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**The Representation of the Judiciary and Judicial Processes
in English Medieval and Tudor Drama**

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A Thesis submitted for the degree of Doctor of Philosophy

31 March 2017

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Abstract

This thesis examines the representation of law courts and legal and law-enforcement personnel in the late medieval mystery plays, morality plays and Tudor interludes. It aims to tease out how characteristics of medieval and early modern judiciary are woven into the details of dramatic representation of the biblical and classical materials while trying to look at the plays from the viewpoints of the medieval and early modern audiences.

The introduction generally discusses the nature of medieval and early modern English courts and their close kinship with the contemporary theatrical performances. Both the early theatres and courts were quite open to their material environments, and their audience members entered and exited venues relatively freely. Many courts and theatres were peripatetic and shared a number of same venues such as churches, halls of gentry and aristocrats, guildhalls, streets and market places. Chapter 1 mainly examines the medieval legal motifs reflected in the courts of Pilate and Herod in the York Passion plays. These judges share the characterisations of the medieval tyrant often seen in other medieval plays. The appearances of material props such as ‘bench’ and ‘bar’ in the speeches, and the proximity of the performance sites to the castles in the streets of medieval York as well as the plays’ similarities with medieval court procedures may well have stimulated the medieval audiences’ empathy with the staged trials of Christ. Chapter 2 examines the ecclesiastical judges and their courts in the Passion plays. The worldliness of those historical Caesarian judges may reflect the judges of late medieval England. The trials of Jesus, especially in the N-town cycle, may have been influenced by the heresy prosecutions in late medieval England. Chapter 3 considers the characterisation of Pilate in the Towneley cycle as a part of the larger contemporary criticisms against judicial corruption and tyranny of the ruling classes. There are various examples of corruptions of judges and jurors not only in literature but also historical writings. Particularly interesting is the bribing of the soldiers in the resurrection plays

which may mirror the corruption of jurors and witnesses in the medieval society.

Chapter 4 continues the exploration of the theme of judicial corruption, especially focusing the phenomenon called ‘maintenance-in-law’. In the morality play *Wisdom*, an allegorical Vice called Maintenance, deploying his subordinate Vices, corrupts the soul of mankind. That the worst of the human sins is represented in the allegorical figure of Maintenance shows how disliked this type of corrupt manipulation of legal system was in that period. Chapter 5 discusses how the older models of mystery and morality plays were adapted to the post-Reformation cultural and religious changes. The chapter looks at how the interludes exploit the traditional characters of tyrants and Vices to represent judges and lawyers and their corrupt behaviours in law courts.

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Acknowledgement

I wish to thank the teaching and clerical staff of the Centre for Medieval and Early Modern Studies, University of Kent at Canterbury, for their support during the extremely long period I spent in the Ph.D programme. I am especially grateful for the various help I received from Ms Claire Taylor, the Centre's capable administrator. My greatest thanks certainly go to my two supervisors, Dr Darryll Grantley and Professor Peter Brown. It is largely because of Dr Grantley's inexhaustible patience and kindness and his expert guidance that I have finally been able to submit this thesis. I am grateful to him particularly because he continued to supervise me after his formal retirement from the university and has spent many hours reading my drafts in between and during his frequent travels. Professor Brown first allowed me to study at the Centre for my MA in 2001/02 in a rather irregular schedule during my sabbatical year, and has been an exceptionally kind advisor ever since. I would have probably given up the degree without his encouragement. I also wish to thank two former teachers at the University of Kent whose enthusiasm for medieval studies kept me going long after they left the university, Mr Andrew Butcher and Dr Stephen Kelly.

Professors Haruo Sato and Mari Sasaki, my former colleagues at Musashino University, have continued to encourage my study after I left the university and occasionally gave me chance to teach in their courses, for which I am very grateful. I am equally grateful for Professors Harumi Tanabe and Asako Miyagawa for their warm and constant encouragement of my research. I must also mention my great indebtedness to my two teachers at Daito-bunka University some forty years ago, Professor Hatsuyoshi Tauchi and the late Professor Yuichi Nagasaki, who first taught me to study English literature as an academic subject, and really changed my life forever.

I would also like to thank my meticulous proofreader, Dr Marilyn Higgins, who carefully corrected many grammatical mistakes and awkward usages. I am also indebted to Dr Yuuka Wickstrum, a former student of mine and now a dear friend, for various

suggestions on editing the thesis. But, for any remaining mistakes, I am solely responsible.

Permission to reproduce the image of the medieval King's Bench in Inner Temple Library Misc. Ms. 188 has been kindly given by the Masters of the Bench of the Inner Temple.

Finally, my greatest personal gratitude is reserved for my family: Ryosuke and Fusa Suematsu, Yuko and Takenori Tanaka and Michiko Suematsu, for their tolerance, encouragement and love.

Introduction

A play enacts a story or stories in a confined space, usually on stage in a theatre, but may also be performed in a street, market place, or other public spaces, with actors, costumes and various sets. Actors are given their scripts, according to which they play their parts, and strive to impress the audience. The audience flocks to the play, expecting to be entertained, enlightened and moved by the performance, which they evaluate, criticise and remember. A judicial trial is also a public performance held in a place where usually not only legal professionals and the parties concerned with the case but often any interested member of the public are allowed to sit. This ‘openness’ of legal trials is one of the fundamental criteria of the modern civilised society and also has long been practised in many traditional societies including medieval and early modern England. Comparable to the theatre script for a play, written and spoken texts, such as statutes, writs, witness statements, pleadings by lawyers and so on, create a trial. In other words, a trial is an attempt to narrate or recreate a story by multiple, usually conflicting, and sometimes *dramatic*, voices in a judicial space and time; it is a forensic, as well as imaginary, recreation of past events. Each plaintiff and defendant has his or her own narrative to promote and prove to judicial audience, i.e. the judge and jury as well as the gallery in a law court. They also have their own professional storytellers or professional *performers*, namely lawyers: as Kieran Dolin puts it, ‘Narrative, or storytelling, forms one of the intersections of law and literature. [. . .] the ability to construct and tell a convincing story is also a crucial part of the trial lawyer’s rhetorical toolbox’ (2007: 26).

Both trials and theatre productions are often highly artificial, performative and

ceremonial. As fictional literature has various genres such as novel, romance, epic poetry, fabliau and so on, so do the narratives in judicial court have their own formats, namely, confessions, witness statements, expert opinions and pleadings by lawyers, meticulously packaged according to the rules and conventions of the court, which participants, or actors of the courts, deliver in a highly laboured artificial style and, by so doing, sustain the extraordinary suspension of disbelief in the courtroom *drama*.

Behind those varied and contesting narratives told in a trial are frequently diverse and conflicting sets of values which suitors of the trial bring in the courtroom and which judges, lawyers and juries sift through, test against the law and finally reach a judgement. Similarly, in the classical formation of the drama, contesting values of characters and communities create confusions and human miseries leading to utter chaos before eventually converging on a certain cathartic closure. The trial of Jesus Christ, perhaps the most famous trial in the history of the West, presents the collision of values of Jewish ecclesiastics led by the high priests, Roman authorities represented by Pilate, Herod, a provincial ruler and Jesus, a new religious leader as well as humbler people such as the soldiers, doctors and followers of Jesus. In this trial, they argue for their values and beliefs which inform their laws. Furthermore, when the medieval playwright adapts these biblical narratives, and the producers and actors put them on stage in the streets of York, Chester and many other cities, the customs, the values and faith of local communities and of groups within the communities, who were the playmakers as well as the audiences, must have become embedded into the biblical drama.

As already stated, judicial trials usually have an *audience* whose members evaluate and critique the *performances* of the actors such as lawyers and witnesses. The medieval theatre audiences, especially in the localities where many of the extant Corpus Christi and morality plays were also performed, may have included a fairly wide section of the community from peasants to gentry, and occasionally nobility. As a typical street theatre, the Corpus Christi plays in York, Chester, Coventry and other medieval towns must have drawn organisers, performers and audiences composed of widely diverse

social strata. Also, a morality play like the East-Anglian *Mankind* may well have shared the same venue and audience as several types of judicial trials in localities. References to a yard (561) and an ‘ostlere’ (732) may suggest that *Mankind* may have been intended for performances in an enclosed space such as an inn yard.¹ But critics also argue that it could have been played both indoors and outdoors (Lester 1981: xxxvi-xxxvii; King 2008: 243; Happé 1999: 60). It is at least certain that a socially varied audience *witnessed* the play as one of the allegorical characters, Mercy, addresses them, ‘O 3e souerens þat sytt and 3e brothern þat stonde ryght wppe’ (29), and Noght, ‘Now I prey all þe yemandry þat ys here’ (333). Along with all the low-down jests and rustic details of the play, it has quite a few sophisticated Latin jokes to entertain literate and well-educated members of the audience such as students, lawyers, priests and friars.

Judicial courts in the capital and provinces involved similarly diverse participants. The law courts figured very large in the daily lives of medieval English people. Ordinary townsmen and villagers may have had occasions to attend one of the Crown courts in Westminster or in circuit as suitors, witnesses or jurors. The royal courts of the common law in London and in circuit were very popular because they were authorised by the king, and were more effective and reliable than other provincial courts provided that litigants had sufficient funds to use them:

The people are said by chroniclers to have groaned under the burden of royal investigations and money-raising judicial expeditions; and yet they apparently flocked to the same judges for the recovery of their possessions, and were prepared to pay money for royal justice. The main attractions for the private litigant were no doubt the effective process and enforcement which royal writs procured, and the availability from the late twelfth century of a central written record which would end dispute for all time. (Baker 2002: 14-15)

In the absence of the sort of regulatory forces represented by the wide-ranging bureaucratic structures of today, the law and legal procedures practically held the country together. The courts as a whole is perhaps the most visible expression of the

¹ All quotations from *Mankind* are from Eccles’s *The Macro Plays* (1969).

government at work for most English people as Eric William Ives expresses:

Not only were property rights tested in the courts, but the routine buying and selling of land also was effected through a court, either by means of a final concord or, more riskily, a recovery. Contracts, agreements, liabilities to the monarch, all had to be expressed as obligations of debt. The government of the country was, at all levels, effected through the legal system. (1983: 9)

The central government ruled its people through law courts by declaring new statutes, explaining its policies to the justices of the peace and sending London serjeants-at-law to provinces as judges of royal commissions appointed by the monarch. Thus the judicial system worked as a link between localities and the Crown (Ives 1983: 9).

Even if many humbler people were not rich enough to participate in the august power of the Crown courts, almost all freemen and even some women participated in regularly held sessions of local courts. Closest to the ordinary people of the community was the manor court, which was practically a community meeting of legal and administrative nature that dealt with various agricultural and financial businesses as well as legal matters such as ‘minor cases of assault, trespass and slander’, and was, in principle, attended by ‘the entire tenants of the manor’ (S. Walker 2006: 97). The hundred court required attendance of ‘the heads of the tithings and usually four villeins from each vill’ (Musson 2001: 95). Though less universally attended than these two, the sheriff’s ‘tourn’ (a local circuit court presided by the sheriff) and the county court also frequently obligated villagers to attend (Musson 2001: 95). Quarter sessions presided by justices of the peace, who are said to have been replacing the sheriffs’ courts² towards the end of the Middle Ages (Baker 2002: 25), were also both criminal courts and administrative meetings, dealing with ‘crimes as well as regular county businesses like repairs of bridges’ (Ives 1983: 9). In cities, the mayor and bailiff held their courts every week (Musson 2001: 96), and craft guilds had their own judicial courts to arbitrate and judge internal businesses, with which obviously the members of each guild were very familiar

² As the chief administrator of the county, the sheriff presided over the county court, but he did not ‘judge’ legal cases but only pronounced the judgement given by ‘suitors’, that is, ‘tenants of land specifically burdened with the duty of attendance’ at county court (Jewell 1972: 130-31).

(Barron 2004: 227-28). Many of these courts, as well as central and ambulant royal courts, regularly required relatively well-off villagers and citizens to attend as jurors. Apparently, in the medieval royal courts, ‘peasants and even villeins were put on juries, in spite of the bars against poverty [. . .] and incapacity of servile status’ (Musson 2001: 116). As for ecclesiastical courts, the diocesan consistory courts may not have been as close to the lives of common people as manor courts, but ‘the archdeacon’s court was on circuit through the rural deaneries holding a mixture of common (or solemn) sessions and private (or informal) sessions [. . .]. Even if they were not themselves suing in the courts, villagers were frequently drawn to act as witnesses in all sorts of cases’ (Musson 2001: 96-97). A fascinating instance of a dramatic representation of a contemporary trial is the N-town Play 14, *The Trial of Mary and Joseph* where a trial of the holy couple is inlaid with realistic details from a medieval ecclesiastical court, possibly a commissary court.³ At the beginning of this play, Den the Summoner who plays a role of expositor directly addresses the audience of the play standing before him, and summons them to the court:

Avoyd, serys, and lete my lorde þe buschop come
 And syt in þe courte, þe lawes for to doo.
 And I xal gon in þis place, them for to somowne,
 Tho þat ben in my book – þe court ze must com too! (1-4)⁴

He names specific townspeople engaged in a variety of trades and quite a few women in his long speech of 33 lines, which proves how familiar such courts were to medieval men and women:

I warne zow here all abowte
 Þat I somown zow, all þe rowte!
 Loke ze fayl for no dowte
 At þe court to pere.
 Both Johan Jurdon and Geoffrey Gyle,

³ For an excellent detailed study of the play, Lipton (2002: 115-35).

⁴ All quotations from the four major mystery cycles are taken throughout from the latest EETS editions: for Chester, Lumiansky and Mills (1974, 1986), for N-town, Spector (1991), for Towneley, Stevens and Cawley (1994) and for York, Beadle (2009, 2013).

Malkyn Mylkedoke and fayr Mabylye,
 Stevyn Sturdy and Jak-at-þe-Style,
 And Sawdyr Sadelere.

Thom Tynkere and Betrys Belle,
 Peyrs Pottere and Whatt-at-þe-Welle,
 Symme Smalfeyth and Kate Kelle,
 And Bertylmew þe bochere.
 Kytt Cakelere and Colett Crane,
 Gylle Fetyse and fayr Jane,
 Powle Pewterere and Pernel Prane,
 And Phelypp þe good flecchere.

Cok Crane and Davy Drydust,
 Luce Lyere and Letyce Lytyltrust,
 Miles þe myllere and Colle Crakecrust,
 Bothe Bette þe bakere and Robyn Rede.
 [. . .]

Fast com away,
 Bothe Boutyng þe browstere and Sybyly Slynge,
 Megge Meryweddyr and Sabyn Sprynge,
 Tyffany Twynkelere, fayle for nothyng,
 The courte xal be þis day! (5-33)

This is an extraordinary proof of the close kinship between the local legal courts and the street theatre of the late medieval and early modern England. It also testifies to the openness of some of the courts and participation of common people, including women, in their proceedings.

That there were certain points of common grounds between the judicial court and theatre in the Middle Ages has been noted. Yet more specifically, the Corpus Christi cycles in particular have a number of obvious points of kinship with the court because the central and most significant sequence of the cycles are the plays enacting Christ's trials and crucifixion, and the final denouement, the Doomsday play, the ultimate court drama for all people. Viewed in that light, all of the cycles are documents of massive trials, and the audiences witness the scenes of these trials as if they were the juries and galleries watching evidences of sins and crimes and reconstructions thereof in law

courts. In particular, the long Passion sequence of each cycle is a continuous court drama and can be considered as a stinging satire on the legal establishments of late medieval England (Potter 1983: 130-32). Jesus the Man, from the viewpoint of the secular and religious authorities, is a dangerous ringleader of a splinter religious group, a sorcerer or heretic and possibly a rebel against the imperial government of Rome. He is thus arrested and examined by the religious lords such as Caiaphas and Annas, and thereafter tried by secular magnates, Herod and Pilate. But, seen from the perspective of the Christian eschatological history, Jesus is put on a trial of another dimension by his Father as to whether he is willing to sacrifice himself as the Son of God to redeem the sins of mankind. The process of the soldiers inflicting torture and humiliation on Jesus while the latter silently endures them without resisting, in a sense, also follows the older model of the trial by ordeal, of which the audience may be reminded by the Towneley soldiers' snide remarks to Jesus on the cross:

[3 *Tortor.*] If thou be Crist, as men the call,
Com downe emangys vs all
And thole not thies myssaes.
4 *Tortor.* Yee, and help thiself that we may se,
And we shall all trow in the,
Whatsoever thou says.
1 *Tortor.* He cals hymself God of myght,
Bot I wold se hym be so wight
To do sich a dede.
He rasyd Lazare out of his delfe,
Bot he can not help hymself
Now in his greatt nede. (23/624-35)

In this way, Jesus resists resorting to his power as the Son of God. As the audience knows, Jesus painfully but successfully perseveres in these 'ordeals' prescribed by his Father, so that he triumphantly enters the gate of hell as enacted in *The Harrowing of Hell* plays. There, Christ is transformed into an advocate of the souls confined in the prison of hell and argued successfully with the gaolers, i.e. devils guarding the gaol and

their prisoners, finally freeing the good souls.⁵ He is then to preside over the ultimate trial on the Doomsday, to which the Passion plays and, for that matter, all the other plays of the cycle could be considered as a long and elaborate preamble.

