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VENGEANCE, COMPLICITY AND CRIMINAL LAW IN OTHELLO

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Shakespeare AND THE LAW

A CONVERSATION AMONG DISCIPLINES
AND PROFESSIONS

Edited by BRADIN CORMACK, MARTHA C. NUSSBAUM,
and RICHARD STRIER

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VENGEANCE, COMPLICITY, AND CRIMINAL LAW IN OTHELLO

Criminal law offers a revealing frame for examining *Othello*, while the play offers in return some provocative thought experiments for examining law. The play encourages attention to law because, among other reasons, it favorably contrasts the deliberative elements of legal process with the more arbitrary process of private vengeance. In act 5, *Othello* refuses to accord Desdemona the very procedures that vindicated him of a false charge in act 1. Thus, while some emphasize Shakespeare's criticism of law and lawyers, I contend in section 1 of this essay that *Othello* shows the virtue of legal processes by the tragedy its absence produces.

For the lawyer, the play also poses a legal question: is Iago criminally liable for the murder of Desdemona? In section 2, I examine the rules of criminal complicity in place at the time Shakespeare wrote the play. *Othello* is a brilliant thought experiment for testing the limits of Elizabethan complicity law, especially for dealing with clever villains like Iago. In section 3, I use the criminal complicity rules set out in section 2 to explain two otherwise puzzling choices Iago makes: (1) his effort to dissuade *Othello* from using poison to kill Desdemona and (2) his lack of effort to be present at the killing. Of course, the law of England would not have literally applied to the events in *Othello*, given that they occurred outside England among non-English subjects. But the audience for whom Shakespeare wrote would have interpreted the characters' actions in the light of their English understanding of legal categories, which might have influenced how Shakespeare structured the action. At the least, a legal analysis shows us how legally trained members of the original audiences might have interpreted the play.

Section 1 justifies the legal frame that I explore in sections 2 and 3. There is some tension in my first claiming that the play reveals the virtues of legal process and my later demonstrating that Iago stood to benefit, by accident or design, from certain limits or defects in the period rules of criminal law. Yet there is nothing unusual in finding such ambivalence in Shakespeare, whose ultimate views on important matters such as law are often hard to pin down.¹ The common point is that law has more to say about *Othello* (and vice versa) than has been previously understood.

1. Othello's Legal Frame: Public Process versus Private Revenge

Various commentators assert that Shakespeare, like other educated nonlawyers of his day, knew a lot about law.² Besides having his own share of litigation, there is evidence that Shakespeare once lived near the Inns of Court, where he had friends and relatives and where he performed for collections of lawyers.³ There was popular interest in law and high attendance at actual legal proceedings, so the plays of the era frequently included trials and made reference to legal concepts.⁴ In addition, "lawyers made up a large part of the Bard's audiences wherever his plays were actually performed."⁵ Shakespeare thus used his legal "knowledge in his plays to create dramatic situations in areas of then current controversy."⁶

When Shakespeare scholars discuss the law in his plays, however, they usually neglect Othello. This omission is unjustified. Even a casual reading reveals that legal themes and terms pervade the text, and not just because we observe various crimes and accusation of crimes (discussed below). For example:

- Iago complains that Othello made Cassio his lieutenant. Three men went to Othello "[i]n personal suit to make me his lieutenant" (1.1.8),⁷ but Othello "Nonsuit[ed] my mediators" (1.1.15). A nonsuit is a legal judgment against a plaintiff for failing to establish a *prima facie* case.
- Roderigo says that if he is lying about Desdemona's having married Othello, Brabantio can "Let loose on me the justice of the state" (1.1.137).
- Desdemona promises to present Cassio's "suit" to Othello: "For thy solicitor shall rather die / Than give thy cause away" (3.3.27–28). English lawyers are either barristers or "solicitors." Brabantio and Othello speak of legal "causes," as discussed below.
- Iago tells Othello he should not be obligated to reveal all his thoughts, arguing:

Who has a breast so pure
But some uncleanly apprehensions
Keep leets and law-days and in session sit
With meditations lawful? (3.3.141–44)

Leets were "special courts, held by some lords of the manor once or twice a year."⁸

- Speaking to Emilia, Desdemona decides there is an innocent explanation for Othello's strange mood:
Arraigning his unkindness with my soul,
But now I find I had suborned the witness

And he's indicted falsely. (3.4.153–55)

- When Iago recommends that Othello strangle Desdemona in “the bed she hath contaminated,” Othello replies that the “justice of it pleases” (4.1.205–6). When Othello is about to kill Desdemona, he comments that her “balmy breath . . . dost almost persuade / Justice to break her sword” (5.2.16–17).

Omitted from this list are the crucial events in act 1, scene 3, where Othello answers Brabantio's charge that he has unlawfully taken Desdemona. The legal framing here deserves sustained attention. Act 1 has the distinction that its events were created entirely by Shakespeare; they have no parallel in the acknowledged source for the play, Giovanni Cinthio's *Un Capitano Moro*, from *Gli Hecatommithi* (1565).⁹ Samuel Johnson suggested that act 1 could be deleted without substantial loss,¹⁰ and, indeed, Verdi's opera *Otello* omits it. Scholars have identified various purposes served by the act.¹¹ I wish to add an overlooked point: the opening act creates a legal baseline for evaluating subsequent events. In act 5, Othello seeks vengeance for what he believes to be Desdemona's adultery. In killing Desdemona and seeking the death of Cassio, he denies to them some of the very elements of a legal process from which he benefits in act 1 and which would have almost certainly unmasked Iago's fragile deception. Thus, the play shows the need for law by depicting the tragic horror that can result from its absence. This reading requires a close comparison of act 1, scene 3, and act 5, scene 2.

THE ELEMENTS OF LEGAL PROCESS IN ACT 1, SCENE 3

In act 1, Brabantio believes that Othello has wronged him by taking his daughter Desdemona from his possession by force or fraud, a serious crime.¹² As will be true when Othello believes in act 5 that Desdemona has wronged him, the source of the error is Iago. Directly and with Roderigo's assistance, Iago truthfully reports to Brabantio that his daughter is secretly away with Othello, but Iago adds sexual imagery to inflame Brabantio's anger (1.1). Later, Iago reports to Othello that Brabantio spoke in “provoking terms / Against your honour” (1.2.7–8), which made Iago contemplate a violent response (1.2.5). Iago also warns against relying on law, suggesting that Brabantio has so much political power that he will turn the governing council against Othello and “put upon” him “what restraint or grievance / The law” will allow (1.2.15–17). Iago thus seeks to provoke a violent confrontation when the two men meet.

