

Rules and Textual Construction of the Vocational Practices of Actors and Lawyers in Early Modern England

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Abstract

This essay examines the interaction between the law and the theatre in early modern England. It argues that, although these represented different social actions and therefore two separate universes of discourse, they closely interacted in many ways (it is well known, for instance, that theatrical performances were one of the activities of the Inns of Court), thus creating opportunities of cross-fertilization. Furthermore, both the theatrical and the legal practice were divided between the comparative 'freedom' of oral performance and the equally comparative 'stability' of written texts. Indeed, both the actors' and the lawyers' training made use of written texts and performance styles and the written texts recorded for the lawyers' exercises closely resemble theatrical 'scripts' of various kinds. A further aim of this essay is to consider the written texts of the legal exercises in light of the issue of authorship. These, no less than the texts circulating in the theatre, were indeed collaborative texts, often constructed by combining plots and patches of various origin. The legal exercises were certainly a mandatory part of the law students' training and were perhaps meant to be used as library material in each of the Inns. Equally uncertain is whether their written versions were freely taken jottings or commissioned reports, reviewed by a reader or by each moot judge involved in the activity.

Keywords: Collective Authoship, Lawyers, Players, Text Construction, Training Exercises.

1. *Preliminary*

There is a sentence in *Hamlet* which might ideally be placed as a road sign at the beginning of that path which leads to an appreciation of the mutual relationships between the theatre and the law in the English Renaissance. It is a path along which I was led by Shakespeare's works and which is proving to be richer and more inspiring at every step. The sentence is spoken by Polonius at the end of the speech in which he introduces the players: 'For the law of writ, and the liberty, these are the only men' (*Hamlet*, II.ii.399). Commentators have usually found this sentence difficult to explain, but most have interpreted it as meaning 'for plays composed according to the rules and

plays written in complete freedom from them' (Jenkins). But the meaning of the sentence may be different. It may be read as an apt definition of the actors' trade, divided as it is between written scripts and comparatively free performance styles, acquired through experience and practice. In the theatre, moreover, as time passed and the plays in the repertoire grew in number and complexity, one can imagine that the practice of rehearsing small scenes to adjust actors' timing in delivery or movements ('the liberty') became increasingly necessary, as did written notes, cues and lists of entrances for prompters (book keepers) and actors ('backstage plots' in the terminology of Stern 2009 and 'playhouse plots' in Pugliatti 2012, in this volume), which may be looked upon as part of 'the law of writ' and which were of help in the repetition of the theatrical event. But Polonius's words may also be read as an allusion to an actorial practice which developed impromptu techniques and therefore a high degree of 'liberty' which almost completely disregarded the written text, as actors of the *commedia dell'arte* did.

For the purposes of this article, however, I wish to suggest that the same kind of twofold activity, wavering between the comparative 'freedom' of an oral performance and the equally comparative 'stability' of a written text can be discerned in the legal learning exercises which were transformed from oral performances at the Inns of Court into written notes circulating among the students with the object of improving their future oral skills as lawyers. Both the theatrical and the legal practices, although representing different social actions, were divided between 'writ' and 'liberty', since both made use of written scripts and performance styles, and both were meant to be used again for different purposes on different occasions. I also wish to argue that in early modern England the law and the theatre were, in fact, two separate but certainly not unrelated universes of discourse; that both the training of actors and that of lawyers made use of written texts and performance styles and that the written texts in which the training exercises of lawyers are recorded closely resemble theatrical 'scripts' of various kinds. Furthermore, there was between these two areas a close interaction, which may well have created constant opportunities of cross-fertilization. My further aim is to consider the written texts that were used as legal exercises in the light of the issue of authorship. Here I shall try to answer a series of questions. Were they freely taken annotations? Were the written exercises a compulsory part of the training and therefore organized in their written form and reviewed by a reader or by each moot judge involved? Were they kept for consultation within the Inn or could they become the personal property of apprentice lawyers who might require them? From the small number of collections handed down to us it is my conjecture that, as happened with the 'patches' of theatrical scripts, they were meant to be used within the premises, in this case as library material.

2. *The Theatre and the Law*

We have documentary evidence that members of the legal profession were actually involved in theatre practice, and that the college halls belonging to the institutions forming the 'Third University' – the Inns of Court and the Inns of Chancery – often hosted performances.¹

These institutions, which were initially devised to meet law students' needs for accommodation during the terms when the Courts of Westminster were in session, also devised and organised discussions and oral exercises in legal practice. These were regarded as a suitable training for the bar, for they dealt with civil law as opposed to the more philosophically oriented studies traditional at Oxford and Cambridge, based as they were on continental syllabuses.² It should be added that the Inns of Court also offered the same educational curriculum to gentlemen of the ruling classes, who mixed freely with the apprentice lawyers. R.R. Pearce, one of the first modern historians of the legal profession in England, while admitting that the Inns were established chiefly for the legal profession, pointed out that these colleges were also attended by 'the youth of riper years' of the nobility and gentry to whom necessary instruction in the principles of the Law was to be imparted. To support his assertion, Pearce quotes John Fortescue, a fifteenth-century lawyer, who, in his *De laudibus legum Angliae*, says:

So that for the endowment of virtue and abandoning of vice, knights and barons, with other states and noblemen of the realm, place their children in those inns, though they desire not to have them learned in the laws, nor to live by the practice thereof. (Fortescue 172)

More recently, A. Arlidge reports that in 1574 there were 176 practising barristers at the Inns, while 593 other gentlemen, who were not interested in the law as a profession, attended the four Inns and mixed with the barristers. Both groups had dealings with the theatre, both as spectators and as authors (2000, 28).