Like the courtly demeanours of the Greek and Trojan ‘knights’ and ‘ladies’ in medieval romances, medievalisation or localisation in contemporary time and place permeates religious drama, and the Passion and Doomsday plays are no exceptions. Playwrights and performers were able to convey didactic messages more strongly by mixing familiar contemporary details from courts of their own time while making clear signs that these are historical events in the biblical era. For instance, the high priests are often addressed in Christian terms, repeatedly as bishop, and occasionally as other titles such as primate (N-town 26/209) and prelate (York 28/336), but the N-town playwright in a well-known stage direction specifies that Annas is dressed as ‘a busshop of þe hood lawe in a skarlet gowne’ (N-town 27/165 SD), visually reminding the audience of the historicity of the events performed before them. Medievalisation in the biblical drama is particularly appropriate since it hammers at the audience the immediate and eternal relevance of the historical events staged before their eyes.

One conspicuous common denominator between medieval and Tudor judicial courts and theatre is, as already indicated, the fact that they frequently shared the same sites, namely, royal and baronial courts, guild halls, cathedrals and churches, market places and other open public spaces. In other words, both judicial trials and drama had not established permanent, purpose-built structures and therefore temporarily occupied multi-purpose open spaces. Linda Mulcahy, who has researched the history of British court architecture, also notes the fact of theatres and courts sharing the same sites in the past:

For many centuries trials across legal jurisdictions within England shared space

⁵ *Piers Plowman* has an elaborate scene of Christ’s legal argument with the devils at the hell gate in B XVIII, where he may appear as an accomplished medieval lawyer, versed in statutory and equity laws (Birnes 1975: 71-93). In *The Harrowing of Hell* plays of the cycles, especially in York Play 37 and Towneley Play 25, Christ makes legal argument with the devils, yet it is not clear if he is modelled after the medieval lawyer. One could, however, think of Christ’s *tour* into hell as an equivalent of a commission of gaol delivery.

with political debates, balls and assemblies, church services, markets and *theatres*. Even the central courts at Westminster were not accommodated in a purpose-built building devoted solely to law until the nineteenth century. (2011:7, my emphasis)

The representative sites of the older, post Anglo-Saxon law courts were perhaps royal and baronial castles, churches and other religious buildings, and open outdoor spaces like churchyards and market squares.⁶ All those places were relatively or completely open to the public, and frequently used for festivities and entertainments including dramatic performances. In particular, the role of Christian institutions was most significant in the development of law courts and drama. They spawned liturgical drama and, if not directly involved in producing the vernacular plays as institutions, mystery plays and other kinds of religious drama were created to instil the unlearned with the teachings of the Church. Legally, they inherited the long tradition of canon law and had always held ecclesiastical tribunals.

Closely related to this amorphousness of the sites of medieval and Tudor dramas and trials is the fact that they occur on a rather irregular basis and that they frequently toured in circuit. Thus, in the late Middle Ages and in the early Tudor period, both sites of legal courts and theatres were still ephemeral and conceptual spaces, constructed with various physical, ceremonial and linguistic trappings: distinct and professional costumes, props, verbal markers such as uses of foreign languages, customary gestures and proclamations, *dramatic* demeanours and so on. Medieval legal courts had to depend on ritualistic and mnemonic devices since many of the attendees were illiterate and, although the significance of written documents transformed the English judicial system since the twelfth century, they were not as readily available or exploited as in modern courts. Just as in the theatre, the court had to impress on, and draw resources from, the collective memory of the people and their communities.⁷ Richard Firth Green writes

⁶ For the use of open-air spaces in medieval and early modern county courts, see Palmer 1982: 19-20.

⁷ The rise of royal courts and accompanying proliferation of document culture is the subject of Michael Clanchy's *From Memory to Written Record* (1993). Also, Richard Firth Green discusses in depth the importance of the collective memory in the medieval legal system in his *Crisis of Truth: Literature and Law in Ricardian England* (1999),

about the early medieval societies that, without commonly shared skill of literary and attendant written documents, ‘it becomes imperative that they use every possible means of fixing the agreement by whatever mnemonic device may assist its recall’ (1999: 42).

The characteristic of legal courts sharing multi-purpose spaces is fundamentally inseparable from the nature of medieval and early modern trials. To cite an instance, the *courts* in the Passion plays of the cycle drama are courts of kings, aristocrats and bishops; their functions are both legal and administrative in the modern sense just as the matters dealt by the royal and baronial councils, manorial courts, county courts and quarter sessions included administrative routines. Moreover, the courts are personal residences of the magnates, where their public and private roles are hardly distinguishable. Thus, in courtroom drama, family members such as wives and sons of the judges may intrude or participate in the official businesses of the court as seen in the York Passion plays, and human whims and foibles of each judge frequently surface.

The use of relatively open spaces as sites of trials also draws much wider audiences than the closely guarded courtrooms used for trials in later periods. Speaking of assize courts, Mulcahy writes that ‘those who wished to observe them [assize trials] enjoyed a freedom of movement not experienced by modern audiences’ (2011: 7). The freedom of the court audience to move and even join in the proceedings may have been encouraged:

Attempts to uphold the notion of the sociable court continued long after the judiciary were allocated dedicated spaces within public buildings in which to conduct trials and until the late eighteenth century it remained common for Assize courts to be marked off from a central public hall by pillars rather than walls (*ibid.*, 7).

In the legal environment similar to the one described by Mulcahy, therefore, the subordinates and visitors of the magnates’ courts such as the soldiers and Jews in the cycle drama are not deterred from participating in the proceedings and are given opportunities to speak rather freely. For instance, towards the end of the York play of

Christ before Herod, one of the courtiers, I Dux, calls for witness statements regarding Jesus before they close the session (31/574-79).

Many medieval and early modern morality plays and interludes must have toured in the country. Most of the legal courts of the same period, both secular and ecclesiastical, also regularly toured in provinces. In a theatrical sense, the travelling court must have been a display, a performance, of royal, baronial, or ecclesiastical prestige and splendour, an important political occasion for the Crown and local officials and gentry. As a theatrical troupe or a Corpus Christi plays were wont to do in a form of banns, visiting justices notified local officials of the coming of the court, who in their turn would have made preparations to welcome the legal dignitaries. James S. Cockburn, writing about assize courts from the late sixteenth to early eighteenth century, informs us that travelling justices were met at the border of the county by the sheriff, his officers and representatives of local gentry, with trumpeters blowing their instrument to signal the arrival. The cavalcade of the visiting royal justices and local dignitaries was 'one of some magnificence, attended by pike- and liverymen specially clothed for that occasion'. Having entered the town, they seem to have been lavishly entertained with 'bells, music, and occasionally, a Latin oration' and probably with sumptuous dinner (1972: 65, 294-302). Such a procession was very theatrical and shares the same cultural framework with the Corpus Christi procession and plays. Amongst the play texts, the movements of ecclesiastical judges in the N-town passion plays also show the importance and theatrical effects of display in processional movements.

Speaking of processions, the Passion plays of the extant cycles are full of them. In addition to the movements of the N-town high priests who solemnly progress to hold a congregation, Jesus is constantly driven by the soldiers from one court to another, and then to Calvary as if he were a faltering packhorse. In between, he was also verbally mocked and physically abused by his captors. These forced processions, humiliations and violence were mostly based on the gospel accounts, but they were embellished in such a manner that they appear to be mirror images of some of the medieval punishments imposed on criminals and sinners. Unlike most of the punishments

imposed in this and last centuries whose purpose is supposed to be rehabilitation, medieval punishments aimed at giving not only severe pain but also extreme misery and humiliation before the community to which the culprit belonged in order to warn others against committing similar crimes (Bellamy 1973: 183-84). For that purpose, many of the medieval punishments were utterly theatrical; they were performed to impress the audience. Moreover, just like the sites of trials, the sites of punishments often paralleled those of drama: churches, streets, market squares and other open-air spaces where it was easy for people to congregate and watch the miserable spectacle.

The generally peripatetic nature of both the medieval law court and theatre meant that the legal tribunal and theatre production were naturally adapted to the environments where they occurred. The backdrop of a stately castle or cathedral where real legal trials were being held must have augmented the atmosphere of the courts of Caiaphas, Herod and Pilate recreated in the ambulatory stages in the streets of medieval York, Chester, Coventry and other cities. The generally open nature of the medieval court also corresponded with the street performance of the Corpus Christi and morality plays, which may well have made the identification of the theatre audience with the public gallery in the tribunal; when the judges and defendants such as Pilate and Christ address the medieval audience, they may have felt as if they were actually involved in the trial unlike the disinterested observers in a permanent commercial theatre. But using the neutral multi-purpose spaces for trials and theatre productions required creating a suitable legal or theatrical ambiance. Thus both the court and theatre exploited certain aural, visual and material signs and objects to create suitable atmosphere such as elaborate costumes, ceremonial gestures, proclamations, use of foreign languages and legal and theatrical props such as 'bar' and 'bench'. Creating a courtroom in a neutral space such as a guildhall or church is itself a highly theatrical endeavour; *recreating* a courtroom for a theatre production is, in a sense, metatheatrical, a play within a play.

The trials of Jesus in the Bible and in the Corpus Christi cycles take place mainly in the courts of the two secular rulers, Pilate and Herod. There have been some excellent studies comparing the Passion plays of one of the cycles with practices of particular

medieval legal courts or trials. Lynn Squires discusses the N-town Passion plays in relation to the judicial functions of the king's council in the fifteenth century (1978: 200-13, especially 207-13). Elsa Tiner analyses the York Passion plays in view of major royal courts in York, especially the king's council held there (2005: 140-49). Pamela King compares the York Passion plays with summary justice of treason according to Chancery procedure; she specifically takes note of the trial and execution of Richard Scrope, the archbishop of York in 1405, who rebelled against Henry IV as a contemporary background informing the York Passion plays (King 1999: 200-16). Roger Hall Nicholson has made a detailed study of the York Passion plays as a trial of Christ as a sorcerer and compares them with the historical prosecution of Eleanor, the Duchess of Gloucester in 1441 (1986: 125-69). Though these studies are quite persuasive and true to a certain extent, it is still doubtful whether we can consistently apply one medieval legal case, procedure or court to analyse specific Passion plays. However, these studies have convincingly proved that medieval legal courts in their widely varied forms and their diverse personnel greatly inform Christ's trials in the cycle plays. Since the extant texts of the four major Corpus Christi cycles as well as the Coventry cycle come from the North and Midlands, it seems that the images of the trials in these plays are likely to be more reflective of regional trials such as county and hundred courts, manor courts, baronial councils and regional ecclesiastical courts than of the royal courts in Westminster. However, since the King's Bench was often held in provinces and there were various circuit courts sent to localities such as the eyre courts and the commissions of the gaol delivery, oyer and terminer and *nisi prius*,⁸ a large number of people in the provinces had opportunities to attend and utilise royal courts in their own areas. Wealthy commoners and gentry in provinces also took advantage of Westminster courts by travelling there themselves but also by employing attorneys. Thus, in Chapters 1, 2 and 3, the major characters of the Passion plays and their subordinates will be discussed as legal personnel modelled to a large extent after medieval secular and ecclesiastical judges, court clerks, juries and law-enforcement

⁸ See Baker 2002: 15-16; Musson 2001: 139-40; S. Walker 2006: 93.

officials. In so doing, We shall try to regard the law and legal professionals from the viewpoint of ordinary people of medieval towns and villages and try to see how those secular and ecclesiastical legal personnel appeared to them.

The trials of Jesus are held in two or three separate courts in the cycles, and the conspiracy scene may be located in another court. In all the four major cycles, Jesus is the target of power struggle between the secular jurisdiction of Pilate and ecclesiastical one of Caiaphas and Annas. Except in Towneley, Jesus is also tried by another secular judge, Herod. The secular and religious judges squabble over the juridical and geographical boundaries of each other's mandate. Laws and legal courts by nature exist within boundaries; a system of law comes into being when it sets its boundaries and mandates. Within those boundaries, laws define, regulate, protect, punish, or expel citizens as scholars of law and sociology state:

In its basic operations, law attempts to create, police, and occasionally transgress social, spatial and temporal boundaries. The pre-eminent declaration of a legal system – its announcement of its own existence – establishes jurisdictional boundaries within which its authority prevails. This definition of a geographical space is matched by the declaration of temporal boundaries [. . .] within which legal authority is exercised. Within law's spatial-temporal grid, complex systems of classification are established, creating boundaries that define individuals, communities, acts, and norms: Who is criminal? A citizen? A victim of negligence? A person or group entitled to legal protection or remedy? (Sarat et al. 1998: 3-4)

Extant medieval and early Tudor plays, though rarely portraying contemporary courts directly, are at least very indicative of multiplicity of medieval legal courts and the boundaries of their jurisdictions. For instance, in the N-town cycle Jesus is brought in for questioning before the two 'bishops', Caiaphas and Annas, and then examined, first by Pilate and, second by Herod, who sends Jesus back to Pilate. The court of the high priests may well reflect medieval ecclesiastical courts. Research already cited above has suggested that the secular court of Pilate may reflect the Court of the King's Bench, King's Council, or the county court presided by a sheriff. The fact that Jesus is examined and tried by several judges is biblical, but it must have reminded medieval

playmakers and audiences of the various courts of their own time. In the cycle drama, a suspect of religious and secular crimes is presented to the multiple courts, each with prescribed mandates and power. Annas and Caiaphas want to punish Jesus by death for his heretical beliefs, but their religious court is not entitled to deliver the death sentence, and thus they have to seek help from the court of a secular judge, Pilate or possibly Herod. Pilate, representing the imperial power in the region, or in medieval terms, a royal justice or a sheriff, starts to examine Jesus sent by the priests, but as he becomes aware that Jesus is from Galilee ruled by Herod Antipas and thus from outside his own jurisdictional boundary, he orders Jesus to be sent to Herod's court.⁹ Herod Antipas is the king of Galilee, but, as a ruler of a client state, is subject to the Roman emperor; in medieval contexts, he may be an equivalent of the powerful regional aristocrat. Herod finds no reason to punish Jesus and sends him back to Pilate, who is generally reluctant to use the capital punishment, but, faced with the mounting pressure from the high priests and their minions, is forced to give the sentence. Broadly speaking, here we have a judicial cooperation and struggle amongst a religious court, a regional court of the central government and a court of a regional aristocratic ruler. Just as the case of Jesus is pleaded in plural tribunals, it seems to be common for a medieval suit to be fought in multiple courts, sometimes simultaneously. People could bring many kinds of cases to either common law court or ecclesiastical court, especially financial and contractual disputes such as recovery of debts (Woodcock 1952: 89). For instance, Brian L. Woodcock writes that,

In 1490 the churchwardens of St. Andrew's, Canterbury, brought one suit into two courts. They were attempting to recover revenues for a chantry; 10s. 4d. was spent on a suit in the Court of Archdeacon, and 8s. 8d. on the preparation and prosecution of a plea in a Common Law court. (1952: 107)

Suitors sought types of courts and locations of trials which appeared to work for them most advantageously. In 1424 William Paston pursued a legal dispute with a local gentry through seven courts 'from the manorial court of Forncett to the king's bench

⁹ However, the Towneley cycle entirely cuts the scene of Jesus before Herod.

and the court of exchequer chamber' (S. Walker 2006: 107).

However, if one were a powerless defendant, like Jesus in the Passion plays, accused by the authorities in a criminal suit or involved in a civil suit with a rich and powerful plaintiff, it would be exceedingly miserable to be tried in multiple courts and dragged from one tribunal to another. Since medieval courts were generally profit-making institutions, penniless suitors could not navigate their complex mazes and could not but leave themselves very vulnerable.¹⁰ The plethora of the tangled and multiple judicial institutions must have been not just very puzzling, but tremendously alienating for many ordinary people without much money or legal knowledge. This is one of the law's perennial problems not only in the past and but also today: highly specialised and arcane customs, manners, and languages of law courts and their unusual costliness are inhumane and, before the door of a law court, people may stand frozen as silent Jesus does in Herod's court in the York cycle.

In Chapters 1 and 2, legal and law-enforcement personnel in the Passion plays of the cycles and the law courts where they work will be discussed in detail. These characters cannot exactly correspond to the equivalents that existed in medieval England, but there are some contemporary characteristics of the dramatised judges and their subordinates in these plays.

In the biblical drama, we certainly cannot find direct mirror images of the royal justices in Westminster. Instead, we have four major magnates who try Jesus in their respective courts: Pilate, an imperial prefect, or a regional governor, acting as a judge of secular court, Herod, a provincial ruler subject to the Roman emperor and holding his own legal court, and Caiaphas and Annas, two Jewish high priests, entitled to try religious offences such as heresy and sorcery. They are generally portrayed as traditional tyrants, bombastic and self-aggrandising, are nearly allegorical representations of *superbia* and/or *avaricia*, and are thus hardly fair and level-headed as judges should be. Herod primarily behaves as a ruler, and Pilate also sometimes defines

¹⁰ An anonymous complaint poem from the early fifteenth-century, 'London Lickpenny', typically portrays such poor suitors drifting from one royal court to another in London (Robbins 1959: 130-34).

himself as such in his rants, which seems to correspond to the fact that medieval English kings and magnates also held their own legal court in various capacities; for instance, using their councils as legal tribunals as Herod seems to do, or being sheriffs themselves and presiding country courts. As for Caiaphas and Annas, as the designations of their titles show, their characterisations are partly indebted to medieval images of high-ranking churchmen.