The meeting occurs later in act 1, scene 2. Brabantio, Roderigo, and some

officers meet Othello, Cassio, and Iago on the street, and each side draws swords. Iago tells Othello that Brabantio “comes to bad intent” (l. 56). Brabantio calls Othello a “thief” (ll. 57, 62) and accuses him of “[a]bus[ing] [Desdemona’s] delicate youth with drugs or minerals / That weakens motion” (ll. 73–75). At this moment, on the cusp of violence, Brabantio could seek to avenge himself through private action or Othello might act preemptively as Iago has suggested.

Instead, Othello discourages swordplay and Brabantio invokes a legal process. Brabantio charges that Othello has acted “out of warrant” and commands his men to make an arrest: “Lay hold upon him; if he do resist / Subdue him at his peril!” (ll. 79–81). When Othello asks, “Where will you that I go / To answer this your charge?” Brabantio replies,

To prison, till fit time
Of law, and course of direct session
Call thee to answer. (ll. 83–86)

As it turns out, the “fit time” for Othello to answer the charge is right away, because the Duke is in council that night attending to matters of war, and his messengers bring word that he has sent for Othello. Brabantio is satisfied to submit his “cause” (l. 95) to the Duke and the council.

In act 1, scene 3, the Duke hears Brabantio’s accusation, which now also includes the serious crime of witchcraft (1.3.65). Although the Duke is not a judge, and he treats the matter informally, he takes the action to be determined by law, telling Brabantio that if they determine that an individual has used witchcraft against Desdemona, Brabantio shall read “the bitter letter” from “the bloody book of law” (ll. 68–69)—that is, be permitted to select the harshest punishment the law allows.

We observe in the scene several basic elements of legal process. The most important contrast to private revenge is that, instead of the accuser / purported victim deciding the case, the parties submit the issues to a (relatively) neutral and impartial decision maker. The Duke proclaims his impartiality, saying that should the charges prove true, the harsh punishment should be applied “though our proper son / Stood in your action” (ll. 70–71), that is, even if his own son were the party accused.

Second, the accuser Brabantio states a specific claim against Othello, providing the accused with notice of his alleged crime—that he has obtained Desdemona’s consent to marry only by the use of witchcraft or drugs (ll. 60–65; 95–107). Third, the Duke makes clear that the truth of the charges will be decided by evidence. Upon hearing Brabantio’s second accusatory speech, the

Duke replies: "To vouch this is no proof, / Without more certain and more overt test" (ll. 107–8).¹³

Fourth, Othello is given an opportunity to answer the charges and introduce his own evidence. He accepts the authority of the council and serves as a witness in his own defense, stating that he will "present" (l. 126) how he was able to win Desdemona's love without witchcraft or potions (ll. 129–70). He also requests permission to call the only other relevant witness, Desdemona:

Send for the lady . . .
And let her speak of me before her father.
If you do find me foul in her report
. . . let your sentence
Even fall upon my life. (ll. 116–18, 120–21)

The Duke replies, "Fetch Desdemona hither" (l. 122); and when she arrives, Othello says: "Here comes the lady, let her witness it" (l. 171). Desdemona's statement then provides the crucial evidence that causes her father to drop his case. The result of this process is the rightful exoneration of Othello, ending Iago's first plot against him.

THE MISSING ELEMENTS OF LEGAL PROCESS IN ACT 5, SCENE 2

Act 5 offers a parallel. At this point, Othello stands in the position of Brabantio, wrongly believing himself the victim of a "crime" (5.2.26), while Desdemona and Cassio stand in the position of Othello, being falsely suspected. Adultery was an ecclesiastical crime,¹⁴ as well as a basis for a legal separation known as a divorce *a mensa et thoro*.¹⁵ Desdemona previously referred to the legal nature of adultery when she denied being a "strumpet" by telling Othello that she preserved her "vessel" from any "hated foul unlawful touch" (4.2.86; emphasis added). Again in act 5, when Othello charges her with being "used" by Cassio, she clarifies by asking, "How? unlawfully?" and Othello answers "Ay" (5.2.70).¹⁶ Othello could have pursued the legal charge of adultery in a church court or, alternatively, could have sought an informal resolution by soliciting an arbiter such as the Duke. But Othello refuses to give Desdemona or Cassio the procedural rights that produced his deserved vindication in act 1, opting instead for private revenge.

Most prominently, Othello is a judge in his own case. In the first words of the final scene, Othello famously states, "It is the cause, it is the cause" (5.2.1). He sees himself not as merely slaying his unfaithful wife, but as performing a public service, a necessary "sacrifice" (l. 65) "else she'll betray more men" (l. 6). When he says "O balmy breath, that dost almost persuade / Justice to break

her sword!" (ll. 16–17), Othello clearly thinks of himself as meting out Justice or even as the embodiment of Justice.¹⁷ As Honigmann notes, the emblems of Justice usually include not only a sword but also a scale to weigh evidence.¹⁸ By this time, Othello has decided what evidence to consider—only the "ocular proof" he demands from Iago (3.3.363). Thus, despite being an interested party, Othello has taken it upon himself to perform all these functions: weigh the evidence, determine guilt, set the sentence, and carry out the execution.

Consider the other missing elements from act 5. Cassio is never directly accused. Regarding Desdemona, Othello's accusations before act 5 are vague; he never specifies the man he suspects her with, much less the basis for his suspicion. Only in act 5 does Othello name Cassio, and by then there is little benefit to this procedural "notice" because Othello has just stated he is there to kill Desdemona and that there is only time for her to confess and pray for forgiveness. Even then, Othello supplies no detail to the charges and no evidence against her. He mentions no circumstances of her supposed assignments.

Of particular note, Othello denies to Desdemona the one evidentiary right she requests. Where Othello was allowed to call a witness (Desdemona) to present evidence in his defense, he refuses Desdemona's request to call Cassio. Shakespeare makes the contrast explicit. Where Othello previously says, "Send for the lady . . . let her speak" (1.3.116–17), and the Duke replies, "Fetch Desdemona hither" (l. 122), Desdemona says of Cassio, "Send for the man and ask him" (5.2.50), and "Send for him hither, / Let him confess the truth" (5.2.67–68). Where the Duke hears the witness Desdemona, Othello sends Iago to kill the witness Cassio, though Cassio has never once been confronted with the accusation for which he and Desdemona are condemned.

THE MEANING OF THE COMPARISON

If the parallel between these scenes were not already clear, note another common thread. In act 1, Brabantio remarks that the case he will present to the Duke is "not an idle cause" (1.2.95), while, in his defense, Othello refers to himself speaking poorly for "my cause" (1.3.89). Regarding Othello's suspicion of Desdemona, Iago and Desdemona both refer to it as a "cause," (3.3.414, 3.4.158), which is echoed in act 5 when Othello states, "It is the cause, it is the cause" (5.2.1).¹⁹ We thus observe how differently the legal causes are resolved. In act 1, Othello's innocence is determined by a semipublic process that includes several basic procedural elements from legal trials. In act 5, Desdemona and Cassio's guilt is determined by an interested party who bypasses law for private vengeance. The comparison makes Othello look all the more flawed and hypocritical.