It is well-known that masques and plays were staged at the Inns. Hall's *Chronicle*, for instance, gives the first account of the reception of a masque performed in 1525, which caused controversy and exile for the main 'actor'. The mask had been written about twenty years earlier by John Roo, Sergeant at Law, and was performed at Gray's Inn, of which Hall was a member. Apparently the masque highly displeased Cardinal Wolsey, who found himself indirectly alluded to, though the masque had been written before he acquired influence at Court.³ John Foxe reports the event and the consequence of the Cardinal's displeasure with Simon Fishe, then a gentleman of Gray's Inn who, being very critical of the Church of Rome, had volunteered to play the part that had offended the Cardinal and apparently paid the price for it:

... in which play partly was matter against the Cardinall Wolsey. And where none durst take upon them to play that part, which touched the sayd Cardinall, thys foresaid M. Fish tooke vpon him to do it, whereupon great displeasure ensued agaynst him, vpon the Cardinals part: In so much as being pursued by the sayd Cardinall, the same night that this Tragedie was playd, [he] was compelled of force to voyde his owne house, & so fled ouer the sea vnto Tyndall: vpon occasion wherof the next yeare folowyng this booke was made (beyng about the yeare 1527) and so not long after in the yeare (as I suppose) 1528. was sent ouer to the Lady Anne Bulleyne, who then lay at a place not farre from the Court. Which booke her brother seyng in her hand, tooke it and read it, & gaue it her agayne, willyng her earnestly to giue it to the kyng, which thing she so dyd. (Foxe 1576, 719)⁴

Throughout the Renaissance, the English theatre was closely connected with the Inns and many examples of fruitful cultural exchange between the theatre and the law might be quoted. On 28 February, 1587, for instance, an entertainment (probably a masque) with prominent metatheatrical and metajudicial characteristics was presented to the Queen by the people of Gray's Inn, at Greenwich Palace. The masque served as a sort of prologue to the staging of the tragedy *The Misfortunes of Arthur*; its contents survive in an Introduction 'penned by Nicholas Trotte'.⁵ The subject of this entertainment was precisely the close relationship between the theatre and the law. In the heading, the initial situation is described as follows: 'Three Muses came vpon the Stage apprellled accordingly bringing fiue Gentlemen Students with them attyred in their vsuall garments, whom one of the Muses presented to her Maiestie as Captiuies the cause whereof she deliuered by speach as followeth'. The Introduction presents Astrea, one of the three Muses who figure in the plot, defined as 'Shee that pronounceth Oracles of Lawes', in order to 'prepare fit seruants for her traine'. At first she scorns 'The noble skills of language and of Arts', that is, linguistic and stylistic skills which are the distinctive traits of the art of telling/representing stories, and only later realizes that they might also teach wisdom. Poesie, the second Muse in the masque, held in disdain by Astrea, is left confined to the 'scorned' place where Folly, the third, stands. Instead of 'The noble skills of language and of arts', Astrea can offer the students:

Forsooth some olde reports of altered lawes,
 Clamors of Courts, and cauils vpon words,
 Grounds without ground, supported by conceit,
 And reasons of more subiltie then sense,
 What shall I say of Moote points straunge, and doubts
 Still argued but neuer yet agreed?
 And shee, that doth deride the Poets lawe,
 Because he must his words in order place,
 Forgets her formes of pleading more precise,
 More bound to words then is the Poets lore ...

When the captive students realize how much they can profit from literary studies, they 'take the pen' and apparently have improved their style so much that they can be called Poets. One of the gentlemen takes his turn with a speech addressed to the Muses, specifying that

Each word of lawe, each circumstance of right,
 They hold the grounds which time & vse hath sooth'd
 (Though shallow sense conceiue them as conceits)
 Presumptuous sense, whose ignorance dare iudge
 Of things remou'd by reason from her reach.
 One doubt in mootes by argument encrease'd
 Clears many doubts, experience doth object.
 The language she first chose, and still retaines,
 Exhibites naked truth in aptest termes.
 Our Industrie mantaineth vnimpeach't
 Prerogatiue of Prince, respect to Peeres,
 The Commons libertie, and each mans right:
 Suppresseth mutin force, and practicke fraude.
 Things that for worth our studious care deserue.
 Yet neuer did we banish nor reiect
 Those ornaments of knowledge nor of touns.
 That slander enuious ignorance did raise ...

The very fact that legal disputes were rendered in theatrical form as well as the content itself of the passages quoted above, where legal language is compared to poetic language, show the link that existed between the two distinct, though comparable, practices of juridical training and theatre training.

3. *Legal Exercises*

Readings, pleading exercises and moots were the collective activities which promoted and enhanced both professional competence in the legal profession and cultural competence in the education of the complete gentleman, who might become either a man of letters or a courtier with duties of governance.

Here it might be useful to describe briefly, as I have done elsewhere (2008), the structure of the collective learning exercises at the Inns that most closely recall the characteristics of theatre practice.⁶

In the Renaissance, a vital part of the activities consisted in the Readings, delivered in the Halls with great solemnity in the periods of the Lent and Summer vacations. These were a kind of seminar devised for the improvement of the apprentices but they were also attended by advanced professionals looking for guidance in their daily practice. The organization of the Readings was the responsibility of experienced judges, and their explicit aim was to maintain the high reputation of their respective Courts. These judges, living authori-

ties in the forensic profession, would select some important parts of a statute, analyse them in their relation to common law, and illustrate the arguments by reference to specific cases. In the history of the legal profession these readings were regarded as a useful means of showing what the common law was like before the enactment of the statute, which they explained in full detail to the students. The method was to explain the issues involved through brief cases which might have no more than two points, one at common law and another according to the statute. Qualities such as plainness and perspicuity in content and delivery were particularly appreciated in a Reader, whose task was also to clear the field of any specious interpretations of the statute. The manner of reading was rigidly codified into Orders, which suggests just how formal these occasions were considered to be. In time, however, they came to be accompanied by costly dinner entertainments that gradually became so important as to obscure the main aim of the meetings. This led to the suspension of the exercises, which had been so valuable and had earned so much academic respect for important jurists and judges and their respective institutions.