In addition to these four major magnates of the secular and ecclesiastical authorities, there are a number of minor, yet interesting subordinates of those tyrannical judges. The tyrants have advisors at hand to consult with; for instance, ‘temperal jewgys’ in N-town such as ‘Rewfyn and Leyon’ (195-96), aristocratic courtiers serving Herod called I Dux and II Dux in York, family members like Herod’s sons in York who give advice to their father, and the beadle called *Preco* in York Pilate’s court. And there are several soldiers and Jews in each cycle who arrest, torture and crucify Jesus, and are sometimes addressed as ‘knights’. They seem to be attached to one of the magnates, and thus could be comparable with medieval household knights or local gentry serving the magnates. Medieval knights were not legal professionals; nor were the soldiers of the cycle drama. But, as important members of the magnates’ affinity, they appear to play various roles equivalent to modern policemen, witnesses, legal advisors and jurors. Although their roles vary from one cycle to another, at least they go out to arrest Jesus, constantly level accusations against him, torture him, participate in the formation of the final judgement, and finally crucify him.

Unlike judges, lawyers do not appear very often in the cycles. Though the Inns of Courts were fully established by the time of the Corpus Christi plays and there were wealthy and influential serjeants-at-law as described in the Prologue to the *Canterbury Tales*, the biblical drama does not seem to contain any clear images of the elite barristers in London. There is no wonder that, while Chaucer, a London bureaucrat, portrays a serjeant-at-law prominently playwrights of provincial biblical drama do not. Nor are the biblical narratives conducive to including reflections of English common law barristers. However, in addition to the very few fully trained professionals in the

Westminster and other royal courts,¹¹ there was a vast number of ‘lawyers’ in the sense of people versed in law and/or doing business around legal courts. Both in London and provincial cities, there were notaries and other scribes employed to draft legal documents who may well have given legal advice to customers (Ramsay 1991: 118-31; Musson 2001: 120). Many of the bureaucrats working in Westminster and major baronial courts may have had legal expertise and used their knowledge in their job, giving advice to suitors and drafting documents for fee or acting as attorneys (Ramsay 1990: 67; Simons 1934: 381-96). Councils of secular and ecclesiastical magnates also contained lawyers who were retained specifically for their professional expertise (Hicks 1995: 55; Rawcliffe 1986: 157-77), and, if not professional lawyers, people with practical legal understanding such as many stewards who possessed working knowledge of law in managing estates and presided over manor courts on behalf of their lords (Brooks 1986: 39). One rare reflection of such a bureaucratic lawyer seems to be the beadle in the court of York Pilate who stubbornly insists on Pilate’s wife leaving the court when it is in session and dares to challenge the Jewish priests by bowing to Jesus, perhaps exhibiting a sort of professional pride and obstinacy.¹² The aforementioned ‘temporal judges’ in N-town, Rewfyn and Leyon, are summoned to Annas’s council, and may be considered as lawyers in the wider sense of the word, as it was quite common for medieval magnates to seek advice from important royal justices (Rawcliffe 1986: 167). Elsewhere in the cycle drama, lawyers appear in the Doomsday plays, especially in Towneley. They are devils attending the ultimate trial of all souls, probably reflecting the image of callous legal professionalism which medieval commoners harboured towards lawyers. In the Towneley portraits of legal devils carrying bags full of ominous documents and their busy clerk, Tutiuillus, collecting scraps of nonsensical words, we can detect the widespread negative image of lawyers and their inscrutable legal documents written in languages and formats inaccessible to

¹¹ Nigel Ramsay writes that the number of the sergeants-at-law in the fifteenth century was less than ten (1990: 66).

¹² See York 30/73-86, 311-15.

ordinary people.¹³

Another important component in the medieval trial is the role of ordinary people. Since smaller, local courts such as manor courts and hundred courts were community meetings, many common villagers took part. It is difficult to envision that those commoners in court always remained silent, well-behaving onlookers at the back. Although the source is biblical,¹⁴ vociferous clamours of the Jews putting pressure on Judge Pilate to execute Jesus, especially in the Chester and N-town cycles, may be related to experiences of medieval people, since it is known that powerful suitors may have intimidated judges and jurors by mobilising a multitude of sympathisers.¹⁵ Moreover, in the later Middle Ages, the clamour of the crowd came to possess a legal entity. Jamie K. Taylor, in this discussion of Chaucer's *Man of Law's Tale*, writes that 'It [the clamour of the people] signified a common complaint of the community, which could function as an accusatory voice', and that 'By the 1340s clamour could be used to produce notoriety or *publica fama* which would initiate legal proceedings by claiming general communal knowledge of wrongdoing' (2013: 41).¹⁶ In the words of a historian of the church courts, the general notoriety of a parishioner could trigger an *ex officio* judicial prosecution:

The usual formula employed by the registrar to record Ex Officio cases is 'A. notatur de crimine B, citatus per C' (the apparitor). [. . .] Incumbents may have requested the assistance of the judges to deal with refractory parishioners; churchwardens may have unofficially 'presented' suspect persons; but it is probable that the majority of cases arose from the general 'ill fame' connected with suspected delinquency and that the whole was shifted and sorted by the inquisitorial activity of the apparitors. The judges probably acted upon their intelligence or perhaps even at their inquisition. (Woodcock 1952: 69)

¹³ I have discussed the lawyers as devils and their documents in the Doomsday plays in Suematsu (2009), especially pp. 43-47.

¹⁴ Matt. 27. 23-25; Mark 15. 11-15; Luke 23. 18-25; John 19. 6-15.

¹⁵ Such was the tactic taken by Sir Thomas Tudenham, John Heydon and their sympathisers at a session of oyer and determiner, reported by Thomas Howys to John Fastolf in a letter dated 9 May 1451 (Beadle and Richmond 2005: No. 1008, III 129). See Chapter 3.

¹⁶ See also Woodcock (1952: 69) and Wunderli (1981: 31-32).

Thus, every member of the parish may have had opportunities to voice their disapproval about certain undesirable neighbours through an ecclesiastical trial or expressing their views to apparitors. Such accusations by local residents may have been a particularly important element in heresy prosecutions in late medieval England. The investigations into Lollards were often triggered by reports by respected members of communities called *viri fidedigni*, as will be discussed in Chapter 2.

In the late Middle Ages, many of the common residents may have taken active part as jurors, and participated in many aspects of trials in their communities. As representatives of the residents, they often looked beforehand into the case which they were to examine in court, and, unlike their modern counterparts, attended the court well-informed of the circumstances of the case. They were also allowed to question defendants and witnesses during the trial.¹⁷ Reminding us of such characteristics of medieval juries, Pamela King (1999: 210) compares the soldiers in the York play of *Christ before Pilate II: The Judgement* (Play 33) with medieval jurors. In her thorough discussion on the similarity of the soldiers in the York play of *Resurrection* (Play 38) and medieval jurors, Olga Horner thinks that the York playwright may have seen a parallel between the soldiers who act as witnesses and accusers and ‘the dual roles of the English juries of accusation and trial’ (1998: 31).

The significance of the role of the two high priests, Caiaphas and Annas, in the Passion plays is hard to overemphasise: the collision, negotiation and compromise of the powers of the ecclesiastical and secular magnates imbue these plays with dramatic tension. Because they are sometimes addressed as bishops or some other ecclesiastical titles, these characters naturally invite audiences and readers to compare them with high-ranking clergy, especially ecclesiastical judges and lawyers, of the medieval Christian church. The tyrannical, conniving and corrupt behaviours of Caiaphas and Annas may be informed by the antagonism which many ordinary people felt towards powerful clergymen. This hostility ultimately caused, for instance, the killings of the hated ‘quest-mongers’ and Archbishop Simon Sudbury by the rebels in 1381 (Harding

¹⁷ Musson (2001: 116); Baker (2002: 75); Clanchy (2006: 127-29).

1984: 165-93). The high-ranking clergy in the Church hierarchy were predominantly political appointees of the Crown and/or the sons of baronial families, and their primary concerns may not have been very different from those of secular magnates. As Peter McNiven writes about fourteenth-century English bishops, 'It was more debatable whether their conception of their duties equipped them to meet the challenge of evolving theological beliefs and religious aspirations in an uncertain society' (1987: 8). Works related to the ecclesiastical courts seem to have formed the central part of the duties of bishops and their deputies as Rosalind Hill states, 'it was particularly necessary that they [bishops] should administer the canon law, and much of their time, and that of their subordinates, was occupied in bringing offenders to justice, and in restoring them to grace by means of suitable penances' (1951: 213). However such penances were often commuted to monetary payments, namely, *de facto* fines (Woodcock 1952: 98). The secularity and greed which medieval people saw in the powerful churchmen invited much criticism and is reflected in anti-clerical literature, including work by Chaucer, Gower, Langland and many others as well as in the cycle drama and some Tudor interludes. Some of this anti-clerical literature will be examined as materials informing the characterisation of Caiaphas and Annas in the mystery plays and some justices of church courts in Tudor interludes.

In the Middle Ages, the ecclesiastical courts could give moral, physical, material and monetary penances, the most serious of which was excommunication. By this sanction, the culprit was excluded from participation in all of the sacraments of the church, and practically banished from all the social and economic activities of the community (Hill 1951: 214). But the church courts did not possess any decisive weapon to punish determined apostates who did not fear the moral authority of the church and did not respond to their summons. Many Lollardian preachers would be unconcerned with whether they would remain in the community of the Roman faith; for them, excommunication may not have been effective. Moreover, those heretical preachers moved about from one community to another and went beyond the locality where a particular notice of excommunication was proclaimed (Richardson 1936: 5-6).

Traditionally, if summons were ignored and the culprit did not report to the church court, after forty days, the Church could seek the writ called *de excommunicado capiendo* issued from the Chancery, by which ‘the bishop could invoke the aid of the secular arm by sending to the king a request that the sinner might be arrested and kept in prison until he came to a better state of mind’ (Hill 1951: 215). Armed with this writ, bishops could possibly enlist the help of the sheriff and his officials, who, if translated into the characters of the Passion plays, may point to Pilate and his soldiers. The Church also needed help from the secular authorities when they wished to give the death sentence. In the gospel of John, Pilate says to Caiaphas and Annas, ‘Take ye him, and judge him according to your law’, to which the priests answered, ‘It is not lawful for us to put any man to death’ (18. 31). Equally, the medieval English bishops were not entitled to order a death penalty, which they wanted to impose on the unrepentant heretics after the Lollardian heresy had spread from the narrow circle of the Oxford academics to members of the gentry, renegade preachers and humbler commoners. The continental Church began using the death penalty to battle with the rampant heretical movements, which the English Church could follow, and Henry Bolingbroke, the usurper and an ally of Archbishop Thomas Arundel, was willing to cooperate with the Church as he was naturally afraid of any dissenting move, religious or not. There had been repeated attempts by the Church to enlist the Crown to help persecute Lollardian radicals and it bore fruit in the execution of an East-Anglian heretical preacher, William Sawtre, and succeeding formal enactment by the Parliament of the statute of *de heretico comburendo* (McNiven 1987: 79-92). By this statute, the secular authorities such as sheriffs, bailiffs and mayors were obligated to help the church authorities in persecuting heretics, and if those arrested refused to abjure or relapsed after a previous recantation, they were to be burnt in public places by the secular officials. Such cooperation between the religious and secular authorities as enabled by this statute cannot but remind us of what is enacted in the Passion plays.

In late medieval England, the Crown did not yet possess the bureaucratic administrative machinery in the provinces; instead they ruled the country, by and large,

by means of the system of law courts. But much of the royal judicial system depended on the power of local dignitaries working voluntarily. Aristocrats and gentry took on the offices of sheriff, coroner and justice of peace, and their retainers and other followers worked as undersheriffs, bailiffs and other minor officials while wealthy villagers and townsmen were often summoned as jurors. In this manner, the Crown was able to mobilise the local elites, from aristocrats to leading villagers, in order to strengthen royal supremacy in the provinces. On the other hand, the provincial elites also took advantage of the prestige which appointments to royal offices lent them. Holding these offices allowed them to prove their allegiance to the Crown and to solidify their standing in their respective communities (Hicks 1995: 10; Hicks 2002: 182; Chism 2002: 14-15). Royal offices could also yield monetary and material gains to their holders not only in the forms of various fines and fees levied for due legal process, but also gifts and subtle and outright bribes from suitors and intermediaries as Edward Powell points out in respect of king's officials:

The character of government remained intensely personal, inspired by loyalty to the king as lord rather than to an abstract conception of the state. The king's service was avidly exploited for personal profit, a practice that went largely unchecked in spite of attempts by Parliament to impeach the more egregiously corrupt and incompetent ministers of the Crown. (1989: 109)

Thus there were local cliques of elites, composed of baronial and ecclesiastical dignitaries and the leading gentry, who were served by the same local gentry and their subordinates and policed the lower classes. Since those elites depended on each other, trading their influences, there was a fertile breeding ground for all kinds of legal and administrative corruption. In the cycle drama, such corruption is undoubtedly reflected in the character of Towneley Pilate and in the episode in the plays enacting Christ's resurrection in N-town, York and Towneley, where Pilate and the high priests bribe the soldiers into silence in order to cover up the miraculous event.¹⁸

Since Roman soldiers in the Passion plays are often called 'knights', the playwrights

¹⁸ The episode is reported in Matt. 28. 12-15. The scene of the bribery occurs in Play 38 in York, Play 35 in N-town and Play 26 in Towneley.

and audience may well have seen in them the equivalents of their own gentry who worked under local aristocrats and the leading gentry and who held the offices of sheriff or magistrates. In the plays, there also appear knights who follow the orders of Caiaphas and Annas just as there were medieval knights serving bishops and deans. These knights seem to function as medieval policemen and gaolers, arresting and interrogating the suspect, and finally crucifying him. Just as the medieval aristocrats held the royal offices in localities, the gentry serving the magnates took on these policing duties as their master dictated. As Powell writes about the government in general, these medieval policemen, when following the orders of Pilate and Caiaphas, were personally serving their lords rather than performing public service of a particular branch of government. Sometimes they appear to be household knights very close to their lords, advising their masters and taking care of them in their personal chambers; but in other scenes, they display some independence from their lords and exhibit somewhat conflicting allegiances as if they served different lords or were motivated by self-interest as in the scene of Christ's resurrection. The varying and complex relationships between the magnates and their followers in the medieval drama may partly reflect the nature of the feudal relationship in the late medieval and the early modern England, which historians termed as bastard feudalism and which is generally characterised as the 'custom of contractual retaining' by means of indenture, annuity and/or other material and monetary remunerations (Hicks 1995: 20). In general, the knights and other followers of the magnates do not exhibit the ethos of disinterested, professional public service which many modern civil servants including policemen and women are required to observe. We shall closely look at them in the Passion plays and examine how they enforce the law, while, at the same time, execute their personal service to their lords.

The systems of law in late medieval England were controlled by the Crown and small groups of local elites for their advantage so that the law courts and the professionals working in them may well have appeared as oppressors to the poor and the powerless. Moreover, the monetary and contractual nature of the lord-subject relationship could bleed legal and administrative corruption, which must have doubly infuriated the

humbler men and women and their intellectual sympathisers. Their frustration sometimes led to violent explosions of hostilities towards secular and religious clerks in general, and the legal system and professionals in particular. During the Great Rebellion, the clerks and institutions of the documentary culture came under severe attack. Thomas Walsingham reports in *The St. Albans Chronicle*:

[. . .] ceperunt facta monstrare quedam que mente conceperant, et omnes et singulos iuris terre peritos, tam apprenticios quam senes iustiiciarios, et cunctos iuratores patrie quos apprehendere poterant, sine ullo respectu pietatis, capitis truncatione mulctare; asserentes non priusquam illis occisis, terram ingenua libertate posse gaudere. Placuit iste sermo uehementer rusticis, et, ex minoribus maiora concipientes, statuerunt omnes curiarum rotulos et munimenta uetera dare flammis ut, obsoleta antiquarum rerum memoria, nullum ius omnino ipsorum domini in eos in posterum uendicare ualerent; factumque est ita. (Walsingham 2003: 414)¹⁹

There also was a tradition of complaint literature severely satirising secular and ecclesiastical judges and lawyers and their gregarious and corrupt lifestyle. The corrupt manipulation of the political and legal system by means of gifts, bribery, livery, intimidation and other illicit means was sometimes called *maintenance* by contemporaries. It may be considered an integral part of the bastard feudalism and a natural product of the monetary and contractual nature of the lord-subject relationship. In the morality play, *Wisdom, Who Is Christ*, there is an allegorical character of Maintenance, who corrupts human soul, or *anima*. Rich in concrete details of late medieval legal sites in London, the play appears to be a display case of the corruption in

¹⁹ '[. . .] they [the rebels] have no fear of any resistance, and began to carry out the actions which they had previously planned. Every single lawyer, apprentices and senior justices, and all jurors of the country, whom they could apprehend, they beat to death without any regard for what was right, declaring that they could not enjoy their land with true liberty until those men were dead. That sort of talk highly delighted the peasants, and from these small beginnings they envisaged greater achievements. They accordingly decided to set fire to all court rolls and muniments, so that after they had got rid of these records of their ancient service their lords would not be able to claim any right at all against them at some future time; so that is what they did.' (Walsingham 2003: 415) The quotation and translation of *The St. Albans Chronicle* were from the edition by John Taylor, Wendy B. Child and Leslie Watkiss. For some important caveats on this passage and Walsingham's chronicle, see Justice (1994: 44-46). On the hostility of the rebels in 1381 to various legal personnel, see Harding (1984: 165-63).

its varied appearances. It is significant that the playwright of *Wisdom* thinks that the depravity of the fallen state of man is effectively depicted by portraying contemporary maintenance in law in personified form. In contrast to the corrupt state of legal maintenance under the system of bastard feudalism, infested with bribes distributed to judges, sheriffs and jurors, the playwright seems to uphold the conservative, or perhaps somewhat utopian, relationship of feudal lord and his vassals, bound by mutual homage and allegiance as exemplified by the relationship between Christ and the faithful.