Othello does have reason to prefer private vengeance. A lawsuit would publicize his dishonor and fail to give him the deaths he seeks for Desdemona and Cassio (adultery was not a capital crime). Yet a legal process would have given Othello something of infinitely greater value. The act 1 process reaches the truth, exonerating the wrongly accused, while private vengeance tragically misfires, destroying both the innocent accused and the accuser.

The omission of legal procedures would be less significant were it not for one additional fact: the fragility of Iago's scheme.²⁰ The absence of law *causes* the tragedy, because we have every reason to believe that legal process would have exposed Iago's deception. Perhaps the best evidence for this point is how quickly Othello reverses course as soon as he hears Emilia assert, without corroboration, that she stole Desdemona's handkerchief at Iago's request and gave it to him (see 5.2.223–27). Iago proclaims that Emilia is lying, but her mere assertion is enough to provoke Othello to attack Iago. Ironically, Othello did not believe Emilia in act 4, when she vehemently stated that Desdemona and Cassio spent no time alone together (4.2.1–23). The difference in act 5 is that there, as in an open trial process, he reveals for the first time the grounds of his suspicion—the handkerchief and Iago—allowing Emilia to give her relevant testimony. When she presents the previously unthinkable possibility that Othello's "ancient,"²¹ "Honest Iago,"²² has deceived him, Othello realizes that all the evidence against Desdemona is linked to Iago, rendering it correlated and suspect. Just as the legal process appears to convince even Brabantio of Othello's innocence, a few lines from Emilia are sufficient to convince Othello of Desdemona's and Cassio's innocence.

A process like the one in act 1, scene 3, would have presumably included Emilia's testimony, but much more. Cassio would have been given a chance to deny Iago's charges and to explain the conversation Othello overheard (where, at Iago's prompting, he mistook Cassio's comments about Bianca to refer to Desdemona). Roderigo might have testified about Iago's scheme to induce Cassio to engage in a drunken brawl, not to mention Iago's confession of his hatred of the Moor and his initial scheme to induce Brabantio to attack Othello. With Desdemona and Cassio denying the charge, Emilia and Roderigo impugning Iago's motives, and Iago subject to rigorous questioning, there can be little doubt that any impartial fact-finder would have seen through Iago's deception.

One might object that Shakespeare could have made the contrast I am advocating more explicit, had he intended the play to praise legal process by showing the consequences of its absence. Yet the contrast is clear enough, given all the references to law. And there are more specific references to the legal alter-

native. When Othello first considers the possibility of Desdemona's infidelity, he contemplates what he might do if his suspicions prove true and states: "I'd whistle her off and let her down the wind/To prey at fortune" and that "my relief/Must be to loathe her" (3.3.266–71). English law, however, placed on spouses an obligation of cohabitation.²³ To "whistle her off and let her down the wind/To prey at fortune" is to repudiate this obligation, which one could lawfully do only after a divorce *a mensa et thoro*, a legal separation. Adultery was one of the grounds on which a church court would grant a separation. After Othello manifests his suspicion to Desdemona, she tells Iago that she will continue to love Othello even if "he do shake me off/To beggarly divorcement" (4.2.159–60).²⁴

Shakespeare did not need to be any more explicit about Othello's legal options because they would have been obvious to his audience. We can see this option in other plays of the same era. When Shakespeare a few years later wrote *The Winter's Tale*, he had the jealous King Leontes, who suspects his wife Hermione of adultery, put her on trial for treason (although, admittedly, Leontes does not accept the resulting exoneration by an Oracle). Consider also Ben Jonson's comedy *Every Man in His Humour*, first performed a few years before Shakespeare wrote *Othello* by a troupe that included Shakespeare. The play includes a jealous character Thorello (in the original Quarto version; his name is Kitley in the revised Folio), who some critics believe is the inspiration for the name Othello.²⁵ Thorello believes that his wife is engaging in adultery; his response is to bring his concerns to Duke (Justice in the Folio) Clement, whose probing questions of various parties reveals Thorello's error. The magistrate concludes: "Why this is a mere trick, a device; you are gulled in this" (Q 5.1.214–15).²⁶ No doubt anyone investigating Iago's accusations would have said the same to Othello. Indeed, Emilia says something similar to Othello when she realizes that Iago has misled him into killing Desdemona: "O gull, O dolt, As ignorant as dirt!" (5.2.159–60; emphasis added).²⁷

The alternative of legal process was sufficiently apparent that the play's references to the law would have alerted the audience that Othello was rejecting that option. And it is this rejection that causes the tragedy: the deaths of Desdemona, Othello, Emilia, Roderigo, and possibly even Iago. Thus, *Othello* is a play praising law or at least the virtues of the deliberative processes law employs.

2. Specific Legal Issues in *Othello*:

Was Iago Criminally Liable for the Death of Desdemona?

Given a legal frame, Iago's manipulation of Othello stands as one of literature's great thought experiments for law, specifically for evaluating the

doctrine of criminal complicity (aiding and abetting or accomplice liability). The obvious question is whether Iago is, under English law of the period, guilty of some homicide offense, such as murder, for the killing of Desdemona.

THE LAW OF ACCOMPLICE LIABILITY IN ELIZABETHAN ENGLAND

Let us begin by assuming that Othello is legally guilty for the murder of Desdemona, as Emilia repeatedly suggests in act 5, scene 2 (ll. 163, 166, 181, 183), with the eventual agreement of Othello (l. 291, calling himself an “honourable murderer”). Iago’s liability turns on whether he was a “principal” or an “accessory” of Othello in that murder. The common law at this time categorized principals as (1) those who commit the criminal act themselves—by their own hand—and are therefore directly guilty without need for complicity doctrine; and (2) those who do not commit the criminal act themselves but aid or encourage its commission and are present at its commission.²⁸ Later the law called these two, respectively, the principal in the first degree and the principal in the second degree. Othello would be (with caveats below) the principal in the first degree. Accessories provided aid or encouragement to a principal (before or after the fact), but unlike principals, the accessory was not present at the crime’s commission. Presence comes to include standing as a lookout even some distance away from the actual crime.²⁹

The difference between principal and accessory has important legal effects. The principal’s crime stands on its own footing and is not conditioned on the conviction of some other principal. By contrast, the accessory’s guilt is purely derivative from the principal’s guilt, so the former can only be convicted if the latter is convicted, and only of the same crime.³⁰

THE LIMITED TEXT ON WHICH IAGO IS OTHELLO’S ACCESSORY

Iago was not present at Desdemona’s murder, not even outside the bed-chamber door serving as a lookout, and is therefore not a principal. Is he an accessory? He did not provide physical aid in the murder, but it is a monumental understatement to say that he “encouraged” the crime. Here is a partial list of what Iago does to work Othello into a jealous rage: (1) lures Cassio into a drunken brawl so Othello will discharge him, so Cassio will seek Desdemona’s help in reinstatement, and their meetings will seem to support Othello’s suspicions; (2) repeatedly asserts Desdemona’s infidelity and Cassio’s admission to that adultery; (3) plants Desdemona’s handkerchief with Cassio; and (4) stages an overheard conversation with Cassio about his sexual encounters with Bianca and manipulates it so that Othello believes Cassio is speaking of Desdemona.

