates the painful climax of *The Crucible*, Arthur Miller's memorable play about the Salem witch trials. And who in the audience would fault Hale's condemnation? Denied fair judgment, protagonist John Proctor has fallen the court's latest victim in a witch hunt that has already claimed Proctor's wife, his friends, and his neighbors. Proctor and the others, none of them witches, will hang with Salem's approval and at its behest on the basis of "spectral evidence" produced by frightened children and a vengeful young woman.² The accusers, in turn, have been spurred to their ruinous false charges by a rapacious, petty, and vindictive citizenry. The morally guilty—Judge Danforth, Abigail Williams, Reverend Parris and the rest—seem to have triumphed. Proctor, his wife Elizabeth, Rebecca Nurse, and seventeen others, all legally guiltless in the eyes of the audience, will perish. Hale is correct to recoil, and surely the audience is correct to empathize with such a response to brutal inequity.

The unhappy judgment visited upon Proctor and his fellow victims has prompted several critics to view the play as an icy commentary on a flagrantly unjust legal system. Leonard Moss, focusing on the play's trial scene, charac-

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2. Id at 2. The vengeful "young woman" is Abigail Williams. Miller's play is rich in historical accuracy with regard to its treatment of the major characters and the general sweep of events that beset Salem in 1692. However, as Miller explains in a brief historical note, he undertook occasional modifications for dramatic purposes. Id. One of these was to advance the age of Abigail. In the play she is seventeen years old. Historically, she was eleven at the time of the trials. See Marion L. Starkey, *The Devil in Massachusetts: A Modern Enquiry into the Salem Witch Trials* 23 (Doubleday, 1969). Starkey describes her as an "authentic hellion." Id. Miller portrays her as such, adding a malicious sexual dimension.

"Spectral evidence" consisted of witnesses' accounts that the shapes or spirits of the accused were going about performing the devil's mischief. Id at 54.
terizes the proceedings as “an unjust trial of a just man.” Benjamin Nelson, contrasting The Crucible's trial scene with that appearing in Bernard Shaw's St. Joan, notes that Miller's exposition of Salem justice fully eradicates any line that may be drawn between reason and lunacy. Others point to the “twisted logic” of the legal proceedings the play depicts and to its portrayal of an “irrational” exercise of authority.

But such reactions clearly miss the mark if we are to read The Crucible as a tragedy. Proctor is far more the victim of his own inaction and pride than he is of a “trial without sense.” To regard him as a victim of legal injustice renders him a pathetic, as opposed to a tragic, figure. And the proceedings and legal method that Miller present teach us very little about formal injustice. This Article proposes a novel reading of The Crucible as a commentary on the law. I suggest that to read Miller's play as an indictment of the legal process is to read it wrongly. My thesis is that the legal decisions depicted in The Crucible, however monumentally unfair and unwelcomed, are not necessarily unjust. Rather, from the standpoint of legal positivism, one can regard them as almost compelled. They result from the legitimacy Miller's Salemites attach to their system of law and from the straightforward deductive application of accepted norms to adduced facts, even facts of the spectral variety. My goal is to demonstrate that the best lessons one learns from The Crucible have little to do with bad law or law badly applied. Instead, as in all great tragedies, the best lessons flow from viewing a heroic figure confronting,

4. Benjamin Nelson, Arthur Miller: Portrait of a Playwright 161-63 (McKay, 1970). Nelson argues as follows: “Whereas Joan's inquisition, as depicted by Shaw, is scrupulously fair, Proctor's ordeal is marked by a monumental unfairness.” Id at 161. He then notes the “irrationality” of Proctor's opponents. Id at 162. As I explain later in this Article, such views tend to overlook the play's tragic properties.
8. Henry Popkin, Arthur Miller's The Crucible, 26 C Eng 139, 140 (1964). Popkin is reluctant to accept The Crucible as a tragedy in the Aristotelian sense. Instead, he sees the play as one of action and suspense. Id at 146. He regards Proctor as an “innocent” whose only flaw consists in his yielding to adultery. Id. I disagree. Proctor possesses a tragic flaw akin to Hamlet's—he cannot act when his conscience requires action. His delay in exposing the fraud leads to his personally perceived fall from grace and ultimately to his death. At first he is Burke's good man who, doing nothing, allows evil to triumph. See text accompanying notes 50-52.
9. See note 125.
and then conquering, the feebly understood self.

I have divided this Article into two parts. In Section I, I present a synopsis of the play's plot. I have decided to review the entire story line rather than to focus only on scenes of legal interest because such scenes are best understood within the context of the play's entire setting and development. Section II implicates two tasks. First, I offer a description of a construct of legal reasoning that I believe is best suited for understanding the legal decision making depicted in the play. Second, with this construct in mind, I analyze the decision making in hopes of offering a sensible and proper interpretation.

I. "leave me my name! . . ." 11

_The Crucible_ recounts the tragic and almost inexplicable events that befell the town of Salem, Massachusetts from the spring through the fall of 1692. Miller attempts an explanation in his introductory comments to Act One:

> The Salem tragedy . . . developed from a paradox. It is a paradox in whose grip we still live, and there is no prospect yet that we will discover its resolution. Simply, it was this: for good purposes, even high purposes, the people of Salem developed a theocracy, a combine of state and religious power whose function was to keep the community together, and to prevent any kind of disunity that might open it to destruction by material or ideological enemies. 12

But as Miller further notes, the conditions which once may have warranted such a repressive social and political mechanism were no longer in place by 1692. 13 Individuals tentatively struggled for self-assertion and factions arose. Authority, once revered and cherished in all quarters, now became doubted in some. Fear and guilt naturally accompanied such doubt. As Act One develops, we see fear and guilt about to give way to mass hysteria and to cries of witchcraft.

The story line of Act One is brief to tell. We are inside the house of the Reverend Samuel Parris, three years now Salem's minister. A catatonic illness afflicting two teenage girls has the town abuzz with rumors of demonic possession. One of the girls, Betty Parris, is the minister's daughter. The other is Ruth Putnam, daughter of Thomas Putnam, a wealthy landholder. Parris had found the two dancing with other girls in the woods the night before. He had also seen them participating in what may have been a séance. He seems to agree with his niece Abigail, a leading participant as it turns out, that the girls' illness is somehow related to their shock over being discovered.

At first, Parris will hear no talk of witchcraft. Still, he has summoned Reverend John Hale, an expert in such matters, from a nearby town to

11. Miller, _The Crucible_ at 143 (cited in note 1).
12. Id at 6-7.
13. Id.
investigate. Hale quickly learns of the girls' activities, and then, in the presence of Parris, Putnam, and others, he begins his interrogation of the ringleaders. Betty Parris lies unconscious off to the side. Hale turns to Abigail first. Under intense questioning, she confesses to drinking blood at the nighttime gathering. But Abigail claims that Tituba, Parris's slave from Barbados, is the chief culprit. To avoid imminent hanging, Tituba in turn blames the devil. When pressured to name individuals she may have seen with the devil, she names two disreputable townsfolk. Abigail now takes her cue from Tituba. She admits to cavorting with the devil and names yet another Salemite as an accomplice. Finally, Betty Parris revives from her stupor and names others. At the Act's conclusion, nine citizens of Salem are accused.