In Chapter 5, the treatment of the legal problems in the Tudor interludes will be examined, together with the ways in which the themes of judicial corruption discussed in the previous chapters developed in the more narrowly focused plays. In the Tudor period, people's awareness of law and the use of law courts further expanded because of spread of education and literacy among the non-clerical classes. The advent of a capitalist economy brought the urban mercantile class and their descendants better prospects of accumulating wealth and climbing the social ladder. However, the rapid change in society and the economy also meant that they could easily miss such opportunities and fall into ruin if they were not capable enough. They recognized the value of education and working knowledge of law in their pursuit of a rise in social standing; Ivy Pinchbeck and Margaret Hewitt write: 'more than in any other walk of life, good education was essential to the merchant's success' (1969: 36). Similarly, the households of the aristocracy and gentry increasingly needed their sons to be highly literate and legally astute courtiers and bureaucrats in order to maintain their family status. The Tudor government, in order partly to curb the power of aristocracy, made use of the existing and emerging gentry class educated in institutions of higher education. In addition to universities, the legal education at the Inns of Court was commonly pursued amongst the upper strata of the society (Grantley 2000: 43). Men were eager to make money in legal business by studying for the bar, or 'to set their sights on clerical offices which had been made increasingly valuable by the increasing number of lawsuits' (Brooks 1986: 121). As people became better educated and more prepared to resort to the law, the number of law-suits increased spectacularly as Eric

William Ives writes about the Yorkist and Tudor period: ‘English men – and women – went to law with alacrity; with a population of just over two million, the main central courts alone handled in the order of three thousand new suits each year, to say nothing of those that never got beyond the opening stages’ (1983: 7).

However, the social circumstances which were conducive to judicial corruption and maintenance in law in late medieval England continued into the early Tudor period. The hallmarks of the bastard feudalism, ‘retaining, liveries and maintenance persisted throughout the sixteenth century’ (Hicks 1995: 34). Therefore, the medieval tradition of complaint literature against legal personnel was continued by polemical writers in the Tudor period including Phillip Stubbs, Henry Brinklow and Hugh Latimer. Concurrently, a new type of drama, generically termed ‘Tudor interludes’, was growing out of the tradition of the Catholic morality plays. With the advent of Protestantism, the morality play tradition had been released from the previous frameworks of *psychomachia* of the type of *The Castle of Perseverance* or the dying man’s spiritual pilgrimage like *Everyman*, and was now free to tackle more specialised topics of moral, political, religious, educational or social nature in Tudor England. At the same time, many of the theatrical performances started to move from the open spaces as widely utilised by medieval drama into more confined venues with socially restricted audiences. Some plays which were exclusively aimed at elite audiences were performed in halls of the nobility and gentry and of educational institutions. Other plays with more popular appeal sought enclosed temporary venues such as inn-yard theatres and finally the purpose-built commercial theatres in London. This was, to a large extent, the pressure from the radical Protestants who detested plays and festivities closely related to the Roman Church such as the Corpus Christi plays and morality plays. These factors were conducive to focused contents of plays, one of which is the matter of law and legal professionals as befits the growing number of highly educated audience members, many of whom had legal education and/or dealt with law courts in their businesses. As has been pointed out above, some of the mystery plays and moralities obliquely mirror contemporary conditions of legal courts and their personnel in the biblical narratives or

the timeless stories of fall and redemption, whereas several Tudor interludes directly tackle the matters of tyrannical and corrupt judges and malfunctions of law courts. They straightforwardly address specific legal problems afflicting common suitors such as delays, lengthiness and high cost of lawsuits, tyrannical and greedy judges and crafty and corrupt lawyers.

This thesis will mainly examine how biblical characters of mystery plays and allegorical characters of moralities reflect contemporary conditions of legal personnel in late medieval England, and how these elements found in the medieval plays were inherited and transformed in the Tudor interludes. The secular and ecclesiastical magnates appearing in the Passion plays will be examined as justices of their courts but, as already mentioned, paying particular attention to the multiple and amorphous functions of their roles and courts. Also closely examined will be the subordinates of the magnates in their legal and law-enforcement roles and the relationship between the magnates and these followers. There were some other plays which are of much interest in the legal motifs amongst the medieval plays, but which will not be discussed in this thesis, such as the N-town *Trial of Mary and Joseph* (Play 14) or the Towneley *Murder of Abel* (Play 2) amongst others. On the legal aspects of those plays, there are already some excellent detailed studies,²⁰ and in this thesis, for the most part, the Passion sequences of the cycles will be the focus for the sake of coherence.

In the process of examining the legal personnel of the medieval drama and Tudor interludes, it emerges that their depictions are overwhelmingly negative. It is perfectly natural that those who persecute and crucify Jesus must be drawn as evil incarnate, but the tyrannical, conceited and sometimes corrupt nature of these characters may also well be mirroring an aspect of what most medieval English people perceived the judges and lawyers to be as becomes clearer when we look at some of the complaint literature voicing frustrations with the contemporary legal system and personnel of those times. Such characteristics of legal personnel become more pronounced in some of the Tudor interludes which will be discussed in Chapter 5. These negative portraits, however, may

²⁰ Lipton (2002: 115-35) and Brockman (1974: 699-707).

well indicate the high expectations which late medieval and early Tudor English people had of legal courts and their personnel. After all, as has been suggested, more than anything else it was through the law and legal courts that the Crown ruled the country and which bound the country and its communities together.

Chapter 1

The *Medieval* Courts of Pilate and Herod in the York Cycle

The judges and their courts depicted in the Passion plays of the English cycles are certainly not realistic portrayals of their late medieval counterparts or faithful dramatisations of scriptural trials of Jesus presided over by Pilate and Herod. However, they probably reflect a composite of images of judges, courts and judicial procedures held by both playwrights and their audiences. This chapter will highlight some of the distinctly medieval characteristics of the scriptural characters and scenes in the Passion plays, beginning with the tyrannical characterisations of Pilate and Herod Antipas and the public and private nature of the judges' courtroom. Then the appearance of medieval markers of judicial courts such as a ceremonial declaration, material objects like judicial bench and bar as well as the absence of any advocate on behalf of the defendant will be discussed. In this examination, we would like to see the extant drama texts from the viewpoints of not only the playwrights but also the original audiences of the late medieval and early Tudor England.

Pilate and Herod as the Medieval Dramatic Tyrant

Much of the characterisations of the judges in the Passion plays seems to have derived from a few traits of stereotypical judges in the Middle Ages. One such portrayal is the image of the tyrant. The two secular judges, Pilate and Herod, especially in York and Towneley, begin plays with a bombastic rant, ordering both their subordinates on the stage and the audience in front of them to shut up, behave themselves and obey their

commands.¹ Thus demands Pilate in York Play 33, *Christ before Pilate 2: The Judgement*; he wields his legal power to oppress dissent violently using his soldiers, or policing force:

Lordyngis þat are lymett to þe lare of my liaunce,
 ʒe schappely schalkes and schene for to schawe,
 I charge ʒou as ʒour chieftan þat ʒe chatt for no chaunce,
 But loke to youre lord here, and lere at my lawe –
 As a duke I may dampne ʒou and drawe.
 Many bernys bolde are aboute me,
 And what knyght or knave I may knawe
 Þat list nozt as a lord for to lowte me,
 I sall lere hym,
 In the deueles name, þat dastard, to dowte me –
 ʒa, who werkis any werkes withoute me,
 I sall charge hym in chynes to chere hym. (1-12)

Similar tyrannical features such as boasting of his legal power and violent threats are more prominent in the characterisation of the Towneley Pilate:

Peas, carles, I commaunde!
 Vnconand I call you;
 I say stynt and stande,
 Or foull myght befall you.
 Fro this burnyshyd brande,
 Now when I behold you,
 I red ye be shunand,
 Or els the dwill skald you
 At ony[s].
 I am kyd, as men knawes,
 Leyf leder of lawes;
 Seniour, seke to my sawes,
 For bryssyng of youre bonys. (20/1-13)

The violent characteristic is also typified in the speeches of the York Herod Antipas who tries Jesus in his court:

Pes, ye brothellis and browlys in þis broydenesse inbrased,
 And freykis þat are frendely your freyknesse to frayne,
 Youre tounge fro tetryng of truffillis be trased,
 Of þis brande þat is bright schall breste in youre brayne.
 Plextis for no plasis but platte you to þis playne,
 And drawe to no drofyng but dresse you to drede,
 With dasshis.

¹ Such bombastic rants also appear in N-town but less frequently, and rarely in Chester.

Traueylis nozt as traytours þat tristis in trayne,
Or by þe bloode þat Mahounde bledde, with þis blad schal ye blede. (31/1-9)

These tyrannical judges in the Passion plays are yet more instances of the occurrence of a series of tyrants in the cycle drama including Pharaoh and Herod the Great. They are foes and persecutors of Moses, Christ and Christians. By blindly thinking that their power is superior to that of God and his Son, they also emulate the acts of Lucifer and other fallen angels.

These stereotypical tyrants are not confined to the mystery plays but also witnessed in morality plays, suggesting that there was an established tradition of staging tyrants in the late medieval period. World (*Mundus*) in *The Castle of Perseverance* is one such character. He calls himself ‘Precyous prinse, prekyd in pride’ (159),² and has subordinates of ‘bolde bachelerys, vndyr my baner to abyde’ (161). He claims that every kingdom hastens eagerly ‘my lawys to lerne’ (186). He threatens that any challenge to his power will be violently suppressed:

What boy bedyth batayl or debatyth wyth blad
Hym were betyr to ben hangyn hye in hell herne
Or brent on lyth leuene.
Whoso spekyth azeyn þe Werd
In a presun he schal be sperd.
Myn hest is holdyn and herd
Into hyze heuene. (189-95)

Although he may not sound as blustering as the Herods or Pilates in the mystery plays, King in *The Pride of Life* speaks in the similar manner in his first speech, boasting of his power to rule all the wide world and to subjugate kings, warriors and knights, threatening to crush any dissent:

Pes, now, 3e princis of powere so prowde,
3e kingis, 3e kempis, 3e knigtis ikerne,
3e barons bolde, þat beith me obowte;
<Sem> schal 3u my sawe, swaynis i[s]worne.

Sqwieris stoute, stondit now stille,

² All quotations from *The Castle of Perseverance* are from Eccles, *The Macro Play* (1969).

And lestenith to my hestis, I hote zu now her,
 Or [I] schal wirch zu wo with werkis of wil
 And doun schal ze drive, be ze neuer so dere.
 King ic am, kinde of kingis ikorre,
 Al þe worlde wide to welde at my wil;
 Nas þer neuer no man of woman iborre
 Ozein me withstonde þat I nold him spille. (113-24)³

The atrociousness of the tyrant's personality is particularly conspicuous in Herod the Great who orders his men to murder the Innocents because he is afraid that a new king is to be born to replace him. In addition to this cruelty, Herod in the York cycle uses some devious stratagem to trick the Magi in order to know Jesus's whereabouts when he meets the travellers from the east. He orders his subordinates to present a falsely welcoming reception to the Magi (16 *The Masons* /147-51), and later, after the Magi have left the court, he gloats over the trick:

Now certis, þis is a sotell trayne.
 Nowe sall þai trulye take þere trace,
 And telle me of þat swytteron swayne,
 And all þare counsaile in þis case.
 Giffe itt be soth, þai shall be slayne,
 No golde shall gete them bettir grace. (16 *The Masons* /261-66)

The duplicity of rulers and judges is most impressively embodied in the characterisation of Pilate in the Towneley cycle as is to be discussed in detail in Chapter 3. Moreover, this characteristic of evil judges and lawyers is also widely shared in the literature of social protest in the late Middle Ages and will be discussed in later chapters.

Another characteristic of the tyrannical magnates in the cycle drama is their narcissism. In this sense, they may be partially regarded as a personification of *superbia*. As the rants by Herod and Pilate above obviously show, they wallow in glorifying their power. Some of them are also boastful of their personal beauty and/or cleverness. The boasting of their physical appearance, bodily beauty and clothing included, is an attempt to impress people with their power, especially in the late Middle Ages and early modern period when dress was a signifier of status and sometimes minutely regulated by sumptuary laws for 'the necessity of maintaining a strictly hierarchical social order'

³ Quoted from Davis, *Non-cycle Plays and Fragments* (1970).

(Piponnier and Mane 1997: 83).⁴ The York Herod the Great says:

Lordis and ladis, loo, luffely me lithes,
 For I am fairer of face and fressher on folde –
 Be soth yf I saie sall – seune and sexti sithis
 Pan glorius gullis, þat gayer is þan golde
 In price.
 How thynke 3e þer tales þat I talde?
 I am worthy, witty, and wise. (16 *The Masons* /16-22)

The Towneley Pilate also shows himself off as ‘So comly cled and cleyn, / A rewler of great renowne’ (20/16-17), and brags that

Was neuer kyng with crowne
 More wor[thy].
 My wysdom and my wytt,
 In sete here as I sytt,
 Was neuer none lyke it,
 My dedys thus to dyscry. (20/21-26)

Similarly, the N-town Herod the Great boasts of his power and personal beauty:

I am þe comelyeste kyng clad in gleteryng golde,
 3a, and þe semelyeste syre þat may bestryde a stede!
 I welde att my wyll all wyghtys upon molde,
 3a, and wurthely I am wrappyd in a wurthy wede. (18/9-12)

Another particular weakness which some of them display, and which has a contemporary resonance is their greed and venality. The treasurer of World in *The Castle of Perseverance* is Covetousness, who seized many lands for his king (179-82). Among the tyrants of the mystery plays, the Towneley Pilate is notorious for his greed and corrupt behaviour, and if we take away his biblical name, he could be considered a personified *avaritia*. His characterisation must be reflective of the contemporary complaints of corrupt judges and lawyers, of which there are a fair number of literary expressions. Some examples of them will be discussed Chapter 3. Such personal evil and fallibility could be construed as a sign of the fallen mankind and cause their utter failure as rulers and judges.

The tyrants such as Herod the Great and Herod Antipas in the mystery plays are

⁴ See also Hodges (2000: 19-20).

primarily rulers, but they may also sit as judges. They are comparable to kings, aristocrats and the leading gentry in the Middle Ages who played judicial roles in their royal or baronial councils, county courts, quarter sessions or manor courts. On the other hand, Pilate is more clearly defined as a judge and therefore comparable to royal justices of the King's Bench or assize courts. Yet there are no reasons why he could not be compared with Justices of the Peace or even sheriffs⁵ since medieval playwrights and audiences did not need exact mirror images of contemporary men of law in the characterisations of these biblical figures in order to stimulate their imagination. Moreover, in none of the four extant cycles does Pilate speak as if he were educated in the Inns of Court and adept at expert uses of legal discourse. Rather, aside from his pride in his judgeship, he seems to be a typically arrogant and tyrannical magnate residing in his own palace. He is certainly a judge, but, from the viewpoint of modern judiciary, he may be considered as an amateur. It is important to remember that various legal trials and law enforcement activities were voluntarily maintained by those whom we would now regard as 'amateurs', such as coroners, constables and juries, and so were most judges except for many of the royal justices in Westminster and assizes. Most local officers were unpaid, except for exchequer officials and assize judges. Sheriffs were normally 'leading county gentry, JPs a mixture of the principal aristocracy and those legally expert, and escheators and coroners hailing from the lesser gentry' (Hicks 2002: 112). As Maureen Mulholland writes, throughout its history, 'one of the notable features of English justice [. . .] was the continuous importance of lay participation in the judicial process' ('Introduction' 2003: 7).⁶

The medieval and early modern reality of magnates playing the role of judges in their areas of influence seems to be closely related to the fact that legal courts were often

⁵ The sheriff was not a justice as he did not give judgements, but he convened and presided over county and hundred courts. See Jewell (1972: 130-31) and Palmer (1982: 32).