Pleadings were conflicting allegations which might be looked upon as evolutions of litigations, each concerned with a single issue. They were devised to set out some special grounds for not proceeding with the indictment. They were conducted in Law French *ore tenus* by a pleader in open court, after the abolition of original writs in personal actions. In the extant collections available each pleading exercise is reported with exchanges of speech allocated to different speakers as in a dialogue with alternate exchanges: the plea is followed by a replication, and sometimes by a rejoinder functioning as a retort, in a repeatable chain pattern. In the case of a plea the argumentation is carried to its final conclusion.

Moots, on the other hand, were the staging of an appeal case around a doubtful juridical issue, that might have different outcomes. The various ways in which the issue could be argued were raised hypothetically through a fictitious case and debated through conflicting opinions. In arguing the conflicting perspectives the mooters assumed that the relevant facts and evidence had already been made available by a first-degree judgement. What took place was essentially a game, based on the choice of the relevant system of law to be invoked and on the selection of relevant arguments. The *moot judge*, usually a barrister with at least ten years of teaching practice as a *reader*, was asked to pass judgement on juridical grounds with regard to the hypothetical appeal, but he also had to evaluate how convincingly the juridical issue had been argued and how the proposed moot question had been interpreted. In 1540, during the reign of Henry VIII, a report was prepared by Nicholas Bacon, Thomas Denton and Robert Cary on the constitution of the Inns of Court and the best kind of legal training for students. Bacon was called to the bar at Gray's Inn in 1533, where he was an 'ancient' from 1536, and became a bencher in 1550.

Thorne and Baker transcribed and translated from Law French the following description of a mootting activity:

[In the Lent and Summer vacations] every day at night, except Sunday, Saturday and some feast,⁷ before three of the elders or benchers at least, is pleaded and declared in homely law-French by such as are young learners some doubtful matter or question in the law, which afterwards an utter barrister doth rehearse and doth argue and reason to it in the law French; and after him another utter barrister doth reason in the contrary part in law-French also; and then do the three benchers declare their minds in English; and this is it that they call mootting. And the same manner is observed in the term-time. (1990, Lx)

By digging into different collections of mootable cases located in a small number of libraries, law historians have so far found only a small number of copies of these collected exercises.⁸ Their content consists of issues debated without any solution, and we can only suppose that the reason for committing them to writing was that they might be used in future supervised learning exercises.

These exercises present the smallest (possible) units of debatable legal points, and lead to the enactment of a line of legal reasoning and the attribution of arguments to different speakers who, through the conflicting parties, interpret the opposing rules or statutes. Each position is expressed in form of a summary, forming a text not dissimilar to the plot sketches (*scenari*) of the *commedia dell'arte*. The passage quoted below contextualises a dispute between two 'parceners' (i.e., partners or sharers) who have one tenant in common; one of them purchases both tenements (after the statute) and the problem (*Quaestio*) is: 'may her coparcener distrain [i.e. constrain to perform some obligation] and make a good avowry [i.e. advocacy]?' The issue is debated and the report summarizes the discussion in the usual way: 'Some say that she may [distrain] on her coparcener, because the lordship is in both of them and one cannot defeat the right of the other ...' (Appendix IV, xxxiii), then the opposing view is examined introduced by '*Contra*'. Then the conclusion is introduced by the title '*Item*':

If three tenants hold of one lord by the services of three suits to his court every year, and one of the tenants purchases the tenements from whence the suit is due, the due is extinct. It is much stronger argument if two parceners have one tenant who holds of them by certain service, namely by suit, and one of them purchases the tenements from whence the suit is due, the suit is extinguished with respect to each of them (which is true). (Appendix IV, xxxv)

The passage is a comparatively unusual fragment with the insertion of notes and mnemonics by the apprentice lawyer taking notes on the moot case dealt with above, and reported in two other manuscripts in a different, less personalized version. The following passage, an issue concerning A. and R., is

contained in a Cambridge manuscript (MS. Mm. 1. 30 ff.7, 37 v) and it can be read as the 'Argument' to be developed from memory for further reflection:

A. tient de R. certayne tenementz a terme de vie ... A. Porte bref dentrusion, *Quaestio* sil recouera encontre son fet demene?

A. tient de R. certayne tenementz e lese meme les tenementz a R. ... A. Porte bref dentrusion *Quaestio* sil recouera encontr son fet demene?

Quaestio Si dues parceners eyent un tenant le quele dayt suit a lour court et lauter parcener achate le tenement de quell tenement la suit est du, ore est a demaunder si lun parcener puit destreyndre son parcener pur la suite? (1990, xxxiii)

This is an early example and is reported in two different collections, British Library MS Hargrave 297, fol. 108 and British Library MS Stowe 386, fol. 118, where it is exceptionally followed by a disputation, a fact which (and I would agree with Thorne and Baker on this point) seems to connect *moots* and *readings*, because, despite their different canonical forms, they have a similar educational function. The fact that we can find moots in different collections, reported in different ways, suggests a possible transmission through oral performance/tradition or different enactments of the same exercise by different mooters on separate occasions.

In MS Harley 1691 case n°. 71 is reported, in Thorne and Baker's translation: first it presents the juridical issue (the 'Argument') and then it gives a summary of the dialogue between two mooters:

[71] In a *praecipe* the tenant vouches himself to save the tail, and recovers in value. The question is: by his judgement, is the tenant to be called tenant in tail of the land which is in his hands [as compensation], without suing execution?

At this point the arguments of the opposing parties are reported, together with the names of the mooters, in indirect speech:

Baker said he is, because he has no means of suing execution of his land; for he cannot sue *extendi facias* or *habere facias advalenciam* against himself, and therefore it shall be said to be executed by the judgement without suing further.