Here’s the surprise: Although Iago is an accessory to Desdemona’s murder,

none of the above behavior is necessary to make him an accessory. More astonishing, arguably none of the above behavior is sufficient to make Iago guilty either. For I have left out the one thing that certainly does suffice, and might be necessary, a single line Iago speaks in act 4, scene 1: "Do it not with poison, strangle her in her bed—even the bed she hath contaminated" (ll. 204–5).

These words may be pivotal. The standard case of complicity-by-encouragement involves an individual's endorsing the crime's commission (prior to its occurrence)—for example, "strangle her"—and this endorsement is absent when the individual merely suggests a motive for the crime. Or, as others have put it, in the standard case, an accomplice's encouragement is "transparent" to the principal in the first degree who understands that he is being encouraged to offend; merely creating a motive for crime lacks this transparency.³¹ Whether there can be accomplice liability outside this standard case remains an open question. Real-world encouragements virtually always involve an endorsement; I haven't located a case deciding whether encouragement without endorsement is sufficient. Yet the great English criminal law commentator Sir James Fitzjames Stephen articulated the endorsement requirement in 1883, speaking specifically about *Iago*. He concluded, "Iago could not have been convicted as an accessory . . . but for one single remark—'Do it not with poison, strangle her in her bed.'"³²

That Iago's guilt may turn on this one statement is surprising. When Emilia learns that her husband is the "insinuating rogue" (4.2.133) who drove Othello to kill Desdemona, she says to him (5.2.183): "And your reports have set the murder on." Emilia does not know that Iago ever said "strangle her" to Othello, but that seems not to be important to the truth of her conclusion.

WHAT IS IAGO'S CRIME? MANSLAUGHTER,
MURDER, OR PETTY TREASON?

To this point, I have assumed that Othello murdered Desdemona. But there are two other legal possibilities, each showing Iago to benefit legally from being an accessory rather than a principal. First, it is possible that Othello is guilty not of murder, but of manslaughter. Sanford Kadish and at least one judicial opinion have noted this possibility.³³ In Shakespeare's time, murder was a killing that occurred with "malice forethought," while manslaughter was a killing that occurred upon a "sudden occasion."³⁴ I am skeptical of the claim that Othello killed upon a "sudden occasion," because he broods for at least several hours, considers the use of poison, and gives Desdemona time to pray. Nonetheless, a jury deciding Othello's fate might never learn all that the play's

audience knows.³⁵ There is no one other than Othello to testify as to the final events in the bedchamber. Had Othello lived to go to (an English) trial, perhaps he would have persuaded the jury that he had suddenly become convinced of the adultery immediately before he killed Desdemona in a momentary rage. If so, Kadish notes the absurdity of Iago's benefiting from Othello's success: why should Iago get the benefit of the mitigation intended for those who kill out of a sudden occasion, when "Iago . . . coldbloodedly engineered the killing"?³⁶

But if we take this scenario seriously, then the problem is even greater than the one Kadish states. If Othello committed manslaughter, the difficulty is not merely that Iago is convicted only of manslaughter, but that he is legally guilty of no crime. The period law Sir Edward Coke describes contains no category of accessory before the fact for the "sudden" crime of manslaughter.³⁷ The logic appears to be that if one who encourages the crime had time and inclination to leave the scene before the killing, or the principal had time to separate from the encourager before the killing, then the crime could not be sudden enough to be manslaughter. Conversely, if the crime were sudden enough to be manslaughter, there could be no encouragers of it who were no longer present at the scene. If Othello convinces the jury that he committed only manslaughter, Iago goes entirely free.

There is a parallel problem. Even if Othello and Iago were convicted of murder, the English audience might have thought Iago had committed a more serious crime—petty treason. The method of execution for petty treason was more painful than the ordinary hanging for murder.³⁸ In Shakespeare's day, two categories of petty treason would have been relevant: a wife killing a husband and a servant killing his master or his master's wife.³⁹ If Othello and Iago stood in a master-servant relationship, then Iago would commit petty treason if he were a principal in the killing of Desdemona. Yet because the spousal category was hierarchical, the husband, the social superior, did not himself commit petty treason by unlawfully killing his wife. As a mere accessory to Othello, Iago is guilty only of Othello's crime of murder and not the petty treason he would commit if he had himself, as a servant, done what he encouraged Othello to do. For as Coke states: "The accessory cannot be guilty of petit treason where the principal is guilty of but murder."⁴⁰

Did Othello and Iago stand in a master-servant relationship? John MacDonnell's treatise on the law of master and servant, written two and a half centuries after the death of Shakespeare, states, "No word in legal literature is more common or more ambiguous than 'servant.'" The military context complicates matters, but it is plausible that for these purposes the ensign Iago was legally

his commander's servant, given how MacDonnell states the general definition: "A servant is one who for consideration agrees to work subject to the orders of another."⁴¹

Certainly, Shakespeare encourages us to associate Othello and his color-bearer Iago,⁴² respectively, with master and servant. First, although Iago explains to Roderigo that he is not genuinely loyal in his service to Othello, he does refer to Othello as his "master" (1.1.41-43) and speak to Othello of his "service" to him (1.2.4; 3.3.470). We see Othello treat Iago as a servant when he orders him to fetch his luggage (2.1.206-7). Second, Iago's wife Emilia is explicitly the servant of Desdemona (1.3.297), a fact that differs from Cinthio's *Un Capitano Moro*, where Desdemona and the ensign's wife are merely friends. So Shakespeare intended to introduce this master-servant relationship. We might think it a logical extension of the petty-treason rule: if it applies when a servant kills the master or the master's wife, then perhaps it should also apply when the servant or the servant's husband kills the master or the master's wife.

Thus, it is plausible that the master-servant relationship applies and therefore that the period law again misses the mark in judging Iago's crime. That Iago manipulates Othello to kill the woman he loves makes Iago's deeds more monstrous than if he had killed her himself. But from the law's perspective, it makes him less culpable, guilty of murder rather than petty treason, or no crime rather than manslaughter.

COULD IAGO ACTUALLY BE CONVICTED FOR THE MURDER OF DESDEMONA?