⁶ However, Anthony Musson seriously questions the distinction between the 'professional' judges in London and 'amateur' judges in provinces, demonstrating that many justices in assize courts were local men of law and that the legal expertise of Justices of Peace has been greatly underestimated by previous legal historians (2003: 37-53).

held in the buildings that these magnates owned and often resided in, and not built for judicial purpose as modern courthouses. The judicial functions developed as a part of governing bodies such as the Crown, the households of secular magnates, the Church, the city governments and so on, and were therefore inseparable from the rulers and their residences. Westminster Hall was a good example. As Clare Graham writes, when first constructed, it was probably designed for large assemblies of people to gather for ‘not just trials, but councils, parliaments and feasts’ (2003: 18). But by the early fourteenth century, it housed the Courts of the King’s Bench and Common Pleas, as well as the Court of Chancery with its administrative and judicial functions. The building was a part of the huge complex of the Palace of Westminster, the king’s principal residence. In Westminster Hall, in addition to the sessions of the royal courts, the Parliaments, royal banquets and other important state functions continued to be held (Musson 2000: 164-65; Graham 2003: 18-19). Thus the monarch was occasionally present in Westminster Hall, and although he was not presiding over judicial sessions himself, royal justices worked under his name and authority. Moreover, viewed from the users of the Westminster royal courts, the king may well have lent his weight to the judicial sessions by the proximity of his physical presence (Musson 2006: 1). This was also true of many other sites of legal courts. Many ambulant assize courts were regularly held in castles owned by the Crown or great magnates. The association with the Crown or great magnates probably added the awe and solemnity to these locations; Anthony Musson writes that the king’s role in royal commissions ‘was emphasised in the provinces in some areas through the deliberate fostering of notions of authority and jurisdiction inherent in archaic architectural forms, notably the heavy-looking keeps of castle dating from the eleventh and twelfth centuries’ (2006: 5). Although castles had generally become less popular as residences of the nobility in the late Middle Ages, they were often used for judicial purposes (Graham 2003: 42).⁷ Parts of these massive buildings were regularly used as prisons for criminal suspects to be detained until the next assizes, and therefore it would have been very convenient for trials to be held in those castles

⁷ For the specific castles used for judicial sessions, see Palmer (1982: 20-21).

(Musson 2006: 5).

In the mystery plays, the courts of Pilate and Herod were held in their residences, possibly a castle or palatial mansion in terms of medieval England. Although it would have been very difficult to create the atmosphere of a grandiose architecture with a set on a moveable wagon, playmakers could have counted on the audiences' conception of law courts held in a castle in the close vicinity of the cities where plays were performed. In fact, in cities like York and Chester, Corpus Christi plays were played in the proximity of the castles and, depending on the location of the performances, the trials of Jesus were enacted against a backdrop of a towering castle wall. This was particularly relevant to York, which was established as the legal and administrative centre of northern England 'under the first three Edwards as a result of periodic removal of the offices of the central government to York' (Ormrod 1997: 16). As Mark Ormrod writes,

On no fewer than five occasions between 1298 and 1338 the exchequer was moved from its normal base at Westminster and relocated at York. Since convention dictated that the court of common pleas should sit in the same place as the exchequer, the entire staff of this court was also transferred to York on these occasions. The removal of common pleas to York in turn encouraged the still peripatetic court of king's bench to make regular visits to the city – more regular, indeed, than those of the exchequer and common pleas. (1997: 16)

In the 1390s, Richard II also considered York 'the natural choice for an alternative capital when the central courts and the other organs of government were briefly removed' (Musson 2006: 3). The great hall of York Castle accommodated judicial institutions while other large buildings in the city such as St. Mary's Abbey, the Minister chapter house and the Guildhall were sometimes used for judicial functions (Musson 2000: 164; 2006: 3). Thus the medieval audience of the York Corpus Christi plays may well have seen royal judges, lawyers and clerks in their vicinity, and even attended one of the courts held in those buildings, alongside which the Corpus Christi wagons progressed and stopped in order to stage the trials of Jesus. It would thus be reasonable to think that the courts of York Pilate and Herod may well reflect some traits of contemporary law courts at work in and around medieval York.

Dramatising Judicial Power: Pilate and his Court in the York Cycle

The historical Pilate was a Roman prefect of Judaea and thus under the command of the Emperor Tiberius and his government. In the gospels, he is called ‘governor’ (*praeses* in the Vulgate Bible), but, in the succinct accounts by the evangelists, his subjugation to the Roman government is not immediately apparent. Compared with the other tyrants in the mystery plays such as Pharaoh, Herod the Great and Herod Antipas, who speak and behave like monarchs, Pilate is apparently defined as a judge. But at the same time he seems to pretend that he is a princely figure and possesses the territory on his own. Since this is a biblical story, it is not necessary to find medieval counterparts of these judges, and playwrights may well have created these stage figures out of patchworks of images from both their religious and historical knowledge and contemporary legal personnel. Parts of his characterisation, therefore, may owe to images derived from the contemporary royal justices of the King’s Bench, assizes, commission of gaol delivery and oyer and terminer, the medieval sheriff or even the Justice of the Peace. The York Pilate, like medieval aristocrats or gentry holding legal and administrative offices, frequently expresses his dominance *within his sphere of power*. He is a regional governor to whom, he claims, the bishops must show obedience: ‘Now I am regent of rewle þis region in reste, / Obeye vnto bidding bu[s] busshoppis me bowne’ (26/2-3). Elsewhere he calls himself a prince: ‘sir Pilate of Pounce as prince am Y preued’ (32/9), and asserts that there is ‘no kyng but he schall come to my call’ (32/28). Being a Roman prefect, like a medieval royal justice or sheriff, he is empowered by proxy, but he has the authority of the empire behind him *within* his boundary. In the same play, he says, ‘Þer is no berne in þis burgh has me aboute heuyd, / But he sekis me for souereyne’ (32/11-12); while he is stressing his regional dominance, in a sense, he is practically admitting the geographical limitation of his power. The York Play 30, *Christ before Pilate I: The Dream of Pilate’s Wife*, opens with Pilate’s rant, which shows, along with his incomparable power, the facts that he was given legal authority by Caesar:

I was putte into Pounce, þe pepill to presse,

And sithen Sesar hymselffe, with [þ]e [s]ynatores be his side,
 Remytte me to þe[r] remys þe renkes to redresse.
 And yitte am Y graunted on grounde, as I gesse,
 To justifie and juge all þe Jewes. (30/20-24)

Similarly, in the Towneley cycle, Pilate in Play 24, *Play of the Dice*, repeatedly stresses his legal power, saying for instance, ‘*Qui bene wult fari / Shuld call me fownder of all lay*’ (24/33-34), yet immediately afterwards he practically admits that his power is only effective, backed by the emperor: ‘*Myghty lord of all, / Me Cesar magnificauit*’ (24/40-41).

The court of Pilate in the York cycle is surprisingly realistic and human, within the constraints imposed by the biblical narrative. Apparently, the trial is held in some kind of palace or castle that is also Pilate’s residence. As already discussed, medieval great halls were used for various purposes including administrative and judicial proceedings. When Jesus is brought in to be tried, Pilate’s aristocratic residence is turned into a place of interrogation and judgement. This amorphousness of judicial sites is shown by Pilate’s bedding scene and the presence of his wife and son. It is not that the bedchambers of medieval judges doubled as a courtroom, but this may have partly due to the physical constraints of the dramatisation on a pageant wagon. However, the intrusion of the family members into the law court at least suggests the presence of the legal site within the judge’s residence or in close proximity to it. In the gospels, Matthew only mentions the wife: ‘When he [Pilate] was set down on the judgment seat, his wife sent unto him, saying, Have thou nothing to do with that just man: for I have suffered many things this day in a dream because of him’ (Matt. 27. 19), which the playwright greatly expands in Play 30, *Christ before Pilate I: The Dream of Pilate’s Wife*, and adds appearances of their son and the wife’s lady-in-waiting. The wife’s theological *raison d’être* is presumably that the devil appears in her dream in order to thwart Christ performing his mission as a man and saviour. But in addition to her dream, the playwright lets her play a bit of a shrew as well as showing some conjugal flirting, thereby enriching her husband’s human characterisation. At the beginning of the play, the wife herself, following Pilate’s rant, gives a boastful speech about her wit, physical

Pilate's respect for this bureaucrat is again apparent when the beadle suddenly worships Jesus. When the soldiers and Jesus appear in Pilate's court for the first time, the beadle tells them that 'þe juges and þe Jewes hase me enioyned / To bringe þe [Jesus] before þam' (308-09). He then worships Jesus:

This reuerence I do þe forthy,
For wytes þat wer wiser þan I,
They worshipped þe full holy on hy,
And with solempnit  sange Osanna [þe] till. (312-15)

The beadle explains how he came to respect Jesus: he went to see Jesus's entry into Jerusalem, and saw people worshipping him. The soldiers who came with the priests and Caiaphas angrily protest against his behaviour to Pilate. But Pilate does not agree with them: 'Sirs, moves you nozt in [[his] matere, but bese myldely demeaned, / For yone curtasie I kenne had som cause' (328-29). He then lets the beadle explain what he saw in Jerusalem and why he worshipped Jesus. It seems to suggest the role and importance which legal clerks occupied in medieval courts where judges were often 'amateurs' in the modern sense, and did not always have solid legal training and where knowledgeable legal clerks must have supplied professional assistance just as they still do in modern magistrates' courts in Britain.

Another sign of the private life intruding on the official legal business of a judge is the presence of the judges' sons in the York Pilate's and Herod's courts. Pilate's son first appears in the private chamber of his mother, who asks him to take her message about the ominous dream to her husband. He then, to carry out her wish, goes to Pilate's courtroom where Jesus has just been brought in, and the judicial proceedings regarding the criminal defendant are just beginning. His role during the trial is very small, consisting of one speech of nine lines. Along with the soldiers, he harshly scolds Jesus for not observing proper manner in presence of such an august figure as his father while Jesus probably stands frozen like a miserable, dumbfounded child:

O Jesu vngentill, þi joie is in japes,
Pou can not be curtayse, þou caytiffe I calle þe,

No ruthe were it to rug þe and ryue þe in ropes.
 Why falles þou nozt flatte here, foule falle þe,
 For ferde of my fadir so free?
 Pou wotte noght his widsome, iwys,
 All thyne helpe in his hande þat it is,
 Howe sone he myght saue þe fro þis.
 Obeye hym, brothell, I bidde þe. (389-97)

He only compliments his father and the power Pilate has over the fate of the accused. It seems unreasonable to assume that family members of judges may have intruded into court proceedings and unduly interfered in the official business of the court in the Middle Ages; rather, the playwright is here exercising a dramatic license to create and manipulate minor characters. However, for the medieval audience, such an appearance of family members in the courtroom may have reinforced the impression that Pilate and Herod were not simply judges in their professional capacity but lords who ruled their territory and may have abused their power.

One of the details which make the trial plays in the York cycle appear contemporary and authentic is the legal formality observed by Pilate and Herod. In the first trial of Jesus in his court, Pilate begins proceedings by having the beadle make a proclamation of a session:

BEDELLUS	I am here at youre hande to halow a hoy, Do move of youre maistir, for I shall melle it with myzt.
PILATUS	Cry ‘Oyas’.
BEDELLUS	Oyas.
PILATUS	Yit efte, be þi feithe.
BEDELLUS	Oyas! [<i>Alowde</i> .
PILATUS	Yit lowdar, that ilke led may li[the] – Crye pece in this prese, vppon payne þervppon, Bidde them swage of þer sweying bothe swiftly and swithe, And stynte of þer stryuyng, and stande still as a stone. Calle Jesu þe gentill of Jacob, þe Jewe. Come preste and appere, To þe barre drawe [þ]e nere, To þi jugement here,

To be demed for [þi] dedis vndewe. (368-79)

Pilate has the beadle shout ‘Oyas’ (Oyez, Hear) repeatedly in the loudest voice in order to turn the audience’s attention to them, and he orders others to stop making noise and stand still. It is just like many of the rants at the beginning of medieval plays. As suggested in the introduction, medieval courts were, like street theatres, open spaces where usually anyone could come in and hear the proceedings; in a huge hall like the Westminster Hall, there may have been multiple sessions going on at the same time and many clerks, lawyers, wardens, witnesses, suitors and all the other people concerned with litigations were congregating. Paul Brand notes the noisiness of some medieval courts:

There was sometimes so much extraneous noise that it was impossible even for the court’s justices to hear what counsel had said. An attorney could plausibly claim in a case of 1300 that, although he had been in court, he had simply been too far away from the bar of the court when pleading took place to hear what his client’s serjeant had said. He asked for the count to be repeated before he avowed it on his client’s behalf. (2000: 107)

Such a familiar legal proclamation to stop noise and draw attention must have sounded very ironic to the medieval audience as uttered by the clerk of the judge who is to sentence Christ to death. Elsewhere in the mystery cycles, the same irony is felt in Play 31, *Christ before Herod*, which shall be discussed later, and also in the scene of a mock-pardoning of Cain’s murder in the Towneley cycle, where Cain, having just killed his brother, makes a judicial proclamation of the king’s peace for himself and his servant while Pikeharnes constantly undercuts Cain’s speech by derisive asides:

<i>Cayn.</i>	Stand vp, my good boy, belife, And thaym peasse, both man and wife; And whoso will do after me, Full slape of thrift then shal he be. Bot thou must be my good boy And cry ‘oyes, oyes, oy!’
<i>Garcio.</i>	Browes, browes to thi boy!
<i>Caym.</i>	I commaund you in the kyngys nayme
<i>Garcio.</i>	And in my masteres, fals Cayme.

Caym. That no man at thame fynd fawt ne blame,
Garcio. Yey, cold rost is at my masteres hame.
Caym. Nowther with hym nor with his knafe,
Garcio. What! I hope my master rafe.
Caym. For thay ar trew full manyfold.
Garcio. My master suppys no coyle bot cold.
Caym. The kyng wrytys you vntill,
Garcio. Yit ete I neuer half my fill.
Caym. The kyng will that thay be safe.
Garcio. Yey, a draght of drynke fayne wolde I hayfe. (2/414-32)

Although confined within the biblical framework, Cain's repeated references to 'the kyng' has a sharp satirical edge about the abuse of the royal pardon. Discussing this play in the medieval contexts, Bennett A. Brockman writes, 'the royal prerogative of pardon was one of the most widely known and deeply resented aspects of the administration of justice in late medieval England' (1974: 701). The Towneley playwright overlays the abuse of contemporary judicial system with Cain's murder of Abel, prefiguring Christ, and later, with Pilate's sentencing death to Christ himself.

A similar ironic use of this judicial proclamation appears in another mock-trial scene in the morality play, *Mankind*, where New Guise, Mischief and Nowadays proclaim the opening of a court:

NEU GYSE. Master Myscheff, we wyll yow exort
 Mankyndys name in yowr bok for to report.
 MYSCHEFF. I wyll not so; I wyll sett a corte.
 Nowadays, mak proclamacyon,
 And do yt sub forma juriys, dasarde!
 NOWADAYS. Oyyt! Oyzyt! Oyet! All manere of men and comun women
 To þe cort of Myschyff othere cum or sen!
 Mankynde xall retorn; he ys on of owr men.
 MYSCHEFF. Nought, cum forth, þou xall be stowerde. (662-70)

The setting of the scene in which the vices mockingly perform is a manorial court as Nought is appointed as a steward, who usually presided over such a court. Not only were most adult males in late medieval England familiar with the manorial court but also they were obligated to attend unless they could send a legitimate excuse called 'essoin', or they could be 'amerced', i.e. given monetary penalty (Mulholland, 'Trials'

2003: 86-87). The appearance in *Mankind* of such legal set phrases used in courts is a proof of how familiar legal courts were to the provincial farmers and townsmen at that time, who were also the participants in and audiences of the mystery plays.