Kebell to the contrary: the reason why someone may vouch himself is for the advantage of the issue and not for his own advantage, for it is all one to him whether he has the land in fee simple or in tail. As to what has been said that he may not sue execution against himself, that is not so; for he shall have a special writ upon the matter to extend the land and deliver in execution what should be delivered. Similarly ... ; therefore he must [sue execution]. (II, 192)

Another case transcribed and translated from MS Hargrave 87 is of some interest since it both confirms the structure of the exercises (which opens with the exposition of an 'argument') and also presents again, among the participants, *Kebell* as one of the mooters:

[11] Two persons who are severally seised of two acres of land, namely each of one acre unto himself, or two tenants in common, make a lease for years or for life reserving 10s. rent

Grene, reader: the tenant shall pay 10s. to each of them.

Fruoyk : the rent shal be apportioned according to the intention et. However, in the case of an entire service, such as a sparrowhawk, each shall have the whole.

Brudenell : it is all one, because there are several reservations according to their estates etc.

Kebell : each shall have the entire rent as they have the reversion, for although the works are joint they shall be taken according to their interest in the reversion, and that is as if each had reserved the entire rent to himself ... (II, 204)

We do not know for certain what parameters were used to evaluate the exercises, but it seems to me that most of the practices adopted nowadays in the training of Common Law jurists are not dissimilar from and not less 'theatrical' than those of the early modern period; furthermore, their relevance to any dramatic poet in any period could also be demonstrated.

The moot judge's attention might have been directed, as it would nowadays, towards the following elements:

content: juridical intuition and analysis of the sources, intrinsic relevance and fluidity in quoting them and the ability to sum up one's thesis so as to focus on and clarify most of the issues, whether social or personal, which can be present, for example, in the plot of a play.

strategy: the relevance of questions of strategy in the presentation of juridical arguments may also apply to the deployment of thematic motifs in the plot of a play;

ability to answer both the objections from the judge and the rejoinders of the other party amounts, in dramaturgical terms, to the ability to construct effective dialogues;

style: all questions of style – ability in argumentation and knowledge of the correct procedure, for example – might be usefully compared to the playwright's knowledge and practice of the different dramatic genres and their canonical rules. This aspect, however, was less decisive when judgements were given on mooted activities.

Readings were cancelled between 1642 and 1660, and it was practically impossible to revive them afterward despite some effort (1660-1676) in this direction. The practice of mooted was not completely interrupted during the Interregnum, but it was certainly neglected after the Restoration, which limited them to mere form, still relying on basic knowledge of forms of pleading and a sure competence of Law French. The Inner Temple was the last to abandon the practice of the exercises and everything ceased in the eighteenth century, under the severe blows of Sir William Blackstone. In a changed cultural ethos, attuned to more philosophically inclined times, and under the influence of the

Continental Enlightenment, which despised 'excessive' English pragmatism and vocationalism, mooting ceased to play any part in legal training, despite some individual attempts at reviving it. With the foundation of the Gray's Inn Moot Society, by Judge J.A. Russell, Q.C. (Queen's Counsel), a Bencher of the Inn, in 1875, the practice started again in the old spirit but didactically it was more carefully planned and graded. The minutes of the Society record the historical fact that, while at the beginning members of the other Inns of Court and Chancery argued with Gray's Inn members, in the first decades of the twentieth century the society was run only by Gray's Inn members, probably because of their excessive numbers (Atkin, ed., 1924, Foreword).

The resemblance of the moots to the *scenari* of the *commedia dell'arte* is made more perceptible by the way they are arranged in the collections of exercises, for they are identified by a number and by the kind of legal action which can most appropriately describe the issue under discussion. The function of these specifications is similar to that of the 'Argomento', which in some cases is prefixed to the text of the *scenari*. Most of the *scenari*, moreover, bear under the title an indication of their genre, such as 'Commedia', 'Tragicommedia', or 'Commedia pastorale', which can also be easily kept in mind and found in a repertory. The classification of the exercises meets the need for easy consultation by lawyers and jurists, which is realized through numbers and the indication of the legal issue.

Moreover, the legal parlance, as recently observed also by Boyer, could offer would-be playwrights an example of the persuasive effects of language on decision making. They also depicted real, recognizable social frameworks that could be worked with on stage since they provided credible contexts for dramatic situations and ready-made mechanisms of action for theatre plots (2007, 20-37). The analogies between the two fields afford a better understanding of the circulation of social energy in a relevant aspect of the early modern cultural paradigm, as is clearly demonstrated in the following passage, taken from a contemporary satirical poem describing the lifestyle of the Templars:

'Heere may I sit, yet walke to Westminster
 And heare Fitzherbert, Plowden, Brooke and Dyer
 Canuas a law case: or if my dispose
 Perswade me to a play I'le to the Rose
 Or the Curtaine, to one of Plautus Comedies
 Or the Pathethique Spaniard's Tragedies ...'
 (Guilpin 1598, Satira Quinta, ll. 25-30)

4. Moots, Scripts, Patched Texts and the Authorship Question

In the field of Renaissance drama, the search for combinable units highlights a practice of composition based on the collection of suitable 'theatergrams'. L.G. Clubb shows that this procedure is characteristic of the routines of the

commedia dell'arte, where it was transmitted through performance practices and written down in the *scenari*, which can be seen as endlessly variable combinations of elements taken from a traditional repertory (see also Andrews, 1991, 21-51). Clubb, however, also argues that these procedures constitute, to some extent, principles of construction which represent 'an international movement of playmaking':

Years of reading Italian scripted plays and *canovacci* preceding or contemporary to Shakespeare have gradually shown me an international movement of playmaking recognizable as Renaissance Drama, a technology consciously developed by writers and actors in various ways from common principles of construction based on a Latin footprint and employing material from both classical and medieval narrative and drama, shaped into movable theatrical units, or theatergrams, which grew over time into a repertory of combinable parts that became the common property of the European stage. The collection of re-shufflable pieces included types of characters, of relationships between and among characters, of actions and speeches, and of thematic design. (2010, 4)