The legal problems discussed above are almost trivial, however, compared to the final issue. Period law regarded accomplice liability as purely derivative of the crime of the principal(s). If the principal(s) went unconvicted, no accessory could be convicted.⁴³ This is not a problem of evidence but a categorical rule. Recall that being a principal in the second degree required physical presence during the commission of the crime. Because Iago was not present at the scene of Desdemona's murder, he was merely an accessory. Thus, he stood to benefit from this peculiar limitation: because the dead could not be convicted, Othello's suicide bars Iago's conviction.⁴⁴ In sum, *Othello* illustrates a surprising set of serious deficiencies in the English criminal law of the period.

3. Using Law to Understand Iago's Scheme

Given the general interest Shakespeare and his audience had in law and the legal frame presented in *Othello*, a legal analysis might illuminate the actions in the play. Here, I claim that we can better grasp Iago's scheme by see-

ing how it stood to exploit deficiencies in English law identified in the previous section. Iago minimized his legal liability by preserving his status as a mere accessory. He avoided becoming a principal by two otherwise puzzling choices: (1) his decision not to be present at the scene of Desdemona's killing and (2) his effort to dissuade Othello from using poison to kill Desdemona.

TWO PUZZLES: IAGO AVOIDING POISON AND PRESENCE

In the long process by which Iago convinces Othello to kill Desdemona, there is a crucial passage in act 4, scene 1 (already partly quoted), where the two men discuss the means of her death:

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. (ll. 201–5)

We are left with two questions that I believe are related: Why does Iago counsel against poison? And why doesn't Iago arrange for his presence at the scene of the crime he works so hard to bring about?

Iago's advice against poison is puzzling. Othello gives a strong argument for poison: he fears he will not be able to go through with a means of killing that requires direct contact with Desdemona. In act 3, scene 3, he decides to acquire "some swift means" to kill her (ll. 479–80), but when he sees her again in scene 4, he is unable to go through with it. Thus, he needs poison to kill her at a distance, "lest her body and beauty unprovide [his] mind again." Above all else, Iago does not want Othello to fail. As he says, "This is the night/That either makes me or fordoes me quite" (5.1.128–29). An abandoned attempt on Desdemona's life could lead her or others to ask questions that uncover the falsity of Othello's suspicion.⁴⁵ So why does Iago counsel against the method of killing that is most likely to succeed?⁴⁶

The puzzle would be less acute if Iago had ensured his presence at the scene of the killing. Even if Iago had good reason to recommend strangulation, he could be confident that Othello would go through with this means of killing only if Iago were himself present to whip up Othello's fury. Of course, as act 5 unfolds, Othello kills Desdemona without Iago's contemporaneous encouragement (though by suffocation rather than strangulation). But in act 4, when Iago counsels against poison, there is no reason for him to be confident that Othello will be able to strangle her. Othello cannot maintain a consistent anger, but follows each violent statement regarding Desdemona with a forgiv-

ing or admiring one. For example, he begins "Ay, let her rot and perish and be damned tonight, for she shall not live," and ends "O, the world hath not a sweeter creature: she might lie by an emperor's side and command him tasks" (4.1.178–82). Each time his fury subsides, Iago supplies just the right words to reignite it (for example, see 4.1.189–91). Without that ongoing manipulation, Iago should worry that Othello will, as he fears, waver again when he physically encounters Desdemona.

Indeed, note that Iago arranges to be nearby on the three other occasions when he prods a person toward violence: when Othello and Brabantio meet in the streets (1.2), when Roderigo lures Cassio into a brawl (2.3), and when Roderigo tries to kill Cassio (5.1). Why not in this one case? It is not enough to say that the ambush of Cassio and the killing of Desdemona occur at the same time, because Iago could have influenced their timing.

Returning to poison, the best two arguments against its use are (1) the poetic justice of strangling Desdemona in the "bed she hath contaminated," as Othello recognizes in his response: "Good, good: the justice of it pleases: very good" (4.1.206); and (2) the sadistic attraction Iago may have for putting Othello onto a more active and sexualized form of killing.⁴⁷ Note that neither point will matter if Othello can't go through with the killing. One might say that the justice Othello sees in strangulation will make it more likely that he will complete the act of killing.⁴⁸ But a bedchamber strangulation is more likely to succeed only when compared to other forms of face-to-face killing. Poison would be *even more* likely to work than strangulation, because it avoids physical confrontation altogether and makes it easy for Iago to continue goading Othello up to the moment when he places the poison.

In any event, Iago and the audience should see a more powerful poetic logic in the use of poison, one more in keeping with other elements of the play. First, Iago has metaphorically referred to his jealousy (2.1.293–95) and the jealousy he inspires in Othello (3.3.328–29) as poison. He refers back to poison when Othello lapses into a trance, saying: "Work on, / My medicine, work!" (4.1.44–45; compare 3.3.335). Overflowing with toxic jealousy, Othello should now infuse Desdemona with his poison. Second, Brabantio charges that Othello has poisoned Desdemona: that he "[a]bused" her "with drugs or minerals" (1.2.74), "corrupted" her by "spells and medicines" (1.3.61–62), and won her with "mixtures powerful o'er the blood / Or with some dram" (1.3.105–6). With Iago present, the First Senator asks Othello "Did you . . . poison this young maid's affections?" (1.3.112–13). It would complete a great irony if Othello were to vindicate the false charges by poisoning Desdemona in act 5. Finally, English society then regarded murder by poison as "the most detest-

able of all [murders], because it is most horrible, and fearfull to the nature of man, and of all others can be least prevented," which seems the entirely apt tool for Shakespeare's greatest villain.⁴⁹

Why would Iago advise against poison? And, having done so, why doesn't he create a plan to be near the confrontation with Desdemona to ensure that Othello goes through with strangulation? Why risk failure? These puzzles are particularly interesting because Shakespeare went out of his way to create them. In Cinthio's *Un Capitano Moro*, the Moor and the ensign are "discussing whether the Lady should perish by poison or the dagger, and not deciding on either of them,"⁵⁰ when the ensign proposes an alternative method, which they adopt: to beat Desdemona to death with a sand-filled stocking, place her in the bed, and pull the ceiling down on her, to make the death appear accidental. One might think that, in keeping a similar detail—the rejection of poison—Shakespeare was simply following his source.

Yet a careful comparison shows the opposite. First, in Cinthio's story, the plotters together consider and together reject poison. In Shakespeare's play, Othello proposes and Iago rejects the use of poison. Second, the Italian story offers no reason favoring the use of poison, whereas the play gives the powerful reason discussed above. Third, the alternative to poison in the story is a method (pulling down the ceiling) that will make the death appear accidental, whereas in the play the alternative Iago proposes (strangulation) will make the crime manifest. Nor, finally, does poison appear in the story as a metaphor for jealousy, or as a possible illicit means by which the Moor gained Desdemona's love. So the problem being discussed—why does Iago dissuade Othello from using poison?—simply does not exist in the source story. Shakespeare created it.