The declaration of ‘Oyas’ at the beginning of the trial is a conspicuous reference to contemporary trials. Once the trial begins with the declaration, granting the limitation imposed on by the biblical narrative, the proceeding at the York Pilate’s court also appears to follow an approximate contour of medieval criminal trials. In the first trial of Jesus before Pilate in Play 30, the session begins at l. 30 with the beadle declaring ‘Oyas’ twice, so that, as Pilate says, ‘ilke lede may lithe’ (every person can hear) (371), implying that this is an open, and possibly noisy, court as were any contemporary common law courts. Then Jesus, the defendant, is called to ‘þe barre’ (377, 381).¹⁰ Pilate encourages Jesus to advance towards the bar (398-99); at the same time he also tells the priests who are the accusers to state the points (‘pontes’) of their case:

Now Jesu, þou art welcome, ewys, as I wene,
 Be noȝt abashed, but boldly boune þe to þe barre;
 What seynour will sewe for þe sore I haue sene.
 To wirke on þis warlowe, his witte is in wa[rr]e.
 Come preste, of a payne, and appere,
 And sir prelatis, youre *pontes* bes prevyng.
 What cause can ye caste of accusyng?
 Þis mater ye marke to be meving,
 And hendly in haste late vs here. (398-406, my emphasis)

The judge seems to be trying to clarify the purpose of this particular judicial session and whether the case submitted is within the remit of his session. The word, ‘pontes’ may imply such meaning as what John Bellamy explains about the delineation of each criminal trial. Medieval juries received instructions from visiting justices as to the remit of the particular sessions:

Each judicial session, whether of general eyre, trailbaston, oyer and terminer, or of the peace, was ordered by the king to investigate particular rather than general flaws in public order [. . .]. Jurors sometimes referred to the delineated

¹⁰ The reference to ‘the bar’ shall be discussed later in detail.

areas of investigation as the 'points' of the particular commissions. (1973: 47
123)

Then, Caiaphas and Annas present their accusations; Caiaphas also demands the death penalty (409). Although some lines of the exchange between Pilate and the priests are missing from the manuscript, it is certain that the priests accuse Jesus of offences related to religious matters and of performing miracles such as breaking the sabbath (418-49), curing the lame, the injured, the deaf and the dumb by witchcraft (441-45), or reviving the dead (446-49). Pilate, however, is not persuaded by their argument. He refutes their assertions legally, indicating that their indictment does not belong to the remit of his court, and that the case should be dealt with in the priests' own court:

Ilke a lede for to louse for his lay is not lele.
Youre lawes is leffull, but to youre lawis longis it
Dis faitour to feese wele with flappes full fele,
And woo may ye wirke hym be lawe, for he wranges it.
Therefore takes vnto you full tyte,
And like as youre lawes will you lede,
Ye deme hym to deth for his dede. (424-30)

After the priests have alleged that Jesus revived Lazarus from death, Pilate again chides them for accusing Jesus of a wrong charge and tells them to expound their law where it stands:

Yha, for he [Jesus] dose wele his deth for to deme?
Go layke you, sir, lightly! Wher lerned ye such lawe?
This touches no tresoune, I telle you.
Yhe prelatis, þat proued are for price,
Yhe schulde be boþe witty and wise,
And legge oure lawe wher it lyse,
Oure materes ye meve þus emel you. (452-58)

To refute Pilate's criticism, the priests make further allegations: that Jesus told others to withhold the tribute to the emperor (461-62), that he had himself called as Christ (465) and that he claimed he would have the higher kingdom (466). For these offences, they say that Jesus committed treason. Hearing these secular and political transgressions

against the Roman authority, Pilate is finally persuaded to proceed further and interrogate Jesus, himself:

To dye he deserues yf he do þus indede,
 But Y will se myselffe what he sais.
 Speke, Jesu, and spende nowe þi space for to spe[d]e.
 Þez lordyngis, þei legge þe þou liste nozt leve on oure la[y]es,
 They accuse þe cruelly and kene;
 And þefore as a chieftene Y charge þe,
 Iff þou be Criste þat þou telle me,
 And God sone þou grughe not to graunte þe,
 For þis is þe matere þat Y mene. (468-76)

The story is essentially following the succinct biblical descriptions, especially Luke 23. 2-3: ‘And they began to accuse him, saying, We found this fellow perverting the nation, and forbidding to give tribute to Caesar, saying that he himself is Christ a King. And Pilate asked him, saying, Art thou the King of the Jews?’ But the way that the York playwright expands this story and gives it medieval reality is noteworthy. Pilate insistently stresses the differences of the laws of the priests and those of his court, and strives not to overstep the boundaries of jurisdiction, whereas the priests are seeking for some legal grounds upon which they could exploit Pilate’s court in order to prosecute Jesus.

In the second trial of Jesus before Pilate in Play 33, because of the miraculous event which greatly demoralised the magnates and soldiers, the start of the formal proceeding is delayed considerably and begins at l. 264 with the declaration of ‘Oyes!’ Since this is the second trial, and Pilate has already heard enough of accusations against Jesus, he tells Jesus to defend himself:

Say man,
 Consayues þou nozt what comberous clause
 Þat þis clargye accusyng þe knawse?
 Speke, and excuse þe if þou can. (296-99)

In the York Register, a leaf is missing where the playwright must have depicted a scene of the Jewish crowd putting pressure on Pilate to sentence Jesus to death while letting

Barabbas go. However, the moment of the sentencing is intact (450-55). Compared with modern common law trials, there is a conspicuous absence of lawyers, namely, someone like a serjeant- or apprentice-at-law defending Jesus or arguing over some points of law. Moreover, in both the first and second trials of Jesus, the defendant speaks only once, and in the trial before Herod, he remains silent throughout, apparently on purpose, so that, in terms of a medieval or modern judicial procedure, no defensive argument is mounted by any lawyer or the defendant himself. Christ's silence is certainly based on the scriptural description as, for instance, Matthew relates: 'Then said Pilate unto him, Hearest thou not how many things they witness against thee? And he answered him to never a word; insomuch that the governor marvelled greatly.' (Matt. 27. 13-14) Yet, the playwright makes the best of the dramatic potential of the biblical description. The scenes involving the solitary figure, probably dirty, fettered and clothed with tattered garment, besieged with the priests' harsh accusations followed by the soldiers' mocking and torture make extraordinary moving drama.¹¹ For the late medieval and early Tudor audiences, this particular image of the well-known biblical scene may also have overlapped with what they sometimes witnessed in criminal trials in their local courts. Even now, hardly would any of us defend ourselves in confidence against a professional prosecutor in a criminal trial without help from a defence counsel. Although speaking of the later, i.e. early modern, period, John M. Beattie aptly expresses the distress of defendants before the judicial *audience* in criminal trials:

It is hardly surprising that men not used to limelight before an audience in an unfamiliar setting – and who were for the most part dirty, underfed, and surely often ill – did not usually cross-examine vigorously or challenge the evidence presented against them. Not all prisoners were unprepared or tongue-tied in court. But the evidence of the printed reports of assize trials in Surrey suggests that it was the exceptional prisoner who asked probing questions or who spoke effectively to the jury on his own behalf. (1986: 350-51)

¹¹ Such solitary figure of Christ, tortured, mocked and confronting his death, is certainly a familiar motif of late medieval visual arts and devotional literature, of which the mystery plays are a part, and which are designed to maximise the emotional impact on the faithful. See Collier (1978: 119-44) and Davidson (1984: 122-34).

In the main, the lack of defence counsel in the trials of Jesus seems to correspond with the situation in English criminal trials as late as the early eighteenth century. John H. Langbein states the traditional view: in the Middle Ages and early modern period,

The criminal trial transpired in a relatively unstructured ‘altercation’ between accusers and accused. The main purpose of the trial was to give the accused the opportunity to speak in person to the charges and the evidence adduced against him. [. . .] In this conception of the function of the trial, there was no room for defense counsel to intermeditate between the accused and the court. (2003: 2)

Other authorities of medieval and early modern legal history concur. John H. Baker writes that, in criminal trials, ‘The defendant could not have the assistance of counsel in presenting his case, unless there was a point of law arising on the indictment.’ (2002: 509-10)¹²

A model of such a courtroom practice is seen in a short and practical legal treatise called *Placita Corone*, written in Anglo-Norman around 1274-75 according to its editor, John Marsh Kaye (1966: xvii). This is one of the group of didactic manuals from that period ‘intended to inform their audience of the proper ways of holding courts, pleading causes and pursuing actions, and to provide forms that could be imitated’ (Beckerman 1999: 33). John S. Beckerman thinks that these treatises would have been ‘either teachers’ texts for classroom lectures or produced from students’ notes of formal classes’ (1999: 36). Kaye regards this particular treatise, especially its longer versions, ‘as a set of detailed precedents for the conduct of appeals of felony in the king’s court’, probably at general eyre or gaol delivery (1966: x). A particularly informative aspect of *Placita Corone* for our purpose is that it contains possible models of arguments by judges, accusers, defendants and others such as witnesses and officials which may well have occurred in medieval criminal courts. In one template, a defendant, ‘Hugh de M.’ is charged with stealing cattle (1966: 16-18). After a witness statement, the judge tells Hugh to give his response. Then Hugh seems to ask for a professional defence lawyer, but the judge refuses Hugh’s request, telling him that using a counsel in a case like his

¹² See also Plucknett (1956: 434-35), Powell (1989: 78), Bellamy (1998: 113) and Mulholland (‘Introduction’ 2006: 8).

is ‘against the law of land’:

‘Sire, pur deu, Je su un simples homs et nynt ay geres use playe de terre, paront Je me say meyns suffisaument defendre: et pur ce vous pri je, sire, ke je puisse estre consille de aukun prodhomme coment jeo me puisse meus defendre en ceo cas.’

‘Coment, Hue? Ce sereyt une deverie apertement encontre ley de terre et encontre dreyture kar ky nous porra meuz certifier de vostre fet demeine ke vous memes?’ (Kaye 1966: 17)¹³

Although this is not exactly a record of an exchange that actually transpired in a medieval court, it is significant that the author of this legal textbook believed that employing the service of defence counsel in such a case was illegal or at least went against the established custom.

Within the Year Books, which are informal records of actual court cases taken by lawyers themselves, presumably for their own reference, surviving since the end of the thirteenth century, there is a similar dialogue between a judge and a defendant about the use of defence counsel in a criminal court.¹⁴ In a case of rape from the 1293-94 Yorkshire eyre, Hugh, the defendant, asks for a defence counsel but was refused:

[JUSTICIARIUS] Hugo, presentatum est nobis quod vos rapuistis [. . .]; qualiter vultis vos acquietare? – *Hugo*. Domine, rogo vos quod possum habere consilium ne subripiar in curia Regis pro defectu consilii. – JUSTICIARIUS. Vos debetis scire quod Rex est pars in casu isto, et sequitur ex officio, unde in hoc casu jura non patiuntur quod habeatis consilium contra Regem, [qui] vos sequitur ex officio [. . .]. Et ideo precipimus ex parte Regis quod omnes narratores qui sunt de consilio vestro recedant. (Horwood 1863: 530)¹⁵

¹³ ‘“Sir, God knows, I am an unlettered man and have scarcely ever made a plea: hence I feel scarcely able to defend myself, and for this reason, sir, I beg you to let me be advised by some learned person as to how I can best defend myself in this case.” “What, Hugh? that course would be clearly against the law of the land and against right, for who can tell us more about your doings than you yourself?”’ Translated by Kaye (1966: 17). All quotations and translations from *Placita Corone* are taken from Kay’s edition.

¹⁴ I am indebted to Daniel Klerman’s article (2003) for this reference.

¹⁵ ‘*Judge*: Hugh, it was presented to us that you committed rape . . . how do you want to acquit yourself? *Hugh*: Lord, I request that I be able to have counsel lest I be deceived in royal court for lack of counsel. *Judge*: You ought to know that the king is a party to this case and prosecutes you ex officio, and in this situation the law does not allow you to have counsel against the king . . . And therefore, on the king’s behalf, we order all the

Like the passage from *Placita Corone*, this one also reads like a dramatic dialogue. Moreover, its relevance is greater because, as it was contained in a Year Book report, this dialogue must have been based not on an imaginary textbook trial but on an actual court case. Besides, the rule against the criminal defendant using counsel is more narrowly defined than in the *Placita Corone* case as the judge disallows defence lawyers because, he says, this is an *ex officio* case, prosecuted by the king's officials, rather than a private appeal. The case of Jesus, if transposed in medieval context, may well be considered as an *ex officio* case of heresy and treason, and thus the rule against using counsel may apply.

The preceding evidence about the lack of defence council in criminal trials come from late thirteenth century, somewhat early for comparison with the trials depicted in the cycle drama although the general principles of judicial procedure must have remained fairly static. However, there is well-known, rather late evidence left by Sir Thomas Smith, an Elizabethan scholar, politician and diplomat, and a trusted counsellor of the queen. In 1562-65 when he was the ambassador to France, he penned a book called *De Republica Anglorum* in order to explain the government, the social classes and the judicial system of England to foreign readers unfamiliar with the country. In this work, he takes up the subject of criminal pleas prosecuted by the Crown. This type of trial in that period as described by Smith seems to be heavily biased against the defendant since, the author writes, 'he that shall speake for the prisoner shall be rebuked, as speaking against the prince' (1982: 91), and explains how defence is pleaded only by the defendant himself:

Neverthelesse it is never defended, but the prisoner and partie defendant in any cause may alleadge for himselfe al the reasons, meanes and defences that he can, and shall be peaceablie hearde and quietlie: But in those pleas or pursuites of the crowne, procurer or advocate he gettes non, which in civill and pecuniarie matters (be it for land, rent, right, or possession, although he plead against the prince himselfe) is never denied (1982: 91).

However, it needs to be said that lawyers were not consistently excluded from all criminal trials in the medieval and early modern periods. Langbein notes that the rule against defence counsel was applied only to felony and treason cases and not to misdemeanours, and that, at least by the early seventeenth-century attorneys were acting for defendants accused of minor offences in quarter sessions (2003: 36). Furthermore, David J. Seipp, who extensively examined the Year Books in the medieval period in this regard, finds that ‘lawyers practiced regularly as counsel for criminal defendants and for the prosecution’ (1995: 22); he suspects that ‘the rule forbidding counsel for criminal defendants really had effect only in the more repressive Tudor and Stuart regime’ (25-26). Mystery plays were first created at the end of the Middle Ages and performed up to the 1570s in the Tudor period. During the same period, even if defence counsels were occasionally allowed in criminal courts, they may not have been a regular part of them. The scene of the dramatised trials of Jesus before Pilate and Herod and those of suspected felons in contemporary criminal courts may well have seemed to be alike in their lack of defence lawyers for the *audiences* of the plays and judicial courts.

As has been already quoted, another obvious detail from contemporary courts in the York Passion plays is the repeated references to the physical ‘bar’ and ‘bench’ in legal courts. These pieces of furniture designated in the speeches and even in a stage direction in the mystery plays which we shall discuss may well have been used in actual staging as they would have been relatively easy to include among portable stage props, and quite effective in recreating the ambiance of courtroom. They first appear in Play 26, *The Conspiracy*, when Judas comes to see Pilate and the priests in order to inform on Jesus. The porter (*‘Janitor’*) is distrustful of Judas and very reluctant to let him see his superiors inside. But Judas assures him he has useful information for them, saying, ‘If I be callid to counsaile þat cause schall be knawen / Emang þat comely companye, to clerke and to knyght’ (185-86). As Judas refers to the conference of Pilate, the priests, the doctors and the soldiers as a ‘counsaile’, this meeting may have been, in part, modelled after a medieval baronial council, which had a judicial function. However, the porter says to Judas, ‘Byde me here, bewchere, or more blore be blowen, / And I schall

buske to þe benke wher baneres are bright, / And saie vnto oure souereynes, or seede
 more be sawen' (187-89). The fixture of bench in the room possibly implies that the
 porter's masters were judges sitting at the judicial bench, and the room is fitted as a
 judicial space albeit temporarily. The word is again used in Play 30, *Christ before Pilate*
I, when the priests bring Jesus to Pilate's court for the first time:

[CAYPHAS] For we haue brought here a lorell – he lokis like a lambe.
 PILATUS Come byn, you bothe, to *þe benke* brayde yowe.
 CAYPHAS Nay, gud sir, laughes is leffull for vs.
 PILATUS A, sir Cayphas, be curtayse yhe bus.
 ANNA Nay, goode lorde, it may not be þus.
 PILATUS Sais no more, but come sitte you beside me in sorowe,
 as I saide youe. (274-79, my emphasis)

From this exchange, it can be deduced that the bench on which Pilate is sitting is on a
 higher platform, perhaps some kind of dais on which medieval judges' benches were
 probably placed. With the three magnificently attired magnates sitting on that bench, the
 scene may well have appeared similar to a medieval court of law such as the King's
 Bench at Westminster Hall. Another play where the word, 'benke', appears is York Play
 47, *Doomsday*. There, like a judge declaring the ultimate sentences, God speaks to the
 damned souls most ironically:

Whanne I had mister of mete and drynke,
 Caytiffis, 3e cacched me fro youre gate.
 Whanne 3e wer sette as sirs on *benke*,
 I stode þeroute, werie and wette;
 Was none of yowe wolde on me thynke,
 Pyté to haue of my poure state,
 Þefore till hell I schall you synke,
 Weele are 3e worthy to go þat gate. (325-32, my emphasis)

This particular 'benke' may or may not mean the bench in a judicial court, but for the
 audiences in the streets of York who had just seen the Passion sequences only a short
 while previously, the 'sirs' may well have pointed at Pilate and the priests sitting on a
 bench haughtily before the 'werie and wette' Jesus.