At the end of the seventeenth century Andrea Perrucci, in the preface to the second part of his treatise *Dell'arte rappresentativa premeditata e all'improvviso* explained, in the Rules that immediately follow this excerpt, that the 'comici'

... non ignudi affatto di qualche cosa premeditata devono esporsi al cimento, ma armati di certe composizioni generali, che si possono adattare ad ogni specie di commedia, sono come per l'innamorati, e donne di concetti, soliloqui e dialoghi; per li vecchi consigli, discorsi, saluti, bisquizzi, e qualche graziosità, e perché ogn'uno d'essi v'abbia qualche regola, andremo discorrendo d'ogni parte di essa in particolare, con darne qualche esempio, acciò che ogn'uno a suo capriccio se la vada poi formando, e se ne serva secondo l'occasione. (1699, 103)⁹

Clubb's idea seems to be compatible with that of Stern (2009), who examines a different form of modular construction, achieved by combining pre-prepared patches. This, Stern argues, was the regular procedure in the construction of plays in the Elizabethan and Jacobean professional theatre. She discusses at least two forms of 'patchy' construction: the first is what she calls 'plot scenarios', that is, the plot summaries which used to be jotted down before or during the composition of plays either by the main author of the finished play, or by other professionals, frequently alluded to as 'plotters' (see also Pugliatti in the present volume); the second concerns the very construction of what we see as finished plays, which, she argues, was in the final analysis a combination of separate texts such as actors' parts (see also Palfrey and Stern 2007), prologues and epilogues. These might change from one production to the next and thus may have been written by several hands and for several occasions: plays within; songs, often composed to well-known popular tunes so as to actively engage the audience; masques, which constituted another form of play within, etc. Texts – even well-made plays – are, Stern argues, the result

of such an *ars combinatoria*, as regards both subject matter and language, a procedure which recalls the way legal exercises were composed. Texts, as well as performed plays, are built up through an accumulation of parts, each of them with a 'physical economy that facilitates not only intra-play but also inter-play references' (Palfrey and Stern 2007, 7). This forces us to reconsider the reciprocal intertextual relations of early modern plays. These were made up of loose sheets, commissioned, perhaps shuffled, but certainly always circulated in advance, before the full text reached the book keeper, who was in charge of the management of the performance as a collective event, even if he was invisible to the audience, unlike normal practice in the medieval drama, where the prompter was in full sight on stage. The close connection between dramatists and specific companies would also imply obvious casting practices such as the playwrights' writing specifically for individual actors, though it might seem odd that no actors' names are given to the *dramatis personae* in written plays. This may well have been caused by the fact that the publication of a play's text was considered a quite different activity from the staging of the same play: a possible indirect confirmation of this might be the evidence of a process of revision to which some plays were clearly subjected, with the result that minor collaborators such as plotters and patch-writers did not appear on the title page. The activity of text revision for publication, if in fact it was considered a separate activity from staging, may lend new support to some philological-critical conjectures formulated for particularly problematic texts (for a treatment of this issue, as regards the first *Hamlet* quarto, see the introductory essay in Serpieri 1997).

Collaborative textual construction, as Pugliatti argues in the present volume, clearly poses the problem of authorship.

The analogy, at least in terms of construction, with legal learning exercises is particularly striking if the *scenari* of the *commedia dell'arte* are taken into consideration. Flaminio Scala collected and arranged his *scenari* for publication (1611); his texts consist of a plot summary (*Argomento*), a title, an indication of genre (*commedia, commedia pastorale, tragicommedia*, etc.), a list of characters and a list of props or costumes (*robbe*); the dialogic pattern indicates which characters are speaking and gives a summary of what each has to say to carry the story forward. The texts of the *scenari* are divided into three acts, which are in turn divided into scenes. Each scene details the entrances and exits of the various characters and, for each character, a very brief summary of the content of the exchanges, expressed in indirect speech (X says that, Y complains that, X answers that), not unlike what happened in the texts of the legal exercises.

Here is a fragment taken from Scala's *Flavio tradito*:

FLAVIO

vede Pedrolino, lo chiama traditore. Pedrolino non parla e li dà una lettera, la quale va a Graziano, facendoli cenno, senza parlare, che si parta. Pedrolino rimane. In quello

ARLECCHINO

domanda a Pedrolino la casa di Graziano. Pedrolino non parla. Arlecchino, ridendo, chiama l'oste.

BURATTINO

li domanda se diede la lettera. Pedrolino non risponde. Loro se ne ridono. Arlecchino chiama il Capitano.

CAPITANO

fuora, et intende Pedrolino esser quello che ebbe la lettera. Capitano li domanda ciò che ne fece. Pedrolino non risponde. Capitano lo squote, alla fine Pedrolino, come si svegliasse da un lungo letargo, tira un grido tanto forte che spaventa tutti, et entrano nell'osteria; e Pedrolino, come infuriato, si parte per strada, e finisce l'atto primo. (Testaverde, ed., 2007, 27)¹⁰

From my point of view the most interesting text is the one which appeared in Scala's 1611 collection under the title *Il marito* (*The husband*), as a few years later Scala used the *scenariò's* plot again to compose a regular comedy entitled *Il finto marito* (Scala 1618). This seems to be the final stage in a process which starts with the delineation of a stylized story which is carried forward by largely stereotyped characters, then improvised and subsequently further revised, till it reaches a complete written formulation, close to the modules of erudite comedy. In this and other similar cases, we do not know how much of the actors' 'improvised' speeches, when based on the *scenariò*, was incorporated in its full-length version.¹¹

The process is similar to that used ever since the Middle Ages, traces of which can be found as late as the eighteenth century. This process is outlined by Palfrey and Stern (see in particular 2007; chapters 1 and 2) in relation to individual acting parts, which were sometimes provided with indications for a correct performance, and distributed to the members of a company intending to stage a play. These separate parts may have been further elaborated by actors taking part in the performance after the main author had completed his task. When an author was working mainly for one company, the various parts were probably written for individual actors and might therefore have common characteristics. Stern has found in libraries in England, on the Continent, and in the USA material in support of this hypothesis: parts belonging to different works, stitched together in one new text, by the same main author. My comparison with the practices of legal education, then, applies to the last stage of the process, when an oral performance had already taken place in rehearsals and public entertainments, in the field of the theatre, and when moots had already been presented and discussed, in legal practice.