Act One, which Miller calls "an overture," deserves close study. In addition to setting the plot into motion, it introduces several of the play's major characters and previews its central conflicts. The séance, we discover, had been largely instigated by Ann Putnam, Ruth's mother. She sought through Tituba to discover why seven of her children died just after birth. She remarks to a shaken Parris, "I sent my child—she should learn from Tituba who murdered her sisters."

When the pious Rebecca Nurse rebukes her for entertaining such an expedient, she angrily asks Hale, "Is it a natural work to lose seven children before they live a day?" She nearly rejoices when the girls name Goody Osburn as one of the devil's disciples: "I knew it! Goody Osburn were midwife to me three times, . . . My babies always shriveled in her hands!" The prospect of righteous revenge is unmistakable. Any guilt she may have felt over the loss of her children is transformed into blame.

Thomas Putnam joins his wife in entertaining impure motives for pursuing the witch hunt. Thomas is an overbearing and officious man. Whatever discomfort he experiences over this affair—after all, his daughter is possessed—is masked by self-righteousness. He commands Parris to initiate an investigation of witchcraft and will have Tituba hang for trafficking with the devil. In an aside, Miller describes him as resentful and vindictive. He notes as well that Putnam was part of a faction engaged in a land war against Francis and Rebecca Nurse. Toward the middle of the act, we view him quarrelling with Giles Corey, an elderly neighbor, over a piece of pasture. Clearly, Putnam would be happier were the Nurses and Corey to find them-
selves among the accused.

Parris fears for his office. He initially resists the cries of witchcraft over concern that his daughter's affliction will darken his name and cause his congregation to turn against him. In fact, the congregation is tired of Parris. The people are loath to accede to his demands for free title of the parsonage, an increase in his supply of firewood, and golden candlesticks. In an early confrontation with Proctor having to do with the house, Parris exclaims: "I want a mark of confidence is all! . . . You people seem not to comprehend that a minister is the Lord's man in the parish; a minister is not to be so lightly crossed and contradicted." Proctor plainly irritates Parris. A practical minded farmer, Proctor disdains talk of pursuing witches, a cause which by now Parris has wholeheartedly embraced. Thus, Parris would be well rid of Proctor and other troublemakers among his flock.

Fed by vengeance, greed, and pride, then, conflicts emerge that will pit neighbor against neighbor and minister against congregation. The remaining conflict depicted in Act One involves Proctor and Abigail Williams. This conflict is fueled by lust. At the beginning of the act, Abigail tries to convince her uncle that the revelry was no more than sport. She says the same to Proctor when Proctor makes his appearance somewhat later on. But just after she leaves her uncle and is alone with Betty and some of the other girls, a darker intention is revealed. A temporarily revived Betty Parris cries out: "You drank a charm to kill John Proctor's wife! You drank a charm to kill Goody Proctor!" We learn that Abigail had once been in the service of Elizabeth Proctor but was turned out after Proctor confessed to his wife that he and Abigail had committed adultery. Abigail harbors a rabid hatred for Elizabeth and a lingering desire for Proctor. Earlier, trying to explain to Parris why she is no longer in Elizabeth's service, she says, "It's a bitter woman, a lying, cold, sniveling woman, and I will not work for such a woman!" She repeats these exact sentiments when she and Proctor have a chance to be alone before Hale's arrival. In this scene, she tries to rekindle Proctor's ardor but fails. Proctor has been faithful to Elizabeth during the seven months since Abigail's dismissal; however, he retains a sense of sin. He tells Abigail, " . . . I will cut off my hand before I ever reach for you again." By the act's conclusion, Abigail's voice is heard loudest among the accusers. No one doubts that she would relish the chance to dance upon Elizabeth's grave.

Act Two shifts the scene to Proctor's farmhouse. Eight days have elapsed, and the girls' mischief has wrought serious harm. Deputy Governor Danforth has set up a court in Salem. He promises hanging to any accused who refuses to confess. Abigail Williams is now chief accuser, a saint among those townsfolk lucky enough to be counted among the righteous. A firestorm gathers

20. Id at 30.
21. Id at 19.
22. Id at 12.
23. Id at 23.
whose heat soon enough will engulf the Proctors. But for now the atmosphere in Proctor's house is cold.

By way of anticipating the movement of Act Three, Act Two is motivated almost entirely by accusation and interrogation. We first witness Proctor and Elizabeth engaged in strained conversation. Elizabeth clings to a brooding, quiet hurt over her husband's infidelity. Proctor has told her of Abigail's revelation of the fraud, and she wonders aloud why he has not made this news public. Proctor further lets slip that he and Abigail were briefly alone when they talked. Elizabeth wonders over this revelation as well. She meets with innuendo each of Proctor's protestations of innocence. Finally, Proctor explodes: "Spare me! You forget nothin' and forgive nothin'. Learn charity, woman. I have gone tiptoe in this house all seven month since she is gone. . . . I cannot speak but I am doubted, every moment judged for lies, as though I come into a court when I come into this house!"24

They are interrupted by the entrance of their house servant, Mary Warren. Earlier in the act, Elizabeth tells Proctor, to her husband's astonishment and disgust, that Mary sits among the accusers. Mary returns from an exhausting day at court and is greeted by a fusillade of questions. The Proctors learn that the firestorm has reached their doorstep. Thirty-nine people by now have been called out as witches and arrested. Judge Danforth is said to invest complete confidence in the girls' accounts of being attacked in court by the spirits of the accused. Elizabeth's worst fear is confirmed when she learns that her own name has been "[s]omewhat mentioned" in the proceedings.25 "Oh, the noose, the noose is up!"26 she exclaims. She knows that Abigail means to take her place. Proctor knows this as well.

A final interrogation taking place in Act Two is conducted by Reverend Hale. His is a private mission to test the "Christian character" of the Proctors. Troubled, he has just come from questioning Rebecca Nurse. Rebecca is revered throughout Salem for her piety, but the girls mention her nevertheless. Hale has learned that Proctor seldom attends church services and wants to know why. Proctor voices his resentment of Reverend Parris's cupidity. "I see no light of God in that man,"27 he says. Hale is not satisfied. He asks Proctor to recite the Commandments. Proctor manages to recall nine but forgets the rule forbidding adultery. Elizabeth then induces her husband to reveal Abigail's confession of fraud. This news staggers Hale. He asks if Proctor will testify to the fraud in court. Proctor reluctantly agrees.

Hale's interrogation is the prelude to the climax of Act Two. Giles Corey and Francis Nurse appear. Both of their wives have been arrested, Rebecca for

24. Popkin, 26 C Eng at 142 (cited in note 8).
26. Id at 59.
27. Id at 60.
28. Id at 64.
29. Id at 65.
the "marvelous and supernatural murder" of Ann Putnam's babies. Finally, Marshall Herrick comes to arrest Elizabeth, now formally accused by Abigail of witchcraft. Hale assures Proctor that all will go well if Elizabeth is innocent. Proctor will have none of it:

If she is innocent! Why do you never wonder if Parris be innocent, or Abigail? Is the accuser always holy now? Were they born this morning as clean as God's fingers? I'll tell you what's walking Salem—vengeance is walking Salem. We are what we always were in Salem, but now the little crazy children are jangling the keys of the kingdom, and common vengeance writes the law!... I'll not give my wife to vengeance!