Elsewhere among the English cycle drama, the word appears in N-town Play 41, *The*

Assumption of Mary. In this play, after the death of Christ, a bishop (*episcopus*) and three princes, termed as *primus*, *secundus* and *tertius princeps* in the text, discuss the danger of leaving Mary and other supporters of Christ loose (59-65). Thus the third prince proposes:

And yif they [Christians] ben sufferyd thus, this will bredyn a stench,
 For thorow here fayre speche oure lawys they steyn.
 And therefore devyse we now vpon *this pleyne bench*
 What is beste for to do, hem for to atteyn.
 We are but loste yif they reyn. (70-74, my emphasis)

This particular ‘bench’ is glossed by Stephen Spector, the editor of the EETS edition, as ‘council’. Indeed, the scene is not a judicial trial but a council of religious and secular magnates. But like Pilate’s council with the high priests, such a council can turn into a judicial tribunal when need arises. In fact, the word ‘bench’ in such a context is, as in the present-day usage implies, not only the physical bench in a courthouse but also the judge or even the law court as a legal entity.

In addition to the bench, the ‘bar’ in Pilate’s court in York strengthens the association with the contemporary judicial sites more clearly because, unlike the bench, the bar is not just a common piece of furniture which could be found in any room; it is definitely the railing used in the legal court or figuratively means the court itself. This word first appears in the cycle, along with the ‘benke’ cited above, in Play 26, *The Conspiracy*, when Judas comes to see the magnates. While Caiaphas, apparently contemptuous of the betrayer, scolds Judas’s manners, saying, ‘Say, harste þou, knave, can þou not knele?’ (208), Pilate is eager to gain information and encourages the informer to speak out: ‘Bot, bewshere, be noȝt abayst to byde at þe ba[r]’ (211). Along with the ‘benke’ in l. 187, the room, fitted with the common legal furniture, is depicted as being regularly used for tribunals. Pilate again uses the word in his first trial of Jesus in Play 30. Just after he has opened the court by having the beadle declare ‘Oyas’ three times as already quoted (370), the judge addresses to Jesus:

Come preste and appeare,

To þe barre drawe [þ]e nere,
 To þi jugement here,
 To be demed for [þi] dedis vndewe. (376-79, my emphasis)

Thus it seems that Pilate is sitting on a bench on a higher platform in an area partitioned off by the bar,¹⁶ towards which Jesus is urged to advance. However, Jesus may well be standing still as if he were stubbornly refusing to follow the order or were totally confused and did not understand how to act in this strange place while the soldiers were increasingly agitated about Jesus's seemingly recalcitrant behaviour:

I MILES	Whe, harke how þis harlott he heldies oute of harre, This lotterelle liste nocht my lorde to lowte.
II MILES	Say, beggar, why brawlest þou? Go boune þe to þe barre.
I MILES	Steppe on thy standyng so sterne and so stoute.
II MILES	Steppe on thy standyng so still.
I MILES	Sir cowarde, to courte must yhe care. (380-85, my emphasis)

The word 'bar' used here by the soldiers, as in the case of 'bench', is not only a piece of furnishing but also a symbolic object which signifies the authority of the court; the defendant is made ready to come to the bar 'so sterne and so stoute' and 'so still'.

The word is also used twice in Play 31, *Christ before Pilate 2; The Judgement*, in a phrase, 'bryng(e) hym to barre' in ll. 133 and 145, meaning 'bring Jesus to the trial'. In these two instances, 'barre' may be used not concretely but figuratively. But these repeated uses of the word may well have presupposed the presence of a physical bar in Pilate's court. Since the York cycle was staged with pageant wagons, Pilate may have been sitting on the wagon which is used as a dais and whose railing was a 'bar' of the court, while Jesus and the soldiers were on the ground, approaching the bar placed on the wagon.

An example of the word in the N-town Play 31, *Satan and Pilate's Wife; The Second Trial before Pilate*, is further illuminating because it appears not only in a speech by

¹⁶ Note that Caiaphas is originally standing at the lower ('laughter') area than Pilate's bench (30/276).

Pilate but also in the stage direction immediately following it, depicting the scene where Jesus is lined up ‘*at þe barre*’ with the other criminals in front of Pilate:

PILAT Serys, syn algatys it must be so,
 We must syt and oure offyce do.
 Brynge forthe to þe barre þat arn to be dempt,
 And þei xal haue here jugement.

Here þei xal brynge Barabas to þe barre, and Jesu, and ij þewys in here shertys, bareleggyd, and Jesus standyng at þe barre betwyx them. And Annas and Cayphas xal gon into þe cowncell hous quan Pylat sytty[th]. (167-170 & SD)

Thus the four prisoners, including Jesus and Barabbas, seem to be *lined-up at the bar*, and tried in succession. The basic story is in line with the Gospel accounts that, according to the prevailing custom, one prisoner was released at the Passover and that Pilate wanted to release Jesus but the crowd demanded that Barabbas be let go and Jesus crucified. Yet, the description also fits what may have happened in late medieval criminal trials. As the medieval trials generally had a very short duration, estimated about 10 to 20 minutes in general (Powell 1989: 78), plaintiffs were not likely to be brought in one by one, but were simply lined-up at the bar before the judges and juries, waiting for only a few questions to be asked, and their sentences to be delivered soon afterwards.

These signs of the physical configuration of the medieval law courts gleaned from the texts of the cycle drama approximately correspond with the appearances of the four courts in Westminster in the fifteenth-century depicted in the so-called Whaddon illuminations currently held in the Inner Temple Library.¹⁷ The general layout of the four courts are remarkably similar to each other although differences in the natures of the four courts such as whether they dealt with criminal and/or civil cases seem to create some distinct variations. For the sake of comparison with the York Passion plays, it is worth looking closely at the drawing of the King’s Bench, because there a criminal trial seems to be depicted. In that drawing, five judges clothed in red are looking down on the other attendees of the session, seated, probably on a bench, which is mostly

¹⁷ See the figure at the end of this chapter.

concealed by the judges' luxurious costume, placed on a higher platform. In front of them is a big table, around which a group of court clerks are busy working on documents. Strangely, there are also two clerks standing on the table, possibly directing the other clerks' work and giving instructions to the jury. On the left several people, undoubtedly jurors, are crowding. A partition in the centre separates these people from those in the foreground. This partition in the middle can be called a 'bar' on which one fettered plaintiff is leaning, accompanied by a gaoler. Two lawyers, probably serjeants-at-law as surmised from their striped robes, are standing by the plaintiff, apparently prepared to give their counsel. But it is probably the plaintiff himself who is now speaking to the judges, comparable to Jesus and Pilate in the cycle drama, although we can see only the prisoner's back. There is another big bar further down. A group of six, rather shabbily attired, miserable-looking prisoners, all chained together, are *lined up at the bar*, like the thieves including Barabbas in the drama, watched by two gaolers. The whole scene signifies the power structure of the court as the judges sitting higher up on the bench, the clerks serving them working beneath, and the defendants, lawyers and gaolers standing further down, separated and enclosed by the two bars. This is a blueprint of a power structure of the court and may have been a most effective stage design if adapted in a mystery cycle.

As has been mentioned, the royal judiciary and administration moved to York several times. According to Clare Graham, the inventory of 1320 when the courts moved to York itemises the furniture of Common Pleas, the King's Bench and the Exchequer, including benches and bars, which further corroborate the Whaddon illuminations and the several details of the cycle drama so far discussed:

Both Common Pleas and the King's Bench possessed benches twenty-seven feet long 'for the Justices and their clerks in ascending steps' (four in the former, three in the latter). Each had a great board or table: that for Common Pleas was 21 feet by 9.5 feet, and supported on joists and posts, while that for King's Bench was 20 feet by 6 feet and supported on trestles. Each had a 'great bar' (Common Pleas also had three smaller bars, and King's Bench one) and several more loose benches or forms of various sizes: There was also a 'block of five steps' at the justices' entrance to Common Pleas and a door and screen

for the entrance to King's Bench. (2003: 19)

It is particularly interesting that the benches were made 'in ascending steps', which probably means that the courts were designed to show the hierarchy of the personnel, recalling the exchange between Pilate and Caiaphas in York (30/274-79). Common Pleas and the King's Bench both had a great bar and smaller bars. Perhaps, the 'great bar' was the bar delineating the outer area of the court in the Westminster Hall whereas the small bars divided the inner area where the judges and clerks sat and the rest of the court where prisoners, advocates and gaolers stood.

The arrangement of judges' bench on a raised platform, a table for clerks and one or two bars by which a defendant or witnesses stand may not have been confined to the Westminster courts but is likely to have been employed in many courts in provinces. Sir Thomas Smith, the Elizabethan politician whose *De Republica Anglorum* is quite detailed on various aspects of the legal system of his day, describes the material arrangement and positioning of court personnel in the provincial sessions of gaol delivery which remarkably correlate with those portrayed in the Whaddon illuminations and, thus, are reminiscent of the details from the cycle drama:

In the towne house, or in some open or common place, there is a tribunall or place of judgement made aloft upon the highest bench, there sitteth the two or three Judges which be sent downe in Commission in the midst. Next to them on eche side, sitteth the Justices of peace, according to their estate and degree. On a lower bench before them, the rest of the Justices of the peace, and some other gentlemen or their clarkes. Before these Judges and Justices, there is a table set on lowe, where sitteth the *Custos rotulorum*, or keeper of writtes, Thexchetor, the undershirife, and such clarkes as doe write. At the end of that table sitteth the sheriff of the shire, behind that there is a barre made, a space for thenquestes or the xij to come in when they are called, behind that space another barre, and there stand the prisoners which be brought thither by the gaoler all chained one to another. (1982: 111)

From these textual and pictorial evidences, it is apparent that, in writing Passion plays set in the biblical court of Pontius Pilate, the playwrights of the cycle drama, especially in York and N-town, must have had the images of the medieval English courts in mind.

Pilate in York is apparently a professional judge, presiding over a judicial court on a regular schedule as the speeches of his faithful and punctilious beadle imply. On the other hand, the historical Herod Antipas was primarily a ruler of Judaea, a client state under the Roman Emperor. In the Bible, compared with Herod the Great, Herod Antipas cuts a less prominent figure, only Luke mentioning him:

And when Herod saw Jesus, he was exceeding glad: for he was desirous to see him of a long season, because he had heard many things of him; and he hoped to have seen some miracle done by him. Then he questioned with him in many words; but he answered him nothing. And the chief priests and scribes stood and vehemently accused him. And Herod with his men of war set him at nought, and mocked him, and arrayed him in a gorgeous robe, and sent him again to Pilate. (23. 8-12)

Thus Herod had heard about, and been interested in, Jesus before he met the defendant in his court, which the authors of the cycle plays seem to have dramatised in contemporary contexts. They imply that there has been a certain animosity between Judge Pilate and Herod, and that Pilate's gesture of entrusting Herod to try Jesus seems to help dissolve this animosity. As has been stated in the introduction, the medieval English legal system is characterised by the varied yet overlapping judicial authorities, each court jealously guarding their jurisdictional and geographical boundaries and the suitors who would seek their judgements. On the other hand, suitors had an array of courts to choose from, which may or may not have been advantageous to their suit; some suitors may have decided to submit their case to multiple courts either simultaneously or in succession. For instance, Louis A. Knafla looked at 'all litigation from a range of major court records local and central, civil and criminal, prerogative, common law and equity, pertaining to parties in the county of Kent in the last five years of Elizabeth I, from Easter 1598 through Hillary 1603' (2005: 130). He finds that 'many cases in Chancery, Requests, the King's Bench, and the Assizes were tried before, or simultaneously, in local courts. In fact, many cases were tried in more than one central

or local court.’ (132) Although the courts were public institutions, judges and court clerks derived much of their income from fees paid by suitors (Klerman 2005: 153). In such an environment, there were bound to be competition and conflicts between legal courts. Discussing manorial courts, Maureen Mulholland writes:

The most serious contempt of court was committed by a tenant who sued in another court than that of his or her lord – an easy offence to commit when there were overlapping jurisdictions, not only between different adjoining manors but also between different judicial systems. Medieval man and woman lived in a society of interlocking and co-existent legal systems, each of which jealously guarded its rights. A person who had suffered a trespass might bring his case before the local court, his manorial court or, with a writ of trespass, before the common law courts, but woe betide him if sued in a court of another lord and another manor. (‘Trials’ 2003: 92)¹⁸

Such conflicts of jurisdiction certainly cannot be directly applied to interpret the plays set in the biblical period. But they may have partially coloured the depictions of the relationship between Pilate and Herod in the cycle drama, where Jesus seems to be, at least initially, a coveted defendant for Herod.

Let us turn to the play texts to see how the jurisdictional conflicts of the two judges are reflected. In the rather short version of the Chester Play 16, the playwright follows the basic storyline given by Luke. Informed by Annas of the fact that Jesus is from Galilee (147-48), Pilate, mindful of Herod’s royalty, orders his subordinates to send Jesus to his court:

Syth he was borne ther as steyne yee,
to Herode send soone shall he be;
ells rafte I him his royaltie
and blemished his renowne. (151-54)

To this gesture of Pilate, Herod says: ‘A! Welcome, Jesu, verament! / And I thanke Pilate of his present’ (167-68). After Herod’s effort to extract an incriminating statement ends in failure as described by Luke, he decides to send Jesus back to Pilate, stating that there is no longer hostility towards his fellow judge:

¹⁸ See also Mulholland, ‘Introduction’ (2003: 5).

Yett sythen that Pilate hasse donne soo,
 the wrath that was betweene us two
 I forgive – no more his foe
 to be after his daye. (191-94)

In the N-town Play 30, when Pilate sends Jesus to Herod, he sounds as if he wants to be relieved of the duty of judging Jesus's offence (137-44):

I vndyrstand ryth now what is to do:
 Þe jugement of Jesu lyth not to me.
 Herowde is kyng of þat countré,
 To jewge þat regyon in lenth and in brede.
 Þe jurysdyccyon of Jesu now han must he;
 Perfore Jesu in hast to hym 3e lede. (139-44)

As for Herod, in the previous play, he orders his subordinates to bring Jesus to his court if the suspect enters the sphere of their jurisdiction:

Serys, yf þat he come in þis cowntre,
 With oure juresdyccyon loke 3e aspye,
 And anon þat he be brouth onto me;
 And þe trewth myself þan xal trye. (29/70-74)

It is noteworthy that the playwright seems to have the audience understand the geographical and jurisdictional boundaries between the courts of the two judges by using words like 'þat regyon' and 'þe jurysdyccyon'. The N-town version also let us see that Herod previously harboured a considerable grudge against Pilate since Herod, receiving Jesus from Pilate, says, 'I forgyf hym [Pilate] now his gret trespace / And schal be his frend withowtyn ende' (30/167-68). What this 'gret trespace' means is not made clear, but it is possible that there may have been an infringement of jurisdictional boundaries on the part of Pilate.

The relationship between the two judges are more elaborately drawn in the York plays as they have more lines to speak there. The York Pilate recognises and respects Herod's kingship and is willing to let him judge Jesus. Pilate says to the priests and soldiers, 'Sir Herowde is kyng þer, ye kenne, / His poure is preued full preste, / To ridde

hym, or reue hym of rest' (30/517-19). His respect is to be formerly conveyed to Herod through the soldiers:

Tille Herowde in haste with þat harlott ye hye,
 Comaunde me full mekely vnto his moste myght;
 Saie þe dome of þis boy, to deme hym to dye,
 Is done vppone hym dewly, to dresse or to dight,
 Or liffe for to leue at his liste.
 Say ought I may do hym indede,
 His awne am I, worthely in wede. (30/531-36)

In contrast to Pilate's respect for Herod, in the next Play 31, Herod's animosity to Pilate is apparent as he initially refuses to see Jesus, or what one soldier calls, 'A presente fro Pilate' (95); he says to the soldiers, 'Gose tyte with þat gedlyng agayne, / And saie hym [Pilate] a borrowed bene sette I nocht be hym' (101-02). As Mulholland suggests in a quotation above, a medieval judge would not have been pleased to know that a new defendant has just been tried in the court of the neighbouring lord. However, as in the Chester and N-town cycles, once Herod realises that Pilate's gift is 'þis prophette' (164) whom he has been very eager to see, Herod's 'hart hoppis for joie' (163) and is eventually happy to forgive Pilate. However, later finding nothing to convict Jesus of, Herod sends Jesus back to Pilate, saying, 'We graunte hym [Pilate] oure poure all playne to appere, / And also oure greuance forgeue we algate, / And we graunte hym oure grace with a goode chere' (407-09). Although the relationship between Pilate and Herod depicted in these three cycles cannot be directly connected to medieval judges, medieval audiences may well have understood these scenes in terms of the jurisdictional conflicts amongst medieval courts.