If Palfrey and Stern are right about the scripting and the distribution of parts for performance before the publication of the entire play was even planned, and if the scripting and the collecting were done in order to secure the possibility of further public performances, then an analogy can be drawn with the written records of collected mooting activities which were drawn up and kept for further study and elaboration in the field of legal education.

5. *Simulation for Educational Purposes*

A comedy bearing traces of a modular dialogic structure suggests that it may have derived from forms of non-scripted performance practice, from different rehearsed set pieces, that were functionally versatile enough to be employed for different stories and in different contexts of interpersonal relations. Therefore another type of relationship might be usefully hypothesised. That the Italian *commedie* were constructed by combining modules of both dialogue and plot is a fact. We do not know, however, whether – and to what extent – the dialogue actually performed onstage was derived from, or inspired by, written repertoires (the speech repertoires called *generici*, for instance) or whether it was the transcription of actual speeches and dialogues performed in various situations and contexts of interpersonal relations.

In the collections of legal exercises it seems that the only possible combination allowed was that of different sequences made up of mixed exercises which might have reflected either the personal mooting experience of their author, or some legal framework that was to be explored. This, at least, is what the few exercises which appear in two different collections seem to suggest.

As we have seen, an analogous manner of text construction by patches also entails new ways of conceiving and actuating theatre authorship in early modern England. Texts written in collaboration pose other radical questions about their authorship. Indeed, that collaboration – and not only in the construction of written texts – was the norm in Elizabethan and Jacobean plays is shown by several passages in Henslowe's papers and it is a fact acknowledged by critics and theatre historians. As G.E. Bentley says,

Collaboration is inevitably a common expedient in such a cooperative enterprise as the production of a play. Every performance in the commercial theatres from 1590 to 1642 was itself essentially a collaboration: it was the joint accomplishment of dramatists, actors, musicians, costumers, prompters (who made alterations in the original manuscript) and – at least in the later theatres – of managers. (1971, 197-198)

Stern takes the argument still further, arguing that when the dramatic text reached the stage of performance it was basically the result of a collection of scattered papers, notes and textual material of various origin, and probably composed by different hands.

Both legal and theatrical texts are incomplete: legal texts because the reports of the moot cases do not appear to be brought to any definite conclusion in respect of the legal issues involved, or they lack any judgment about the legal expertise of the apprentice lawyer; theatre texts because the theatre patches (theatergrams and *generici*, that is, the repertoires of speeches suited to various situations) which constitute the *scenari* are prepared with a view to making up a complete plot and find their ultimate meanings (and judgement) only when actually staged.

As was mentioned above, all these texts pose the problem of authorship. The apprentice lawyers who were often the anonymous editors of the collections of exercises were scrupulous about giving details that asserted the authoritativeness of these exercises through the authority of the people involved in each moot (especially the authority of the moot judges explicitly mentioned). They were obviously less interested in giving details about specific occasions, unless these were noteworthy for some special reason. We should also add that the circulation of the collections was limited to members of the Inns, and, at this stage in the history of the Inns, they basically constituted material to be consulted at the Inns themselves. They represented the contemporary social body in that the arguments sprang from the manners and actions of society itself, in its functions and in its dysfunctions; they were also part of an ideal sharing of knowledge among a limited group of professionals, and ultimately, through the discussion of various cases, their aim was to ameliorate any defective rules and clarify any doubtful areas which were sometimes highlighted by the application of the statutes.

It is not clear who the author of the collected texts was, but some conjectures might be made. It is possible that the task of collecting orally performed material was entrusted on each occasion to one or other of the apprentices by the body of students or by the moot judges and that the purpose was simply to make this material available to all the apprentices for individual perusal and reflection in the libraries of the Inns of Court and of Chancery; but it is also possible that this group appointed a single person who was responsible for collecting and distributing the transcriptions.

I have already commented on the composite nature of the group using these collections of exercises. They must have been compiled, however, by a more limited group of people, who specifically intended to undertake the career of barrister. Judging by the importance attributed to these collective activities in the Orders of the various Inns, the editors of the collections may even have had specific interests of an academic nature, their aim being to consolidate the good performance of their own college in open conflict with the others.¹²

The authorship of the *canovacci* of the *commedia*, too, is mainly collective, although the authors of the *scenari* played a prominent authorial role in reshuffling the literary material, which necessarily derived from their own collective, oral performance practice, previous to writing and, through this, explicitly directed towards facilitating the repetition of subsequent performances.

All these practices also cast doubt on the authorship of full-length plays, both those that have come down to us anonymously in the form of playhouse promptbooks – whether in manuscript or in print – and those that are attributed to one or more authors. When at least some parts of the text are recognizable as set modules, these seem to be, even in Shakespeare's plays in some cases, the result of standard pieces being reused, or the final products of adaptations of previous material.

Legal vocational training is in its turn attested by the albeit limited dissemination of books and notes taken for practical reasons by common lawyers during the performance of collective oral exercises. As the circulation of this printed material became wider, it became less important for apprentices to share lodgings. At the same time the other gentlemen attending the Inns became acquainted with material that also lent itself to a different use. My point is that the collections of notes were regarded as ‘common property’, like the unpublished and possibly authorless ‘common property’ of playwrights and actors. Consequently, promptbooks and legal exercises went to the printing house for merely practical uses. In the case of moots, the idea of authorship needs to be explored in terms of group participation and the close interrelations between knowledge and power within the group, and the way in which these factors were expressed through the written notes circulating in the Inns of Court.