Shakespeare also created the puzzle about Iago's presence by removing his character from the scene of the killing. In *Un Capitano Moro*, not only is the manner of death different from that in *Othello* (!), but the ensign is free to be present at the scene with Desdemona because he has already attempted to kill the Cassio character at an earlier time. And not only is the ensign present at the scene; he is the primary actor. The Moor conceals the ensign in a bedchamber closet and, when Desdemona is nearby, the ensign jumps out and strikes her with the sand-filled stocking while the Moor watches and expresses contempt for Desdemona. Legally, if we read Cinthio's story through later English law, the Moor is there depicted as only the principal in the second degree.

Shakespeare had good dramatic reasons to make Othello the primary actor and to have him kill Desdemona with his own hands. There are also narrative advantages to narrowing the death scene to just Othello and Desdemona. But

Shakespeare does not merely reverse the roles of Iago and Othello in the killing. He also does not let Iago hang back quietly in the background of the bed-chamber, ready to speak words of contempt to Desdemona (or encouragement to Othello), nor even to stand outside the door keeping watch. Shakespeare follows Cinthio's story in many details, so why does he completely remove Iago from the scene of the crime he worked so hard to bring about?

A LEGAL THEORY: IAGO PRESERVES HIS STATUS AS AN ACCESSORY

The law explains each puzzle. Iago's presence at the scene of the killing and the use of poison would both have increased Iago's legal exposure. As explained above, Iago is a mere accessory to the unlawful killing of Desdemona because he was not present at the scene of the crime he encouraged. As discussed, there are many reasons Iago stood to gain from staying on the accessory side of the line.

First, there is a chance that Othello could convince a jury that he had committed only manslaughter, in which case a mere accessory avoids all criminal liability. Second, as principal, Iago might be guilty of petty treason, but as accessory he cannot be. Third, anything preventing Othello's conviction will bar Iago's conviction. Many impediments might arise, some possibly with the help of Iago. I already mentioned that Othello's suicide barred Iago's conviction. Othello might also have died resisting arrest or have fled beyond the reach of Venetian authorities. There is a chance that he would have been acquitted on grounds of insanity. I am skeptical, but as with the manslaughter claim, the jury would not have learned all that the audience knows. If Othello persuaded a jury to acquit him on grounds of insanity, the law would not permit Iago's conviction as an accessory even though he is (legally) sane. Finally, there is a theoretical chance that a character in Othello's position would be pardoned by the Crown, which would also render the accessories immune from prosecution. Iago thus stood to benefit in any number of ways from maintaining his status as an accessory, which is why he avoided being present at Desdemona's death.

One might respond that, by the end, it no longer matters whether Iago evades punishment for Desdemona's death. English law would have condemned Iago to hang for his murders of Roderigo and Emilia (and Cassio if he died of the wounds Iago inflicted). But what matters here is Iago's plan at the time he sets up Desdemona's death. Overall, it appears that he never intended to be caught.⁵¹ He does not appear to plan the murder of Emilia, whose untimely testimony he does not anticipate. He did plan to kill Roderigo and Cassio, but Cassio did not recognize Iago when he stabbed him in the dark and, if things had gone right

for Iago, Roderigo would have died immediately from his wounds and left no letters on his person. Thus, the remaining question is how Iago could maximize his chances of evading legal responsibility for Desdemona's murder. One answer is: by avoiding presence at the scene.

Now for the second puzzle. Given that he won't be present to urge Othello on, why does Iago discourage the use of poison? There are two legal explanations. First, the law considered the use of poison sufficient to demonstrate the "malice forethought" required for murder. Poison would have eliminated the chance that Othello's killing was merely manslaughter.⁵² If the killer uses poison, the law will reject the claim of sudden rage. By contrast, Iago's recommended method—strangulation—would be perfectly consistent with the kind of impulsive killing that constituted manslaughter, for which Iago could not be convicted.

In addition, there was a special complicity rule just for poisonings, an exception to the basic rule that presence is required to be a principal. Coke states the rule in the *Second Part of the Institutes of the Laws of England*, published shortly after Shakespeare's death: "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."⁵³ Coke cites one pertinent precedent: *Vaux's Case*, decided in 1591.⁵⁴ William Vaux was convicted for giving his victim, Nicolas Ridley, a substance, "cantharides"—a preparation from the blister beetle used as a male aphrodisiac ("Spanish fly"), but highly toxic⁵⁵—that Vaux said would help Ridley bear a child with his wife but which instead killed him. 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."⁵⁶

The logic 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 many murders by poison. The report in *Vaux's Case* contrasts the traditional dictum, as cited by Frederic William Maitland, that "the law will suffer a mischief rather than an inconvenience" by saying that it would be both "inconvenient and mischievous" to let the poisoner go unpunished.⁵⁷ Requiring the principal to be present at a poisoning would be mischievous for letting a guilty party go free and inconvenient for creating a contradiction in the law.

Thus, if Othello had used poison, then the fact that Iago was not present at

the scene of Desdemona's death would not guarantee that Iago was merely an accessory. If he were a principal, none of the discussed limitations on liability would apply: Iago (1) could be convicted (a) of murder even if Othello were guilty of only manslaughter and (b) of petty treason even if Othello were guilty of only murder or manslaughter; and (2) he could be convicted even if Othello were not convicted because Othello (a) committed suicide, (b) died resisting arrest, (c) fled the jurisdiction, (d) won an insanity defense, or (e) was granted a royal pardon. 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." In other words, he would be morally guilty of a "contrived murder" (1.2.3) but would have committed none in the eyes of the law.⁵⁸

Of course, even with the poison exception, it is not certain that Iago would have been a principal. The exception need not make *everyone* involved in a poisoning a principal. Years later, in the *Third Part of the Institutes*, Coke describes the poison exception as applying only to one who "layeth or infuseth" the poison.⁵⁹ Iago might have remained a mere accessory if he merely brought the poison to Othello, who placed it in food or drink that Desdemona would ingest.

Yet the basic point remains. Coke's statement that, absent presence, only one who "layeth or infuseth" the poison was a principal is his subsequent gloss, published after 1628 and not available when Shakespeare wrote *Othello*. William Staunford's 1557 *Les Pleees Del Coron*, the first textbook on English Criminal Law, makes no mention of the poison exception to the presence requirement, so *Vaux's Case* appears to have invented the exception.⁶⁰ As Coke's earlier report of the case does not contain the "layeth or infuseth" dictum, it would appear that at the time Shakespeare wrote *Othello* (within the period 1601–4), the only certainty the law offered was that a person could not be a principal if he was absent from the crime's commission unless the means of killing was poison. Thus, at the time, one planning to be absent from the commission of a murder he or she encouraged would have a strong reason to prefer any means but poison—to guarantee staying on the accessory side of the line.