The act ends on a note of desperation tinged somewhat with hope. Proctor, in anguish, begs Hale to concede the fraud. Groping for an explanation, Hale reminds Proctor and the two other husbands that some of the accused will hang. Surely, he pleads, there must be a cause proportionate. "Think on your village," he commands, "and what may have drawn from heaven such thundering wrath upon you all." All but Proctor and Mary Warren then exit. Proctor turns to Mary who earlier had tacitly admitted to the girls' deceit. With force he commands her to admit it in open court. Mary acquiesces. The audience is now left to ponder whether the two of them can expose the real witchery in Salem.

Acts One and Two share an appealing dramatic dynamic. Each opens with a subtle tension that builds momentum as the action progresses to reach feverish proportions by the act's end. Act Three, the trial scene, operates similarly. In addition, Act Three propels the play to its climax.

The setting is Judge Danforth's court in Salem. Proctor, accompanied by Mary, has come to save his wife and friends. By now the witch hunt has spread far beyond Salem. We learn early on in the act that Danforth has jailed more than four hundred persons throughout the colony. Seventy-two souls are condemned to hang. Miller describes Danforth as a grave man, not without

30. Id at 71.
31. Id at 77.
32. Id at 79.
33. Id at 75-76. Abigail had earlier testified that Elizabeth's spirit, or familiar, pierced her with a needle. The arresting officer finds among Elizabeth's belongings a "poppet" with a needle sticking in it—hard proof corroborating Abigail's accusation. But to all present in this part of Act II, Mary admits to having made the poppet, originally intending it as a gift for Elizabeth. She admits as well to sticking it with a pin; she cannot, however, account for this act.

humor, who maintains a steely conviction in the justness of his cause. His credulity is sorely tested when Mary testifies that the spirits of the accused never afflicted her or the other girls. He tells Proctor, who has also charged the girls with fraud, the following:

I tell you straight, Mister—I have seen marvels in this court. I have seen people choked before my eyes by spirits; I have seen them stuck by pins and slashed by daggers. I have until this moment not the slightest reason to suspect that the children may be deceiving me. Do you understand my meaning?  

Danforth then attempts to cajole Proctor into dropping the charge. Elizabeth, it so happens, is pregnant and may safely bring the child to term before any further action can be brought against her. But Proctor declines. His friends' lives are at stake as well. He brings forth a testament bearing the names of ninety-one citizens who declare their good opinion of his wife, Rebecca Nurse, and Martha Corey. Danforth orders these people arrested for questioning. Giles Corey then accuses Thomas Putnam of conspiring to steal land. Fearing the court's reprisal, he refuses to name witnesses. Proctor presses his charge. Hale, whose earlier zeal has dampened, requests that Proctor have the guidance of legal counsel. Danforth refuses, arguing that since witchcraft is by its nature an "invisible crime," its existence may be proven merely by testing the credibility of the accusers.  

Danforth proceeds to question Mary Warren. Throughout the action Mary has at best behaved timidly. In a faltering voice, she admits she lied in her accusations of witchcraft. Abigail and some of the other girls now enter. Mary feebly insists that the girls pretended. Abigail accuses Mary of lying. Danforth commands Mary to faint, recalling that some of the girls would faint while testifying. She cannot. Danforth cautions both Abigail and Mary against lying. On cue, the girls lapse into a fit of hysteria. They are possessed, this time by Mary. Howling confusion grips the stage. Proctor ushers in momentary silence. Shedding his own pretense, he cries out Abigail as a whore. To see justice done, he will sacrifice his good name. He tells the court the particulars of his liaison with Abigail, including his wife's knowledge of it. Danforth will get to the bottom of this "swamp." He calls in Elizabeth Proctor. The honesty of a woman whose honesty is well known will decide this case. In the act's darkest and most ironic moment, Elizabeth denies her knowledge of her husband's adultery with Abigail. She would lie to protect Proctor's name, a name already publicly dishonored. Pandemonium again controls. The girls now see Mary as a large bird eager to tear their faces. Mary buckles and runs to the girls' corner. Pointing to Proctor, she cries out, "You're the Devil's

34. Miller, *The Crucible* at 91 (cited in note 1).
35. Id at 100.
36. Id at 111.
Danforth demands a confession. Proctor finally yields to crazed frustration and defeat. He turns to face Danforth and issues the following warning:

A fire, a fire is burning! I hear the boot of Lucifer, I see his filthy face! And it is my face, and yours, Danforth! For them that quail to bring men out of ignorance, as I have quailed, and as you quail now when you know in all your black hearts that this be fraud—God damns our kind especially, and we will burn, we will burn together.\(^\text{38}\)

Proctor is led off to jail, along with Giles Corey who has been arrested for contempt. Hale, sickened, quits the court.

Act Four opens with a view of the interior of the Salem jail. It is the fall of 1692, on the day set for Proctor's execution. The firestorm of Salem has left a bitter and blighted landscape. It has reached so many people that orphans and cattle wander from place to place, and crops lie rotting in the furrows. Ironically, other signs speak of promise. Abigail has run off to Boston after emptying her uncle's strongbox. The people of nearby Andover have sought to overthrow the court. Fearing the people's reprisal, Parris is not eager to proceed against respectable folk such as Proctor and Rebecca Nurse. Hale, now turncoat, pleads with prisoners to confess in order to save their lives. Only Danforth, the "rule-bearer"\(^\text{39}\) remains unconditionally wedded to the court's cause.

Benjamin Nelson properly observes that Act Four belongs to Proctor,\(^\text{40}\) for it charts the course of his spiritual redemption. At stake once again is Proctor's good name. He may still escape hanging, but only if he signs a prepared confession and allows it to be given public display. Proctor's will is set against Danforth's. Danforth will adamantly proceed according to the rules. Hale early on urges him to pardon those who will not confess. Parris, urging the same, fears a riot. Danforth's unpitying refusal is fueled with high earnestness:

Now hear me, and beguile yourselves no more. I will not receive a single plea for pardon or postponement. Them that will not confess will hang. Twelve are already executed; the names of these seven are given out, and the village expects to see them die this morning. Postponement now speaks a floundering on my part; reprieve or pardon must cast doubt upon the guilt of them that died till now. While I speak God's law, I will not crack its voice with whimpering. . . . I should hang ten thou-

\(^{37}\) Id at 118.

\(^{38}\) Id at 119-20.

\(^{39}\) This is an apt characterization which Miller employs in a letter he wrote to Sheila Huftel. He says of Danforth, "I am . . . interested in his function in the drama, which is that of the rule-bearer, the man who always guards the boundaries which, if you insist on breaking through them, have the power to destroy you." Sheila Huftel, Arthur Miller: The Burning Glass 146 (W. H. Allen, 1965).