Simulation for educational purposes is what the legal learning exercises were all about. But there is a further link between legal performance and theatrical performance: simulation for the purpose of educating the audience could equally and legitimately have been what was practised, or at least intended, in the theatre. To affirm that theatre entertainment had an educational side – as some playwrights in England and many *comici* in Italy did in their defences – would indeed have greatly contributed, from the point of view of both authors and actors, to that acquisition of moral and cultural legitimization which the theatre sought to achieve in reaction to the fierce antitheatrical debate which started in the 1580s and culminated with the publication of Prynne’s *Hystriomastix* (1632). The transposition of theatre practices to the field of the law, and *vice versa*, may have helped both audiences and authorities to achieve a better awareness of the need to acknowledge explicit didacticism as the recognized social function of the theatre.

¹ See the registers and manuscript collections of the four Inns, the Books of Rules, Orders and Regulations, primarily kept in the library of each Inn, and early authorities writing on the subject. Refer also to the Introduction to Thorne and Baker (1990), in the section ‘Collections of mootable cases and the moot books’, for a full account of manuscripts and their locations.

² In British Library MS Harl. 980, 153, as quoted by Pearce 1848, 143, a Law student at Lincoln’s Inn, a certain Thomas Gibbons, reports that Attorney General Noy, in a reading at Lincoln’s in 1632, stated that each Inn was a university in its own right and compared student curricula, giving the following useful details: at Oxford and Cambridge, ‘after a short abidance’ they got the title of Sophister, after four years that of Bachelor, after seven that of Master of Arts, after 14-19 that of Doctor; and comments: ‘all being specious and swelling titles’. At the Inns, after five years, the students were awarded the title of Mootmen, after seven or more the title of Barrister, then single Reader, later Apprentice at Law and after three or four years more, Sergeant at Law.

³ Wolsey's reaction makes it clear that the social danger which the theatre might constitute for those in power was perceived basically as occurring at the time of performance, when plays could attract and entertain full houses, thus becoming what today we would term 'mass communication media'.

⁴ The book in question was certainly Simon Fishe's, *The Supplicacyion for the Beggars* (1529), against the monastic orders of the Church of Rome in England, which Henry VIII must have been pleased to receive. The booklet had entered the country secretly, and was cleverly handed on to King Henry VIII by Ann Boleyn, who had received it from her brother. John Foxe dates the arrival of Fish's pamphlet to February 2, 1529. When the king learned that he had fled from the realm for fear of the Cardinal, he treated him in a most friendly manner and gave him his signet to protect him from another Cardinal, this time Sir Thomas More. Foxe's report of the life of this martyr of the reformed Church of England in his *Acts and Monuments* seems to endorse the version of Fish's wife, after her husband's death from plague in 1531, namely that the king himself had wanted to meet Fish personally in order to rehabilitate him.

⁵ Hughes (1587). In the facsimile edition of the text from which I quote pages are not numbered; therefore, no page number is going to be given after quotations.

⁶ It might also be worthwhile to point out that all these structured activities originated in the mediaeval rhetorical exercises called *disputationes*. These consisted of an initial reading, which stated the case under discussion, an enunciation of the legal issue containing the elements to be taken into consideration, practical illustrations for a fuller understanding of the case subject and matter, and final questions to test the level of acquisition achieved by the prospective lawyers at the end of the exercise. These structured activities, however, became, as time passed, less and less interactive.

⁷ These exceptions remind us of the periods when the theatres were closed and performances were forbidden in order to render to God what was owing to him in the form of prayers and ritual.

⁸ See the Harvard MS HLS MS 33, the Cambridge CUL MS Hh. 2.8, ff 115-120, discussed in Thorne and Baker (1990). The sources to consult regarding juridical culture are: the Year Books (1270-1535), reports of the activity of the Court of Common Pleas classified by year of reign; Nominative Reports (1550-1790); reports of judicial decisions of High Courts of Common Law, classified by author and available at least in the library of each respective Institution. In addition, there is the invaluable work done by the same Thorne and Baker with their transcription and translation from Law French, and by the subsequent historical work done and published by Baker alone (1991, 1996, 2000).

⁹ 'it is not by stripping oneself entirely of scripted materials that one should take up the challenge; rather, one should be armed with some general compositions that can be adapted to every kind of comedy, such as *conceitti* (literary conceits), soliloquies, and dialogues for the male and female lovers; or speeches of advice, discourses, greetings, speeches with double meanings, and some gallantries for the old men. Since there are rules for each of these, we will discuss every role in detail, with examples, so that anyone can create his own composition at will and use them as appropriate' (Engl. trans., 2008, 103).

¹⁰ 'FLAVIO At that, Flavio enters, sees Pedrolino, and calls him a traitor. Without a word, Pedrolino gives him the letter meant for Gratiano, and Flavio takes the letter and leaves.

ARLECCHINO Arlecchino comes out of the inn and asks Pedrolino where the house of Gratiano is. When Pedrolino does not answer, Arlecchino laughs at him and calls the host.

BURATTINO Burattino comes out and asks Pedrolino if he has delivered the letter, but Pedrolino does not answer. They joke around, and Arlecchino calls the Captain.

CAPT. SPAVENTO The Captain comes out and is told that Pedrolino is the one who was to deliver the letter. The Captain asks him what he did with the letter. Still Pedrolino does not answer. The Captain pinches him, and with that, Pedrolino gives such a loud bellow that he frightens all of them into rushing back into the inn. Pedrolino, infuriated, goes off up the street, and the first act ends' (Salerno, ed., 1967, 42).

¹¹ The interaction of orality and writing and the idea that 'At the heart of the *commedia dell'arte* was the structural tension between the linear, well-constructed plot based on a literary model and the centrifugal improvisations of the stand-up performer' is at the basis of Robert Henke's book (2002, 1).

¹² See the late example by William Hughes of *Gray's Inn* (1675).