In any event, even if Coke's later interpretive gloss governed, if Iago had provided poison, he could not be certain that Othello would not have involved him in placing it. Iago could not easily have refused such a request, and his participation in "laying or infusing" the poison would have certainly made him a principal.

Even though Shakespeare knew some law, we should wonder if he knew the

criminal law that I have just reviewed. Did he know of *Vaux's Case*? I have located no direct evidence; I can only speculate. But the timing is interesting. The date of the decision in *Vaux's Case* is 1591, during Shakespeare's writing career but well before he began *Othello*, which was 1601 at the earliest. The first printed report of *Vaux's Case* is Coke's in 1604, while Honigmann says the play was most likely written from mid-1601 to mid-1602.⁶¹ Others date the play as late as 1604,⁶² but more salient is the fact that we know that legal knowledge of the day did not depend solely on printed reports. Lawyers orally passed on "common learning" and circulated their handwritten reports of cases.⁶³ So the legal community could have known of the case before Coke's report. Moreover, as noted, murder-by-poison was a terrifying news item of the period. Unless Shakespeare received his legal knowledge strictly from printed works, it is not difficult to imagine his interest in a case where a man is hanged for supplying a poison he represents to the victim as the aphrodisiac he needs to father a child.⁶⁴

Thus, Shakespeare mostly follows Cinthio's story but removes Iago from the scene of the crime he worked so hard to bring about because Iago would otherwise be a principal, guilty of murder despite Othello's death, flight, insanity, pardon, or successful plea of manslaughter. Similarly, Shakespeare makes Iago reject the method of killing that everyone expects this villain to use—poison—to preserve his status as accessory. And it works. Given Othello's suicide, English law would have made it impossible to convict Iago of Desdemona's murder.

4. Conclusion

Othello matters to law because it brilliantly illustrates some perpetually vexing problems in the criminal doctrine of complicity. It is difficult enough to define the responsibility of one who aids or encourages crime in the typical case, where that secondary actor is less morally responsible for the crime than the principal who carries it out. Yet through Iago, the play vividly shows that an encourager of crime can be more responsible for its occurrence—more monstrous—than the one he encourages.

In turn, a legal frame matters to the interpretation of *Othello*. The tragedy occurs because Othello denies Desdemona and Cassio the legal procedures that previously vindicated him from a false charge. And law helps us understand Iago's actions. He avoids being present at the scene of Desdemona's killing and dissuades Othello from using poison in order to preserve his status as an accessory, which allows him to avoid criminal liability for Desdemona's death

under a variety of scenarios, including the one that occurs—Othello's suicide. Iago's brilliant deviousness allows him to manipulate law as well as people.⁶⁵

NOTES

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1. For an argument that Shakespeare was generally uneasy with law and legal procedures, see Richard Strier's essay in this volume.

2. Daniel J. Kornstein, *Kill All the Lawyers? Shakespeare's Legal Appeal* (Princeton, NJ: Princeton University Press, 1994), 15–20; W. Nicholas Knight, *Shakespeare's Hidden Life: Shakespeare at the Law, 1585–1595* (New York: Mason and Lipscomb, 1973).

3. Kornstein, *Kill All the Lawyers*, 14–15.

4. *Ibid.*, 15. See generally Lorna Hutson, *The Invention of Suspicion: Law and Mimesis in Shakespeare and Renaissance Drama* (Oxford: Oxford University Press, 2007).

5. Kornstein, *Kill All the Lawyers*, 15.

6. See Richard Helmholz, "Shakespeare and the *ius commune*," unpublished manuscript, May 2009, on file with the author.

7. All references to the play are to William Shakespeare, *Othello*, ed. E. A. J. Honigmann, Arden Shakespeare, 3rd ed. (Walton-on-Thames, UK: Thomas Nelson, 1996).

8. *Ibid.*, 217n.

9. For an English translation, see Geoffrey Bullough, *Narrative and Dramatic Sources of Shakespeare* (New York: Columbia University Press, 1957–65), 7:241–52, as cited in Honigmann, *Othello*, appendix 3, 370–86.

10. See Samuel Johnson, *Johnson on Shakespeare*, ed. Walter Raleigh (Oxford: Oxford University Press, 1908), 201.

11. See, e.g., Honigmann, introduction to *Othello*, 62–64; Harold C. Goddard, *The Meaning of Shakespeare* (Chicago: University of Chicago Press, 1960), part 2, p. 81.

12. See Sir Edward Coke, *The Third Part of the Institutes of the Laws of England* (London, 1644), cap. 12, 61–62; also J. B. Post, "Ravishment of Women and the Statutes of Westminster," in *Legal Records and the Historian*, ed. J. H. Baker (London: Royal Historical Society, 1978), 150–60.

13. "Overt" invokes an element of a criminal attempt, while "test" refers to proof, trial, and evidence. See Honigmann, *Othello*, 142nn.

14. See Richard Cosin, *Apologie for Sundrie Proceedings by Jurisdiction Ecclesiastical* (London, 1593), part I, chap. 2, p. 20.

15. See Coke, *Third Part of the Institutes*, cap. 27, 89; also B. J. Sokol and Mary Sokol, *Shakespeare, Law, and Marriage* (Cambridge: Cambridge University Press, 2003), 141–42. Divorce *a mensa et thoro* was not a complete legal severance of the marriage; the parties were not free to remarry.

16. Rodrigo also refers to his “unlawful” solicitation of Desdemona. 4.2.201.

17. See John Money, “Othello’s ‘It is the Cause . . .’: An Analysis,” *Shakespeare Survey* 6 (1953): 94.

18. See Honigsmann, *Othello*, 307n17.

19. Finally, after Desdemona’s death, Cassio says to Othello, “I never gave you cause” (5.2.296).

20. See M. R. Ridley, introduction to William Shakespeare, *Othello*, ed. M. R. Ridley, Arden Shakespeare, 2nd ed. (London: Methuen, 1958), lxix (“If Iago’s plot does not work fast it will not work at all”).

21. See, for example, 1.1.32. The “ancient” is an older term for the rank of ensign, the color bearer of the company, who must be a person of particular courage, well liked and trusted. See Paul A. Jorgensen, *Shakespeare’s Military World* (Berkeley: University of California Press, 1956), 107–9.

22. See 1.3.295; 2.3.173; 5.2.71; 5.2.150. For a discussion of “honest” and “honesty” in *Othello*, see William Empson, *The Structure of Complex Words* (Cambridge, MA: Harvard University Press, 1989), 218–49.

23. See note 15 above.

24. In the final scene, when Desdemona begs for a lesser punishment—“banish me” (5.2.77)—she plausibly refers to the separation the law permits after this form of divorce.