\(^{40}\) Nelson, Portrait of a Playwright at 155 (cited in note 4).
sand that dared to rise against the law, and an ocean of salt tears could not melt the resolution of the statutes. . . .

Hale prevails upon Elizabeth to coax a confession from her husband. She will promise nothing but yearns to see him. Danforth assents.

We next revisit Proctor, who has become a tortured and near broken man. His failure to speak out sooner against the town's ignorance, even at the cost of his name, fills him with self-loathing. So does his adultery. He marvels at the courage of Rebecca Nurse who, by Elizabeth's account, calmly awaits the noose. Giles Corey's decision to be pressed to death, rather than to plead, invites his awe. He feels he is not fit company for people of such courage and reveals to Elizabeth his strong temptation to confess: "I cannot mount the gibbet like a saint. It is a fraud. I am not that man. My honesty is broke, Elizabeth; I am no good man. Nothing's spoiled by giving them this lie that were not rotten long before." He would have Elizabeth's guidance, but she will offer him none. "I cannot judge you," she tells him. Instead of judgment or guidance, she gives him an outpouring of love that flows from her own confession that she was a poor wife.

Danforth awaits Proctor's decision. Proctor agrees to confess, but he immediately wavers when told that the confession will be made public and that it must implicate Rebecca and his other friends. Rebecca, now present, silently rebukes him for considering the lie. Danforth as well insists on the truth. "[Y]ou mistake me," he tells Proctor. "I am not empowered to trade your life for a lie." He presses on. Proctor signs the confession but then refuses to turn over the document to Danforth. Upon Danforth's repeated urgings for an explanation, he tells him why such a confession cannot be seen:

Because it is my name! Because I cannot have another in my life! Because

41. Miller, *The Crucible* at 129 (cited in note 1).

42. Under the old common law, anyone who refused to answer a charge could not be tried. See Starkey, *The Devil in Massachusetts* at 205 (cited in note 2). Without a trial the state could not obtain a conviction, and without a conviction the state could not confiscate the accused's property. Id at 206. But the state could resort to *peine forte et dure* to induce a plea, as it did against Giles Corey. See Chadwick Hansen, *Witchcraft at Salem* 153 (George Braziller, 1969). Corey never pleaded. For two days he permitted more weight to be piled on him while he lay on the ground. He then died. Id at 154. The historians are divided concerning the motives behind Corey's tactic. Hansen, who notes that Corey was the only one to be pressed, suggests that he acted out of protest against the trials. Id at 154. Starkey maintains that he sought to protect his property. Starkey, *The Devil in Massachusetts* at 206 (cited in note 2). Miller's depiction of Giles Corey seems to support both views. He is an irascible, pugnacious fellow who knows the law well and loves his property as much as he loves himself. See Miller, *The Crucible* at 40-41, 93-98 (cited in note 1).

43. Miller, *The Crucible* at 136 (cited in note 1).

44. Id at 138.

45. Id at 140.
I lie and sign myself to lies! Because I am not worth the dust on the feet of those that hang! How may I live without my name? I have given you my soul; leave me my name!\textsuperscript{46}

An exasperated Danforth now refuses to accept the false confession.

Proctor has shed his guilt with his honest confession. Hale tells him his words will hang him, but Proctor no longer guards his corporeal life. Proctor perceives some goodness in himself, and gathering from that perception is the strength to resist all the Danforths this world can summon against him. He will die with his friends. In the last scene of the play, Hale frantically beseeches Elizabeth to plead with him. Elizabeth refuses, saying, “He have his goodness now. God forbid I take it from him!”\textsuperscript{47}

In a postscript, Miller remarks that soon after the Salem witch trials the power of the theocracy in Massachusetts began to weaken. By 1712, it had vanished.\textsuperscript{48}

II. “the people of Salem developed a theocracy. . . .”\textsuperscript{49}

As previously noted, Act Four boils down to a battle of wills between Proctor and Danforth. Emerging from this contest is what John H. Ferres describes as one of the play's most baleful ironies. He explains:

[B]oth Proctor and Danforth believe they are fighting against the same evils of irrationality and ambiguity in the administration of justice and against their anarchic influences. . . . Danforth must in conscience regard attacks upon the court as attacks upon God—which is to say theocracy. Proctor is convinced the theocracy is an offense against God because it would deny the humanity of His creatures.\textsuperscript{50}

A greater irony informs the play's powerful message. The theocracy, for all of its outward morality, cannot morally test the likes of John Proctor. He must be his own judge, and in recognizing that reality, and acting upon it, he finds his goodness/humanity. Danforth, the theocracy's minion, is denied goodness because he dare not look into his own soul for the causes of Salem's problems. The law's prisoner, he must always be perceived as the loser on the play's thematic level.

But let us turn from the play's theme and look more closely at this rule-bearer as a dramatic character whose function it is to procure a species of justice. Danforth appears to be an enemy of right reason, but he does not come off as a caricature in a show piece directed against an inherently wayward legal system. He is as human as Proctor, and necessarily so. Were he

\textsuperscript{46} Id at 143.
\textsuperscript{47} Id at 145.
\textsuperscript{48} Id at 146.
\textsuperscript{49} Id at 7. See also text accompanying note 12.
\textsuperscript{50} Ferres, 17 Univ C Q at 15-16 (cited in note 6).
injustice personified, Proctor's epiphany and sacrifice would have symbolic meaning only. And, as Henry Popkin reminds us, *The Crucible* is no mere play of ideas. Nor, as human, does Danforth strike us as necessarily evil. Unlike Parris or Abigail, he has had no hand in consciously promoting the fraud. It is likely that he seriously believes in the girls' accounts and seriously believes that he has correctly observed the law.

Furthermore, Danforth's dilemma is credible, and the theocracy's rule of law can in many respects be viewed as a workable system. Although a modern audience is uncomfortable accepting the concept of witchcraft, it accepts such a concept given the play's historical context. Moreover, shift the matter to a more topical social concern, such as child molestation, and we have a readily available contemporary context. Our present legal system deals on a daily basis with such "invisible" crimes—crimes known only to the accuser and to the accused. And despite our system's presumption of innocence, it does happen that the accuser sometimes emerges in such instances as the holy party. Salem justice, while imperfect, makes a believable effort to sort out the guilty from the guiltless in such instances. We trust, for example, that if Mary Warren can just cling to her courage, the fraud will be justly discovered. And outrages of injustice do not greet Danforth's decision to let the entire matter rest with Elizabeth, a woman who, as Proctor proclaims before the court, "cannot lie."

How, then, does Salem justice acquire a semblance of credibility in the face of the misery it breeds? The answer, which I hope to develop in the following pages, is this. The Salem system of justice, like our own, possesses both external and internal logic. Externally, it looks to legal norms whose validity is shared by the community as appropriate for governing conflicts as they arise. Internally, just as in most legal systems, justice is driven by deductive logic. The norm, or let us say major premise, most relevant to resolving a conflict is applied to the facts to reach a particular result. To be justified,

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51. Popkin, 26 C Eng at 146 (cited in note 8).

52. Four years after writing the play, Miller had come to regret making Danforth "perceptible as a human being." Miller, *Collected Plays* at 43 (cited in note 15). Instead, he would have made him a perfection of evil. Id. Had he done so, the play, in my opinion, would have lost much of its credibility and dramatic appeal.