Works Cited

- Andrews Richard (1991), 'Scripted Theatre and the *Commedia dell'Arte*', in R. Mulryne and M. Shrewing, eds (1991), *Theatre of the English and Italian Renaissance*, Basingstoke and London, Macmillan, 21-51.
- Arlidge Anthony (2000), *Shakespeare and the Prince of Love*, London, Giles de la Mare Publisher.
- Atkin James, ed., (1924) *The Moot Book of Gray's Inn*, London, Chiswick Press.
- Baker J.H. (1978), *Catalogue of the Manuscript Yearbooks, Readings and Law Reports in Lincoln's Inn, The Bodleian Library and Gray's Inn*, Zug, Inter Documentation.
- Baker J.H. (1991), *The Inner Temple*, London, The Honourable Society of the Inner Temple.
- Baker J.H. (1996), *A Catalogue of English Legal Manuscripts in Cambridge University Library*, Woodbridge, Boydell Press.
- Baker J.H. (2000), *Readers and Readings in the Inns of Court and Chancery*, London, Selden Society.
- Bentley G.E. (1971), *The Profession of Dramatist in Shakespeare's Time*, Princeton, Princeton University Press.
- Boyer A.D. (2007), 'Drama, Law and Rhetoric in the Age of Coke and Shakespeare', in C. Jordan and K. Cunningham, eds, *The Law in Shakespeare*, Basingstoke, Palgrave MacMillan, 20-37.
- Clubb L.G. (2010), 'Looking back on Shakespeare and Italian theater', *Renaissance Drama*, 36/37, 3-19.
- Dente Carla (2006), 'Commedia dell'Arte, Shakespeare and Goldoni. Circulation of theatrical Energy Through the Re-Presentation of Oral Tradition', in R. Ferrari and L. Giovannelli, eds, *The Complete Consort*, Pisa, PLUS, 41-62.
- Dente Carla (2008), 'The Impact of Theatre Practice on Renaissance Juridical Education. Simulation, Dialogue and Dialogism on Stage and in the Courtroom', *Textus XXI*, 581-610.
- Fortescue John (1942 [?]), *De Laudibus Legum Angliae*, critical edition of the Latin text, translation and notes by S.B. Chrimes, Cambridge, Cambridge Studies in English legal History.
- Foxe John (1563, 1570, 1576, 1583), *Acts and Monuments*. Available online as *The Unabridged Acts and Monuments Online* or TAMO (1576 edition), Sheffield, HRI Online Publications, 2011, at <<http://www.johnfoxe.org>>, accessed 1 Jan 2012.
- Guilpin Edward (1598), *Skialetheia. A Shadow of Truth in certain Epigrams and Satyrs*, London. Transcription by Risa S. Bear (2000) for Renaissance Editions, University of Oregon at <<http://www.luminarium.org/renaissance-editions/guilpin.html>>, accessed 17 Feb 2012.

- Hall Edward (1809 [1548 and 1550]), *Chronicle containing the History of England during the reign of Henry the Fourth and the succeeding monarchs to the reign of Henry the Eight ... Carefully collated with the editions of 1548 and 1550*, London.
- Henke Robert (2002), *Performance and Literature in the commedia dell'Arte*, Cambridge, Cambridge University Press.
- Hughes Thomas (1587), *Certaine Devises and Shewes presented to her Majestie by the Gentlemen of Grayes-Inne, at her Highnesse Court in Greenwich, the twenty-eighth Day of Februarie, in the thirtieth Year of her Majesties most happy Raigne*, London. The book contains an Introduction in verse followed by the tragedy *The Misfortunes of Arthur*. The facsimile edition I am quoting from is available online for the Open Library at <<http://www.archive.org/stream/misfortunesofart00hughuoft#page/>>, accessed 17 Feb 2012.
- Hughes William of Gray's Inn (1675), *Hughes's Queries: or Choice Cases for Moots, Containing Several Points of Law, not Resolved in the Books...*, London.
- Jenkins Harold, ed. (1982), *Hamlet*, London, Methuen.
- Palfrey Simon and Tiffany Stern (2007), *Shakespeare in Parts*, Oxford, Oxford University Press.
- Pearce R.R. (1848), *A History Of the Inns of Court And Chancery: With Notices Of Their Ancient Discipline, Rules, Orders, And Customs, Readings, Moots, Masques, Revels and Entertainments*, London, Richard Bentley.
- Perrucci Andrea (1699), *Dell'arte rappresentativa premeditata et all'improvviso. Parti due. Giovevole non solo a chi si diletta di rappresentare, ma a' predicatori, oratori, accademici e curiosi*, Napoli, Mutio. Engl. trans. (2008), *A Treatise on Acting, From Memory and By Improvisation*, Lanham, MD, The Scarecrow Press. Bilingual edition.
- Pugliatti Paola (2012), 'The Anonymous Plotter in the Routines of Renaissance Theatre and Drama', in this volume.
- Salerno H.F., ed. (1967), *Flaminio Scala's Il Teatro delle favole rappresentative*, New York, New York University Press. (Engl trans. of Scala, 1612), Foreword by K. McKee.
- Scala Flaminio (1611), *Il teatro delle Favole Rappresentative, ovvero la ricreazione comica, boscareccia e tragica, divisa in 50 giornate*, Venezia, Pulciani.
- Scala Flaminio (1618), *Il finto marito*, Venezia.
- Serpieri Alessandro (1997), *William Shakespeare. Il primo Amleto*, Venezia, Marsilio.
- Shakespeare William (1982), *Hamlet*, ed. by H. Jenkins, London, Methuen.
- Stern Tiffany (2009), *Documents of Performance in Early Modern England*, Cambridge, Cambridge University Press.
- Testaverde A.M. and Anna Evangelista, eds (2007), *I canovacci della commedia dell'arte*, Torino, Einaudi.
- Thorne S.E., and J.H. Baker (1990), *Readings and Moots at the Inns of Court in the Fifteenth Century*, vol. II, *Moots and Readers' Cases*, London, Selden Society.