25. See Hutson, *Invention of Suspicion*, 325.

26. Ben Jonson, *Every Man in His Humour*, ed. Henry Holland Carter (New Haven, CT: Yale University Press, 1921), 226.

27. I thank Paxson Williams for bringing this comparison to my attention.

28. Coke, *Third Part of the Institutes*, cap. 27, 89.

29. See Sir William Blackstone, *Commentaries on the Laws of England* (Philadelphia: J. B. Lippincott, 1893), book 4, chap. 3, p. 352.

30. Coke notes that “accessories sequitur naturam sui principalis.” *Third Part of the Institutes*, 139.

31. See Larry Alexander and Kimberly D. Kessler, “Mens Rea and Inchoate Crimes,” *Journal of Criminal Law and Criminology* 87 (1997): 1138.

32. See James Fitzjames Stephen, *A History of the Criminal Law of England* (London, 1883), 3:8, emphasis added. A second reason is that we cannot legally know Iago intends Desdemona’s death until he speaks this line, because he previously (3.3.477) declared, however disingenuously, “let her live.”

33. See Sanford H. Kadish, “Complicity, Cause, and Blame: A Study in the Interpretation of Doctrine,” *California Law Review* 73 (1985): 323, 385; *People v. McCoy*, 25 Cal.4th 1111, 1122, 24 P.3d 1210, 1217 (2001).

34. See Coke, *Third Part of the Institutes*, cap. 8, 55.

35. See Hutson, *Invention of Suspicion*, who argues that Shakespeare and contemporary writers elicit from audiences the dual perspectives of one who knows all that the play reveals and of one who, like a jury, knows only what can be subsequently proved.

36. Kadish, "Complicity, Cause, and Blame," 386.

37. See Coke, *Third Part of the Institutes*, cap. 8, 55: "Manslaughter is a felony, and hereof there may be accessories after the fact done; but of murder, there may be accessories, as well before, as after the fact."

38. For petty treason, women were burned while men were drawn (dragged) to the gallows and hanged. See Coke, *Third Part of the Institutes*, cap. 2, 20, 21.

39. Matthew Hale, *The History of the Pleas of the Crown/Historia Placitorum Coronae* (London, 1690), chap. 29, "Concerning Petit Treason," 379.

40. See Coke, *Third Part of the Institutes*, cap. 64, 139.

41. John MacDonell, *The Law of Master and Servant* (London: Stevens, 1883), 38, 34.

42. See note 21 above.

43. On Westminster Primer, cap. 14, Coke states: "For it is the ancient and fundamentall maxime of the common law, *juri non est consonum, quod aliquis accessories in curia regis convincatur, antequam aliquis de facto fuer attinctus*," meaning it is not the law that any accessory can be convicted in the king's bench before someone else is attainted of doing the act. See Sir Edward Coke, *The Second Part of the Institutes of the Laws of England* (London, 1644), 183. See also 184: "[T]he charge of the jury is, that if they find the principall not guilty, they shall find the accessory not guilty also."

44. The rule was abandoned by the time of Blackstone. See Blackstone, *Commentaries*, book 4, chap. 3, p. 356.

45. Noting a parallel risk regarding Cassio, Iago says (5.1.20–22): "[T]he 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.

46. Iago also shows himself to be knowledgeable of poppy and mandragora (3.3.333–36), which can be used as poisons. See Edward Tabor, "Plant Poisons in Shakespeare," *Economic Botany* 24 (1970): 81, 84–85.

47. I thank Richard Strier for pointing out this interpretation to me.

48. I thank the anonymous referee for this point.

49. Coke, *Third Part of the Institutes*, cap. 7, 47, 48. Coke is sufficiently concerned about killing by poison that "for the better finding out of this horrible offense," he lists, at 52, seven known poisons (in a legal treatise!). Coke also notes, at 48, that for some period of the early sixteenth century (before Shakespeare), murder by poison was treated as treason and punished more harshly than other murder—by boiling to death.

50. Bullough, *Narrative and Dramatic Sources*, 7:383.

51. As late as act 5, Iago is still brilliantly improvising to avoid discovery. He appears at the scene of Cassio's ambush in night attire, as if from bed (5.1.47; see Honigsmann, *Othello*, 299n), and he throws suspicion onto Bianca (5.1.85–86, 104–20).

52. Coke, *Third Part of the Institutes*, cap. 7, 51.

53. Coke, *Second Part of the Institutes*, 1:183.

54. Pasch. 33 Eliz.: 76 *English Reports*, 992.

55. See A. Polettini, O. Crippa, A. Ravagli, and A. Saragoni, "A Fatal Case of Poisoning with Cantharidin," *Forensic Science International* 56 (1992): 37; L. C. Nickolls and Donald Teare, "Poisoning by Cantharidin," *British Medical Journal* 2 (1954): 1384.

56. 76 *English Reports*, 993.

57. See F. W. Maitland, ed., *Year Books of Edward II*, vol. 1, 1 & 2 Edward II A.D. 1307–1309 (London: Bernard Quaritch, 1903), xviii–xix ("Our old lawyers were fond of declaring that 'the law will suffer a mischief rather than an inconvenience,' by which they meant that it will suffer a practical hardship rather than an inconsistency or logical flaw"). See the discussion in Bradin Cormack, *A Power to Do Justice: Jurisdiction, English Literature, and the Rise of Common Law, 1509–1625* (Chicago: University of Chicago Press, 2007), 174.

58. Note the parallel to Shylock in *The Merchant of Venice*, who seeks to kill Antonio by enforcing his contract rights, yet without committing a crime. See Richard A. Posner's essay in this volume, where he notes: "[Shylock] had no intention of killing Antonio unless the court ruled that he was legally entitled to do so" (p. 150).

59. Coke, *Third Part of the Institutes*, cap. 64, 138.

60. I thank Jacob Corré for his extraordinary assistance on this point.

61. See Honigmann, *Othello*, appendix 1.

62. Honigmann reviews (but rejects) scholarly work dating *Othello* as late as 1604. *Ibid.*

63. See J. H. Baker, *The Law's Two Bodies: Some Evidential Problems in English Legal History* (Oxford: Oxford University Press, 2001); also A. W. B. Simpson, *Legal Theory and Legal History: Essays on the Common Law* (London: Hambledon Press, 1987), 359–82.

64. News pamphlets of the period show an interest in London in murders committed elsewhere, particularly poisonings. In 1604 a news pamphlet recounted a poisoning murder in the County of Chester (today Cheshire), noting the need to correct "the rumours which ran up and down the streets of London" concerning the murder. See D. C. Collins, *A Handlist of News Pamphlets, 1590–1610* (London: South-west Essex Technical College, 1943), 67–68. The murder in *Vaux's Case* occurred in Northumberland, which is on the Scottish border, but Cheshire is the northernmost county on the Welsh border, so news could obviously travel great distances.

65. See Strier's essay in this volume.

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