53. Coming most readily to mind in this regard is the McMartin pre-school molestation case, which was tried in Los Angeles in the late 1980s. Polls conducted before the trial indicated that most respondents believed the molestation charges brought by pre-school children against the original seven defendants. An early national survey the *Los Angeles Times* conducted showed that "most" people familiar with the case believed that some abuse had occurred. Lois Timnick, *The Times Poll; Most Believe Children's Abuse Reports Reliable*, Los Angeles Times Pt I, 1 (Aug 26, 1985). Near the trial's commencement, when only Raymond Buckey and his mother, Peggy McMartin Buckey, remained as defendants, a defense-conducted poll revealed startling results: 97 percent of those polled with an opinion considered Raymond Buckey guilty; 93 percent believed the mother was guilty. Lois Timnick, *McMartin Attorneys to Seek Relocation of Trial*, Los Angeles Times Pt I, 16 (Feb 23, 1987). Both defendants were acquitted.

the result need only be validly derived. It need not be fair; nor need it be
good from a moral standpoint. John Proctor and his companions are morally
innocent in the eyes of the audience, for history and Miller would plainly have
it so. But just as no legal system could ever guarantee a morally just result in
the cases that come before it, so no legal system could guarantee such justice
in Proctor's case. Proctor, in short, is legally guilty. Insisting to the contrary,
in the words of John Finnis, is insisting that "ought" be deduced from what
"is" in a situation wherein "ought" is not contained in the major premise.

The model of justice alluded to above lies as the cornerstone of legal
positivism—that branch of legal philosophy that does not require that legal
systems, rules, or outcomes be moral in order to be valid. A more detailed
examination of the model's elements is now in order. I have indicated that a
legal system acquires an external logic if its participating members share a
belief in the system's validity. Neil MacCormick terms this belief the system's
"validity thesis." He explains that

a central tenet of positivistic legal theory [is] . . . that every legal system
comprises, or at least includes, a set of rules identifiable by reference to
common criteria of recognition; and that what constitutes these criteria
as criteria of recognition for a legal system is shared acceptance by the
judges of that system that their duty is to apply rules identified by
reference to them.

All rules of law within a system, then, are valid rules so long as they are
commonly recognized as such within the community. MacCormick interjects an
equally important tenet. Courts and judges derive their legitimacy from the
community: "[Courts] are institutions established . . . by a wider community
from which they derive their legitimacy and authority. . . . To have 'judges' at
all . . . we must therefore postulate the existence of some group of people
who ascribe to some individual or individuals of their number the function of
determining controversies." It follows that judges presiding within a legal
system are expected to decide cases on the basis of the rules operating in that
system. Once a judge decides a case, the order will be followed, if need be by
force.

But every case requires that certain compelling conditions be met in order
to render valid the judge's decision. It, too, must have a logical base.
MacCormick, building on a theory best elucidated by John Dewey, suggests

55. MacCormick, Legal Reasoning and Legal Theory at 37 (cited in note 10). See also
text accompanying note 10.
56. John Finnis, Natural Law and Legal Reasoning, in Robert P. George, ed, Natural
59. Id at 54.
60. Id at 55.
61. Id at 56.
that central to a decision's validation is establishing the boundaries of a workable legal syllogism. According to Dewey, "[the logic] which has ... exercised greatest influence on legal decisions, is that of the syllogism." Arriving at the correct syllogism involves first the critical task of identifying the rule of law most relevant to deciding the instant case. But in undertaking this task, the judge cannot adopt a rule which contradicts another binding and valid rule in the system. The rule, once correctly identified, can be expressed in the form if p, then q. It becomes the syllogism's major premise. The judge can now justify the syllogism's conclusion by the application of simple deduction: if the factual setting of the case, or minor premise, is proven to be an instance of p, then the result q must follow.

Establishing that the facts of a case represent an instance of p, of course, can pose a formidable challenge. Contending parties are expected to present a set of facts to form a minor premise favoring one side only. Proving thus becomes a matter of adducing credible evidence. Evidence, explains MacCormick, "is something which enables us (a) to hold as true propositions about the present; and (b) to infer from these, propositions about the past." He adds that the test for verifying evidence is the test of coherence, weighing how the facts hang together to form a believable story. The test "involves interpreting the directly visible, audible, performances of witnesses ... within a web of general beliefs, assumptions, and theories."

The deductive process alone, however, cannot fully validate a legal outcome. A reasoned explanation is also warranted. To Dewey, the purpose of this sort of justification is to "set forth grounds for the decision reached so that it will not appear as an arbitrary dictum, and so that it will indicate a rule for dealing with similar cases in the future." Justification is almost always presented by way of one or more of the four Aristotelian modes of argument. Judges particularly favor consequentialist justification, but ratio-

62. Id at 37.
63. John Dewey, Logical Method and Law, 10 Cornell Q 17, 21 (1924).
64. MacCormick, Legal Reasoning and Legal Theory at 67-68 (cited in note 10).
65. Id at 62.
66. Id at 27. The formula if p, then q, is obviously limited when applied to legal decisions since it cannot accommodate negative outcomes, such as a verdict of not guilty in a criminal case. It works in the instant situation because Proctor and the others are found guilty. When testing the logic of a legal decision, a better formula is found in the expression if, and only if, p, then q. This is the formula by which judges instruct juries in criminal cases. It is deduction through the co-implication of major and minor premises. In schematic form, it can be expressed p\(\rightarrow\)q. See Laymen E. Allen, Symbolic Logic: A Razor-Edged Tool for Drafting and Interpreting Legal Documents, 66 Yale L J 833, 840 (1957).
67. MacCormick, Legal Reasoning and Legal Theory at 71-72 (cited in note 10); see also Dewey, 10 Cornell Q at 23 (cited in note 63).
69. Id.
70. Id at 90.
71. Dewey, 10 Cornell Q at 24 (cited in note 63).
72. See generally MacCormick, Legal Reasoning and Legal Theory ch 6 (cited in note
nales based on circumstance, similitude, and definition are common as well.\textsuperscript{73}

One must note this final observation on legal decision making from the positivist perspective. Just as nature abhors a vacuum, so do positivists abhor decisions based solely on equity. Deciding a case on the basis of its special merits, and without reference to rules already in place, promotes anarchy in the law, not justice. A case either fits within the ambit of the rules or it is an exception. The law can always accommodate an exception, but it is loath to allow individual cases to dictate their own rules.\textsuperscript{74} MacCormick observes, “the notion of formal justice requires that the justification of decisions in individual cases be always on the basis of universal propositions to which the judge is prepared to adhere as a basis for determining other like cases and deciding them in the like manner to the present one.”\textsuperscript{75} Hence, to decide a case solely on the basis of equity would interfere with consistent and predictable application of the law.

Validity thesis, rule selection, adduction of credible evidence, and syllogistic reasoning accompanied by thoughtful justification are the elements of positivistic judicial decision making. Let us now return to Salem to test their application in \textit{The Crucible}.

\textbf{A. THE VALIDITY THESIS: “I SPEAK GOD'S LAW. . . .”}\textsuperscript{76}

Does Miller depict a legitimate legal system in \textit{The Crucible}? A positivist would insist that this is very much the case. In keeping with their historical counterparts, Miller's characters embrace the Bible as the basis of their validity thesis, and by extension, the Puritan theocracy. Creed ran “high and severe” in the early days of the Massachusetts colony,\textsuperscript{77} and so it does in \textit{The Crucible}. The play presents us with a God-driven autocracy created, as Miller tells us, out of necessity.\textsuperscript{78} Huddled in the wilderness, the first colonists were besieged by unforgiving winters, fierce natives, and impure alien ideologies.\textsuperscript{79} They permitted religion and government to commingle as protective agents whose guardianship they bought with piety, austerity, simplicity, and conformity. By 1692, these traits still typified most of the people of Salem. But as the play instructs us, darker forces had begun to gather. The people had little choice but to turn to the Bible for explanation and succor. This required turning to the theocracy as well.\textsuperscript{80}

\begin{itemize}
\item \textsuperscript{73} Karl Keating, \textit{Winning with Aristotle: The Four Kinds of Arguments}, 52 Cal St Bar J 308 (1977).
\item \textsuperscript{74} MacCormick, \textit{Legal Reasoning and Legal Theory} at 98 (cited in note 10).
\item \textsuperscript{75} Id at 99.
\item \textsuperscript{76} Miller, \textit{The Crucible} at 129 (cited in note 1).
\item \textsuperscript{77} Starkey, \textit{The Devil in Massachusetts} at 25 (cited in note 2).
\item \textsuperscript{78} Miller, \textit{The Crucible} at 6 (cited in note 1).
\item \textsuperscript{79} Id at 5-6.
\item \textsuperscript{80} Starkey, \textit{The Devil in Massachusetts} at 32-33 (cited in note 2). Starkey notes that several ill portents visited the Salemites toward the end of the century: “One calamity
It matters little for the purposes of this discussion that the theocracy becomes an object of scorn in Miller's play. Proctor's code of self-forgiveness must have its foil, and the theocracy's inflexible law serves nicely in this regard. Nor does it matter that Miller depicts a legal system that is, at best, primitive, for law in historical Salem was rough hewn and hand-hardened. Marion Starkey tells us that the colonists had little grasp of legal developments in England. Further, they had no real need for sophistication:

This chosen people, this community which submitted itself to the direct rule of God, looked less to England for its precepts than to God's ancient and holy word. So far as was practicable the Puritans were living by a legal system that ante-dated Magna Carta by at least two millennia, the Decalogue and the tribal laws codified in the Pentateuch.

What matters for our discussion is that *The Crucible* faithfully represents the system that Starkey describes. Let us return to MacCormick for a moment to review the requirements of the validity thesis. First, the system's legitimacy is determined on the basis of whether the system admits legal criteria of shared recognition within the community. Secondly, courts and judges derive their legitimacy from the community. The Salem of Miller's depiction readily meets both requirements. Legally, the criteria of shared common reference are contained in the word of God. In Act Three, Danforth reminds the girls that he presides over a "court of law... law, based upon the Bible, and the Bible, writ by Almighty God." He delivers this remark with reverence and severity; none of his listeners yields to a shred of doubt that God's word is the proper root of the community's law. Later, in Act Four, Danforth identifies himself to Hale as the speaker of "God's law." And significantly, we know from Miller's description of the early colony that Danforth has not usurped such a role. The people bestowed it upon him. Referring to the government established by the first colonists, Miller writes, "It was... an autocracy by consent, for [the people]...
were united from top to bottom by a commonly held ideology whose perpetuation was the reason and justification for all their sufferings.\footnote{Miller makes it clear that by 1692 many people feared, even loathed, their theocracy. But it remained, at least temporarily, as the agreed upon agent of God's will.}

So we can see that the legal system Miller offers us possesses legitimacy. Its framework is thus a valid one for seriously evaluating the legal decision making that takes place in the play.

B. RULE SELECTION: "THOU SHALT NOT PERMIT A WITCH TO LIVE. . . ."\footnote{In the logic of the law, rules may be regarded as major premises, or general propositions, that allow us to draw potentially truthful decisions about a set of particulars. But neither in the legal context, nor in any other imaginable context, do we begin our thinking with major premises. We begin, as Dewey argues, by observing facts. In the law, this means observing the facts of some confusing and complicated case, one "admitting of alternative modes of treatment and solution." The task is to discover those general principles which best accommodate the facts. This process, as we quickly learn in The Crucible, is not foolproof.}

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The problem of discovery the play presents involves interpreting the girls' troubling behavior—behavior first manifested by Betty Parris and Ruth Putnam at the play's beginning, and later by Abigail and her cohorts at the end of Act One and throughout the trial scene. The experts conclude that the girls present a compelling case of witchcraft. We know, but only through dramatic irony, that this finding is wrong. Nevertheless, it possesses legal validity from a positivist point of view.

For the validity thesis attaches to rules just as it attaches to legal systems. Synthesizing the ideas of H. L. A. Hart and Joseph Raz, MacCormick summarizes the positivist position as follows: "every genuine 'positivist' holds that all rules which are rules of law are so because they belong to a particular legal system, and that they belong to the system because they satisfy formal criteria of recognition operative within that system as an effective working social order." On the basis of this statement, one can say that if the system is valid, then so too are its rules. Where problems of rule selection arise, MacCormick turns to a concept he calls "second order justification." Competing rules are tested to determine

\footnote{Id at 6.}
\footnote{Exodus 22:18, quoted in Starkey, The Devil in Massachusetts at 52 (cited in note 2).}
\footnote{Dewey, 10 Cornell Q at 23 (cited in note 63).}
\footnote{Id.}
\footnote{Id.}
\footnote{MacCormick, Legal Reasoning and Legal Theory at 100 (cited in note 10).}
which makes most sense in both the world and in the context of the system.\textsuperscript{95} Because legal norms are either directed at or set patterns of behavior and do not seek to describe the world, making "sense" does not mean accurately reflecting facts about the world. Rather, it means selecting a rule that best interprets human conduct as it is understood in a particular society.\textsuperscript{96}

The society of historical Salem ardently believed in witchcraft. Starkey tells us that a Puritan's belief in witchcraft was as necessary as a belief in God: "To doubt the devil was a blasphemy on a par with doubting God Himself. . .."\textsuperscript{97} Hence, the belief in witchcraft rose to a level of dogma, since "to deny acts of malefic witchcraft was to deny the devil."\textsuperscript{98} Miller's Saemites closely resemble history's on this point. Indeed, when Hale first arrives upon the scene, the other characters seem almost eager to believe that witchcraft beguiles Betty Parris. He offers this ironic warning: "Now let me instruct you. . . . The Devil is precise; the marks of his presence are definite as stone, and I must tell you all that I shall not proceed unless you are prepared to believe me if I should find no bruise of hell upon her."\textsuperscript{99}

This caveat invites speculation over other possible causes, thus allowing second order justification to come into play. One possibility, a physical ailment, has already been dismissed before Hale's arrival. Dr. Griggs, a local physician, has come and gone, and can find no natural cause for Betty's condition. Also, before Hale's appearance, Rebecca Nurse, in her wisdom, points to another possibility:

I think she'll wake in time. Pray calm yourselves. I have eleven children, and I am twenty-six times a grandma, and I have seen them all through their silly seasons, and when it come on them they will run the Devil bowlegged keeping up with their mischief. I think she'll wake when she tires of it. A child's spirit is like a child, you can never catch it by running after it; you must stand still, and, for love, it will soon itself come back.\textsuperscript{100}

A child's sport invites guilt, and then paralyzing fear. Rebecca, of course, points to the truthful cause of Betty's malady. But the truth is not an option in this case. The stiff theocracy regarded children as nothing other than small adults. They were expected "to walk straight, eyes slightly lowered, arms at the side, and mouths shut until bidden to speak."\textsuperscript{101} Insight into a child's psychological dilemma is accessible only to the likes of Rebecca Nurse and to modernists, and not to those such as Hale and Danforth. Ironically, Hale's subsequent attempts to get at the truth permit the truth to become less and less credible as the

\textsuperscript{95} Id at 103.
\textsuperscript{96} Id at 103-04.
\textsuperscript{97} Starkey, The Devil in Massachusetts at 53 (cited in note 2).
\textsuperscript{98} Id.
\textsuperscript{99} Miller, The Crucible at 38 (cited in note 1).
\textsuperscript{100} Id at 27.
\textsuperscript{101} Id at 4.
hysteria gathers momentum. He unwittingly invites a false response from Tituba and then from Abigail, and soon the stage is set for the pandemonium of Act Three.

The major premise is thus solidly established. This is a case of witchcraft. Further, since this is witchcraft, a corollary premise emerges from an ancient biblical commandment: “Thou shalt not permit a witch to live.”

C. THE MATTER OF EVIDENCE: “THE DEVIL IS PRECISE; THE MARKS OF HIS PRESENCE ARE DEFINITE AS STONE. . . .”

What marvelous irony Miller conveys with these words! At no time are readers or viewers of The Crucible willing to suspend disbelief that the devil possesses the girls. We, along with Proctor and later Hale, simply know too much. The diabolical forces at work in Salem are surely definite, but they are also sadly mundane. Pride, lust, greed, envy, guilt, and fear—such are Salem’s enemies, as they are our own. Clothed in righteousness, sin and weakness accompany Lucifer up and down the village streets. Danforth feels the sickness of Salem and would ferret out its source. But, as was noted above, he lacks the courage or the wisdom to look for answers deep enough inside the human soul, especially his own. Instead, a lawyer, he turns to the Bible and to tradition and folklore, all the substance of Salem law on point. He will find his answers in, among other sources, demonology.

Starkey notes that the magistrates came to Salem armed with several methods for detecting the devil's presence. These agreed upon principles accommodated both physical and testimonial evidence. The discovery, for example, of a “teat” or some other unexplained “excrescence” on the body of the accused sufficed for a finding of guilt. Mischief following squabbles between neighbors could raise suspicions which, in turn, could lead to an unfavorable judgment against an accused. In their thirst for spite, neighbors were quick to recall how sundry farm tools suddenly became lost after such battles or how some farm animal inexplicably died. Most damaging was a victim’s testimony, varyingly the product of hallucinations, dreams, or fancy, that the accused was seen going about the devil’s work and in some way harming the victim. The magistrates regarded this “spectral evidence” as proof that demons assumed the shape of the accused. A guilty verdict automatically followed, since the Puritans held to the concept that “the devil could not assume the shape of an innocent person in doing mischief to mankind.” Furthermore, no defense
could be mustered against the charge. For example, if an accuser said, “Goodman Brown came into my room last night,” not even air tight evidence that Goodman Brown was elsewhere at the time could disprove the allegation. The shape could wander about as it pleased.

Miller amply illustrates the unfairness of such proof. Martha Corey is hauled off on account of a gaffe. Giles finds it somewhat odd that his wife reads books at night and informs the townsfolk of his opinion. A neighbor who seems unable to keep his pigs alive then charges Martha with bewitching the pigs by means of her books. Rebecca Nurse becomes the killer of babies. Elizabeth Proctor afflicts Abigail by allegedly sticking pins into “poppets.” And thus it continues, Hale ever eager to follow “wherever the accusing finger points,” until Proctor himself is charged.

Modern audiences can perceive little justice in a scenario that seems to determine guilt almost solely on the basis of accusations. The play thus appears to tempt us to mock Salem justice. But mockery would be useless, since it is an irritating, frustrating, and often agonizing fact that legal logic does not require the truth. How could it, when none of us is ever entirely certain about the truth surrounding motives and events? And how could it, especially in an adversarial system such as our own where the truth is up for grabs? Legal logic, as positivists point out, requires merely valid major premises, or rules, and valid minor premises, or propositions of fact. Says MacCormick, “courts . . . make ‘findings of fact’ . . . and . . . these, whether actually correct or not . . . count for legal purposes as being true. . . .” The proposition of fact brings the legal argument to near completion. Any resulting decision is justified, providing it is based on reference to that argument.

As it so happens, Danforth embraces an argument capable of revealing both moral and legal truths. He appears willing to piece together a believable story based on the testimony of competing parties. He will allow Elizabeth to assist him in undertaking the test of coherence. If Elizabeth, by her testimony, can

110. Id at 54.
111. Upon Hale’s arrival, Giles, in front of all assembled, shares a concern he has about his wife’s reading habits: “Mr. Hale, I have always wanted to ask a learned man—what signifies the readin’ of strange books?” Miller, The Crucible at 40 (cited in note 1). When Hale asks him to explain the question, Giles replies, “I have waked at night many a time and found [Martha] in a corner, readin’ of a book. Now what do you make of that?” Id. He regrets his question at the end of Act II after Martha has been arrested on account of her books. Giles pleads with Hale, “I never said my wife were a witch, Mr. Hale; I only said she were reading books!” Id at 71.
112. Id at 72.
113. Id at 71.
114. Id at 75-76; see also note 33.
117. Id.
118. Miller, The Crucible at 113 (cited in note 1); see also MacCormick, Legal Reasoning and Legal Theory at 90 (cited in note 10).
buttress Proctor's charge of harlotry against Abigail, then perhaps the fraud will cease. But in hopes of doing her husband good, Elizabeth lies. The truth proves inaccessible even to her. At this point, any fraud perpetrated by the girls seems secondary or nearly irrelevant. When given an honest chance, the people of Salem are incapable of saving themselves.

Miller offers us broad ironies about matters of human truth, ones not merely confined to the courts of law. As far as the major characters are concerned, nothing is "definite as stone." Elizabeth's desperate lie presents a case in point. So do the lies the girls tell—lies originally wrought by fear but clung to as proof of sainthood as the play develops. And what, ultimately, does one make of the likes of Hale, the cleric who would have Proctor and the others lie at the risk of losing their souls?

Truths, however, do emerge, and they collide at the play's end. One truth, the moral truth, belongs to Proctor. It becomes his fountain of goodness and salvation. Proud and self-deceiving throughout most of the play, Proctor grows to accept the truth about himself. He has been fatally weak and reckless. He will willingly mount the gibbet rather than live another lie. His gesture is redeeming in another sense, Miller reminds us, because the theocracy will eventually fail. Danforth owns the other truth. It is the truth of the minor premise contained in the legal syllogism. It need be neither accurate nor moral. It need merely cohere with the tested evidence. It is on the one hand ironic that Danforth, like Proctor, will partake of no lies, since the law of Salem so easily accommodates them. On the other hand, Danforth's insistence on legal truth is both appropriate and necessary. And Proctor's refusal to confess to witchcraft is all the truth that Danforth requires. He can now comfortably decide the case and justify his decision.

D. DEDUCTION AND EXPLANATION: "AN OCEAN OF SALT TEARS COULD NOT MELT THE RESOLUTION OF THE STATUTES."

Let us briefly review the elements of judicial decision making discussed up to this point. First, valid judgments are attainable in any system characterized by a society's belief in rules identified by reference to common criteria of recognition. A corollary to this proposition requires that courts and judges derive their legitimacy from the community. Second, in the subject society, any rule selected to resolve a controversy is valid so long as it is best suited to interpret human behavior as it is understood within that society. Finally, problems of proof are resolved by selecting and presenting evidence that satisfies the test of coherence.

119. Miller, The Crucible at 38 (cited in note 1); see text accompanying note 98.
120. Miller, The Crucible at 129 (cited in note 1); see text accompanying note 41.
121. See text accompanying note 58.
122. See text accompanying notes 59-60.
123. See text accompanying note 91.
124. See text accompanying note 70.
The Crucible, as we have seen, captures each of these elements with remarkable fidelity. The fate of the accused now rests in part with straightforward deduction. The deductive formula is simply understood. The major premise posits the rule that witchcraft is a crime in Salem, and it is a crime punishable by hanging. The minor premise is supplied by the adduced proposition of fact that John Proctor and his friends are witches. Formal justice and deductive logic now demand the inevitable legal decision that Proctor and the others must, therefore, hang. But, as Dewey explains, such a decision would be incomplete, or less than valid, if left unexplained. Danforth offers a valid explanation when he rejects Hale's entreaties for a pardon. The judge turns to a common strategy, the consequentialist argument. He reminds Hale that twelve other people have already been hanged. To pardon the others now would bring into doubt the guilt of those twelve, as well as speak of "floundering" on Danforth's part. To avoid such a consequence, then, he will have consistency—he will hang ten thousand should they rise against the law.

Certainly, one is tempted to condemn Danforth's consistency for bearing all the earmarks of the hobgoblin variety. We know that Proctor and the rest are innocent; pardon, then, seems to be the only just course. Benjamin Nelson perceives in Danforth's decision the motives of a sadist. To John Ferres, it is merely self-serving. But clearly, a pardon would make no sense whatsoever. If one were to believe in Danforth's sincerity as a jurist, then from his perspective grounds for a reversal simply do not exist. Hale would have a pardon on grounds of innocence, but no new evidence has come to Danforth's attention which in the slightest manner casts doubt on the condemned prisoners' guilt. Nor would a reversal be appropriate were we to interpret Hale's request as an appeal for clemency. To avoid, in Proctor's case, the specter of a widowed wife and orphaned children, a pardon would certainly speak of charity. But to decide the case on the basis of such special merits would be to decide it solely on grounds of equity. Equity of this sort only breeds arbitrary and capricious results, since a decision favoring Proctor would not be made with reference to

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125. This outcome meets the demands of "formal justice" if, as does MacCormick, we attach to this term the concept that like cases be treated alike. Others, after all, have been hanged on the basis of similar evidence. See generally MacCormick, Legal Reasoning and Legal Theory ch 3 (cited in note 10). The decision meets the demands of formal logic inasmuch as it flows necessarily from the established premises. Id at 38. For the outcome to be illogical or unjust from a formal standpoint, it would need to contain terms not entailed by the premises. Id. This is not the sort of injustice depicted in The Crucible. The play presents a case of HARSH UNFAIRNESS, not formal injustice.

126. See text accompanying note 71.

127. See text accompanying note 72.

128. Miller, The Crucible at 129 (cited in note 1); see text accompanying note 41.

129. Miller, The Crucible at 129 (cited in note 1); see text accompanying note 41.


131. Ferres, 17 Univ C Q at 10 (cited in note 6).

132. Miller, The Crucible at 49 (cited in note 1). We learn in Act Two that the Proctors have at least two boys. Id.
the law. Finally, it is worth recalling that Danforth's decision is a response in part to fears voiced by Parris that segments of the community might riot. By discounting such fears, Danforth flatly refuses to hand over the rule of law to a mob. Even the most charitable of those among us can see some sense in this motive.

The law, then, must be consistent. Where consistency is lacking, the law cannot proceed rationally. As MacCormick explains, "laws must be conceived of as having rational objectives concerned with securing social goods or averting social evils in a manner consistent with justice between individuals; and the pursuit of these values should exhibit . . . rational consistency." Danforth, self-righteous and unyielding though he may be, seeks through the consistent application of the law to avoid any further evils the devil may wish to visit on Salem. Viewed through the play's prism of dramatic irony, his explanation for his behavior is altogether unsatisfactory. But when viewed through the lens of legal logic, his explanation leaves little room for alternatives. His decision and explanation speak of believable justice.

III. Conclusion

I have just answered the question posed in the title of this Article. Justice is not denied in The Crucible. I have relied on an obviously formalistic approach to reach this finding. For purposes of clarification, I must add now, to use Hart's words, that my conclusion applies to "justice in the administration of the law, not justice of the law." This latter form of justice, which I regard as an abstraction, I take to mean a form of morally grounded justice. It is justice that cries out for the right or good result. It is its absence in the legal system that Miller depicts which prompts critics to label the Salem proceedings as unjust or irrational. I have argued that such observations miss the mark because they ignore the formal legal context developed within the play.

More importantly, they ignore the play's tragic aspect. On the topic of law and morality, Miller offers only a single, and mundane, observation: never should a society, as did Salem, permit such discord to arise between the administration of justice and the cardinal principle that the innocent shall be set free. Otherwise, Miller makes no serious argument that law and morality be joined. This is perfectly in keeping with the play's tragic dimension. Requiring that law be joined with morality leads to an insistence that the law be capable of rendering correct moral judgments. But to Miller such a capacity is properly vested in the individual. Elizabeth reminds us that no one can judge John Proctor but himself. Only Proctor knows the real issues surrounding his descent, and

133. See text accompanying notes 74-75.
134. Miller, The Crucible at 127 (cited in note 1).
only he can discover the path that leads to his redemption. "Justice of the law," then, must be internal, and we see it residing in Proctor. The court, even when correctly disposing its formal justice, is far outmatched by Proctor. Such is *The Crucible's* most enduring lesson, a lesson fully appreciated with a positivistic interpretation of this play.

words she says, "Do what you will. But let none be your judge. There be no higher judge under Heaven than Proctor is!" Id at 137.