As has been suggested, Pilate's court in the York cycle, with its bar and bench, and the meticulous clerk, materially appears to be a regular legal site, but the court of Herod Antipas does not seem to be primarily designed as a legal court. It appears to be a court of a minor king or a regional ruler in Palestine; if translated into late medieval England, it may be regarded as the king's council,¹⁹ or a council of a powerful nobleman whose

¹⁹ Lynn Squire compares the council depicted in the N-town Passion plays with 'the

authority eclipses a royal justice. It shares some characteristics with Pilate's court. Firstly, since Herod sleeps there, the judge apparently lives there. Secondly, as in the case of Pilate, he has also sons with him who boldly participate in the interrogation like lawyers. Similarly to Pilate, and perhaps more so, Herod's court is both a private and public place. Thus his court is perhaps imagined to be a part of a castle of a regional lord, who is unlikely to be a royal justice but is entitled to hold a legal court such as a baronial council, manorial court or county court. If he is comparable to a powerful nobleman rather than a member of the lower gentry, his court is likely to be a baronial council. In fact, asked who they are by Herod's courtier, one of the soldiers who bring Jesus to the court says, 'Sir, we are knyghtis kende, / Is comen to youre counsaill þis carle for to kill' (31/59-60). It may not be possible to compare Herod's court with actual baronial councils in late medieval England. However, as with other legal motifs in the cycle drama, the baronial councils are worth paying attention to as one of the contexts. Medieval baronial councils often functioned as judicial tribunals, complementing the common law courts, which were plagued by delays and inconveniences. According to Carol Rawcliffe who studied the baronial councils in depth, by late medieval period, 'they offered a valuable and popular alternative to litigation in the King's Bench or court of Common Pleas by providing a formal and authoritative court of arbitration before which property disputes and other civil suits were quickly and more cheaply determined' (1979: 91-92). Now, as the councils dealt with civil disputes, the criminal cases, especially of treason and heresy as in the Passion plays, could not have been presented in such councils. But many members of the medieval audience may have been familiar with the lords in their region presiding over their own judicial courts in their castles, surrounded by lawyers and clerks.

Rawcliffe writes that 'most, if not all, baronial councils included a group of lawyers, retained specifically for their professional services' (1979: 90). Perhaps due to the small scale of the play's production, the York Herod's council does not contain any overtly legal professionals, but possesses two courtiers called Dux (I and II). As courtiers, they

so-called king's "Council Learned in the Law", a part of Henry VII's council especially concerned with judiciary matters' (1978: 208).

are versatile men, helping their master with various personal and official tasks. On closer inspection, they seem to accomplish quite a few procedural tasks of somewhat legal nature, such as bringing in the defendant, giving the judge with preliminary information while improving his humour, instructing the defendant and the accompanying soldiers about the proper manner of answering questions, presenting charges, and advising Herod in order to facilitate the interrogation. The first courtier (I Dux) calls Herod ‘Mounseniour’, which is not heard amongst addresses to Pilate. Their speeches to Herod are quite ornate and pretentious: ‘Mounseniour, demene you [to] menske in mynde what I mene, / And boune to youre b[e]dw[a]rd, for so holde I best’ (33-34). They must have been dressed in luxurious costume; and their gestures, as well as their language, may well have been ostentatious. Thus their presence contributes to an overall impression of a court an aristocratic ambiance. As Herod’s courtiers, they help the king to go to bed (47-51), and act according as they think Herod would wish. For instance, when the soldiers arrive at the court, the first courtier tells them to go away as the king has just gone to bed, and would be annoyed to be awakened (61-62). But when they hear that the soldiers are with the notorious ‘boy’ whom Herod has been keen to see (65-66), they wake up the irritable king while trying to placate his initial displeasure, and they gradually warms the king’s curiosity about a strange tiding he should hear:

REX	What, and schall I rise nowe, in þe deuyllis name, To stighill amang straungeres in stales of astate? But haue here my hande, halde nowe, And se þat my sloppe be wele sittande.
I DUX	My lorde, with a goode will Y wolde youe, No wrange will I witte at my wittande.
	But my lorde, we can tell 3ou of vncouthe tythande.
REX	3a, but loke ye telle vs no tales but trewe.
II DUX	My lorde, þei bryng you yondir a boy, boune in a bande, þat bodus outhier bourdyng or bales to brewe.
REX	þanne gete we some harrowe full hastely at hande.
I DUX	My lorde, þer is some note þat is nedfull to neven you of new.
REX	Why, hoppis þou þei haste hym to hyng?

II DUX We wotte nocht þer will nor þer wenyng,
 But boodward full blithely þei bryng.
 REX Nowe do þan, and late vs se of þere saying. (71-86)

When they have talked the king into seeing the soldiers, they then prepare the visitors with this remark: ‘Lo, sirs, ye schall carpe with þe kyng, / And telles to hym manly youre menyng’ (87-88). A moment later, when the king is still grudging to examine Jesus and nearly dismisses the soldiers from his presence, again the courtiers intervene and tactfully speak on behalf of the soldiers as well as stating how this suspect should merit the king's consideration:

I DUX A, my lorde, with youre leve, þei haue faren ferre,
 And for to fraiste of youre fare was no folye.
 II DUX My lorde, and þis gedlyng go þus it will greue werre,
 For he gares growe on þis grounde grete velanye.
 REX Why, menys þou þat myghtyng schuld my myghtes marre?
 I DUX Nay, lorde, but he makis on þis molde mekill maystrie.
 REX Go ynne, and late vs see of þe[r] sawes [n]er[r]e [. . .]. (103-09)

The courtiers repeatedly stress that Jesus may cause disorder on *this*, Herod's, *ground* or *mould* even though Herod's *might* is not threatened. Up to this point, Herod has regarded Jesus as only an irritating gift from Pilate, perhaps a kind of ingratiating bribe to earn his goodwill cheaply, and may well have thought that he has nothing to do with Jesus in his own jurisdiction, but the courtiers' counsel has changed his mind.

After Herod starts interrogating Jesus (‘we schalle *appose* hym’ [162; my emphasis]), the courtiers continue to facilitate the questioning. Intervening between the king and the accused, they try their hardest to elicit a response from the mouth of silent Jesus. First, they instruct Jesus how he should respond to the king:

II DUX Harke, cosyne, þou comys to karpe with a kyng,
 Take tente and be conande, and carpe as þou knowis.
 I DUX Ya, and loke þat þou be not a sotte of thy saying,
 But sadly and sone þou sette all þi sawes. (169-72)

Soon, they become irritated by Jesus's complete lack of decorum before their master; the first courtier tries to coach Jesus how to behave before the king: ‘Knele doune here

to þe kyng on thy knee' (177), and again: 'Whe! Go, lawmere, and lerne þe to lowte, /⁶⁷
Or þai more blame þe to-bring' (181-82).

While endeavouring to have Jesus speak and not to irritate the king, they also carefully steer Herod with advice in order to ease Jesus into speaking out. The first courtier tells the king that his thunderous voice 'astonys hym [Jesus]' and is 'so store [loud]' that 'Hym had leuere haue stande stone still þer he stode' (251-52). The second courtier suggests the king's 'fauchone hym flaies / And lettis hym' (255-56). Herod listens to this advice, and puts away the frightening sword and will 'softely with a septoure assaie' (258). Later, the second courtier also indicates that Jesus is 'agaste' of Herod's 'gaye gere' (283). Thus, the two courtiers keep behaving as both Herod's close subordinates and court officials simultaneously.

The most conspicuous feature of the trial of Jesus before Herod in the York cycle is the strong emphasis on Jesus's silence throughout the trial. As has been quoted, this is based on the biblical description and therefore also reflected in the Chester and N-town plays though the Towneley author chooses to do without the scene entirely. The whole play is constructed around the silent Jesus interrogated by vociferous Herod and his men including the king's sons. Faced with the defendant's steadfast refusal to plead for himself or even utter any word at all, Herod and his subordinates seem to conclude that Jesus is a fool and unable to answer as one courtiers says to the king, 'Nowe, goode lorde, and you may, meue you no more, / Itt is not faire to feght with a fonned foode' (293-94). One of the sons also tells his father that all the legal disputation is of no use as the defendant is mad: 'Mi lorde, all your mutyng amendis not a myte, / To medill with a madman is meruaille to me' (335-36). They then dress him with white clothes of a fool (350-02) and, deriding the claim that Jesus is the new king, mock him as a fool king (359-60). From the point of view of the medieval audience, the scene may have not only taught them Christ's resolution and patience, but also reminded them of some episodes from the contemporary criminal trials which they attended, because there were defendants who, if not remaining completely silent, stubbornly refused to plead in such trials as John Bellamy writes:

Most of those who had been indicted objected not at all to trial by jury, being perhaps aware of local sympathy in their own favour or mindful of the incidence of acquittals in general. A few men, perhaps strangers to the region where they were supposed to have committed their offence or knowing of the influence of their enemies with the jurors, resolutely refused, when asked by the judge to plead guilty or not guilty, to make any plea at all. (1973: 140)

What would have happened to men who did refuse to plead as Jesus did? According to Bellamy, it was thought ‘necessary to force men to plead’, and ‘The first statute of Westminster said that notorious felons who refused to plead should be put in strong and hard imprisonment as refusing the common law of England’ (1973: 140). The intractable defendants were imprisoned with starvation diet of little water and bread. In one model court case in *Placita Corone*, a defendant called Nicholas is afraid of accepting a trial by jury because he says to the judge, ‘Sire, je seu un estrange homme en ceste pays et meyns coneuz entre ces bone genz ke mestir me seroyt: donc je ne my os mettre en lur verdit de ceste suspecion ke mise my est sure sanz acheson’ (18).²⁰ For his refusal to plead, the judge orders the gaoler to take the defendant back to prison and to give him ‘poy a manger et meyns a boyure’ (‘little to eat and less to drink’) (18). Since the condition of gaols in medieval and early modern periods were so inhumane and debilitating, the imprisonment may have practically meant a death sentence for many.²¹ As the Middle Ages drew to a close, the measures of compulsion became increasingly severe and torturous:

By the beginning of the fifteenth century the notion was no longer of severe imprisonment but of severe pains. In 1406 Chief Justice Gascoigne ordered that on two suspects there should be placed as great a weight of iron as they could bear *and more*. In the reign of Edward IV a judge instructed that an appellee should be put naked in a cell with his arms and legs each tied by cord to a corner. (Bellamy 1973: 141)

²⁰ ‘Sir, I am a stranger in these parts and less known to these good people than I would need to be. Hence I dare not trust myself to their verdict in respect of this supicion, which has been raised against me without reason’ (18).

²¹ Regarding the atrocious conditions of early modern gaols and the frequent deaths caused by them, see Langbein (2003: 49-50).

Such tortures may well have caused the death of the defendant. In fact, by the time when Sir Thomas Smith wrote *De Republica Anglorum*, the defendants of felony who refused to accept a trial by jury and remained silent were tortured to death:

If he [the defendant] will not aunswere, or not aunswere directly, guiltie or not guiltie, after he hath beene once or twice so interrogated, he is judged mute, that is dumme by contumacie, and his condemnation is to be pressed to death, which is one of the cruellest deathes that may be: he is layd upon a table, and an other uppon him, and so much weight of stones or lead laide uppon that table, while as his bodie be crushed, and his life by that violence taken from him (112).

Why, then, did some men remain silent and choose a certain death? Sir Thomas Smith explains:

This death some strong and stout hearted man doth choose, for being not condemned of felonie, his bloud is not corrupted, his lands nor goods confiscate to the Prince, which in all cases of felonie are commonly lost from him and his heires, if he be forejudged, that is condemned for a felon by the lawe (112).

Thus such defendants chose the agonising death in order to save their inheritances for their descendants. In a sense, the dramatisation of Christ's steadfast silence during the trial may have suggested to some of the contemporary audience that Christ also chooses not to defend himself in order to save his children, i.e. the mankind as a whole; after all, difficult as it is for him as a man, he is destined to be executed in order to save God's children.

As with Pilate's court, there are again some procedural and physical signs of medieval legal tribunal in the York Herod's trial of Jesus. Unlike Pilate's first trial, there is no clear marker of the beginning of the session at Herod's court: he and his councillors simply begin to interrogate Jesus. But, as is described in the gospel of Luke, Jesus never opens the mouth in Herod's court, and the king becomes quite irritated with the defendant's silence. The king finally loses interest in Jesus and seems to have decided to send him back to Pilate. Before doing so, curiously he contrives to give a legal formality to the whole session:

- [REX] Goes, garre crye in my courte and grathely garre write
 All þe dedis þat we hauē done in þis same degré;
 And who fyndis hym greued, late hym telle tyte,
 And yf we fynde no defaute hym fallis to go free.
- I DUX Ozes! Yf any wight with þis wriche any werse wate
 [Of his] werkis beris wittenesse, wh[at] so [he] wirkis wrang;
 Buske boldely to þe barre his balis to abate,
 For my lorde, be my lewté, will not be deland [lang].
 My lorde, here apperes none to appeyre his estate.
- REX Wele þanne, fallis hym goo free [. . .]. (371-80)

Like a regular judicial session at a common law court, he orders to have the record of the session written (371-72), and has the first courtier cry out for any other person who wants to stand witness against the defendant. It is noteworthy that the courtier says, ‘Buske boldely to þe barre’, suggesting that, as is in Pilate’s court, there may be special furnishing for a judicial court in Herod’s hall, which suggests a judicial session is a regular occurrence in his court. Some details of the court procedures briefly expressed in the above quotation may well reflect what really happened in medieval and early modern courts. In *De Republica Anglorum*, Sir Thomas Smith writes how, at the start of a jury trial after the names of jurors having been recited, the court crier exhorts witnesses to step forth as the first courtier does in the play: ‘The crier [. . .] then sayth aloude: If any can give any evidence, or can saie any thing against the prisoner, let him come nowe, for he standeth upon his deliverance’ (113). In the York Play 31, no new witness comes forward and Herod decides to let Jesus go back to Pilate’s court. According to Thomas Smith, ‘If none come in to give evidence although the malefactor hath confessed the crime to the Justice of the peace, and that appeare by his hande and confirmation, the xij. men will acquite the prisoner ’ (113). Though the circumstances surrounding the biblical trial are far removed from those of the jury trial in Tudor England, the playwright may have been influenced by the phrases often repeated in contemporary courts.

A little later, while sending the soldiers off to Pilate’s court, Herod again sounds juridical, asserting that his court has found no reason to condemn Jesus ‘in rollis of

recorde’:

Wendis fourth, þe deuyll in þi throte,
We fynde no defaute hym to [fil]e.

Wherfore schulde we flaye hym or fleme hym,
We fynde nozt in rollis of recorde;
And sen þat he is dome, for to deme hym,
Ware þis a good lawe for a lorde? (398-403)

In addition, as the trial draws to a close, one of the courtiers tells that his lord will not be ‘deland [lang]’ (378). Richard Beadle, the editor of the EETS edition, glosses ‘deland’ as ‘sitting in judgement’. A soldier of Pilate tells Herod that, if Jesus becomes suspicious at all, they may come back to him, but they will not be able to see the judge as Herod says, ‘Nay, bewscheris, ze fynde vs not here, / Oure leue will we take at þis tyde’ (388-89). Beadle explains these lines: ‘Herod’s reply possibly includes a metatheatrical glance towards the pageant’s imminent departure to the next station’ (2013: 277), which is quite plausible. But it is equally possible that, except for the royal courts in Westminster, most of the medieval judicial courts, especially in provinces, were peripatetic, and, for that reason, Judge Herod will not be ‘deland [lang]’ at this site.

In this chapter, the *medieval* legal motifs reflected in the courts of Pilate and Herod in the York cycle have been examined. Particular attention has been paid to their characterisation of the medieval tyrant often seen in dramatic literature. Their courts are amorphous legal sites, reflecting their human, political and administrative sides as represented by the intrusions of their family members and the multiple roles which Pilate’s court beadle and Herod’s courtiers play. Though not exactly expressed in speeches, the judges’ castles or palaces may be related to the legal and political importance which the city of York possessed as the alternative capital, or at least, the centre of royal power in the north in the late Middle Ages. As for the material environment of the court, the repeated references to the ‘bar’ and ‘bench’ in play texts, both in speeches and stage directions, clearly indicate that the playwrights had medieval

courts in mind while dramatising the biblical trials. Some other motifs have also been discussed which, because the setting is biblical, have usually been taken for granted in medieval drama such as the absence of defence counsel and the defendant's persistent silence in the trials of Jesus in the York plays. If we adopt the perspective of medieval audience of both theatre and legal courts, we may notice there are some correspondences between the situation of the medieval criminal defendant and Jesus in the courts of Pilate and Herod. There are also some verbal expressions of legal proceedings in the plays which seem to have come from contemporary trials. Looking at these and the other similarities, we cannot but be surprised how *medieval* the courts of the tyrants are in the York cycle.



Figure: the Court of the King's Bench, an illuminated manuscript of the mid-fifteenth century now owned by the Inner Temple

Chapter 2

The Ecclesiastical Judges and their *Medieval* Courts: Secular Power and Persecution in the N-town Cycle

Caiaphas and Annas, the ecclesiastical judges appearing in the Passion plays, are moulded on the pattern of the ranting medieval tyrants, especially in the York and Towneley cycles, as discussed in Chapter 1. This chapter will examine these ecclesiastical magnates and their religious trials in the light of some of the powerful ecclesiastical lords who lived in the tumultuous period of the English history from the late fourteenth to the early fifteenth centuries when the Great Rebellion of 1381, the usurpation of the Crown by Henry Bolingbroke and the Lollard heresy and its persecution took place. Particular attention will be paid to the Caesarian characterisations of Caiaphas and Annas and the naming Jesus as a heretic in the N-town cycle, and we shall especially probe the influences of the medieval heresy prosecution upon the drama texts.

Caiaphas and Annas as Medieval Caesarian Bishops

Since Caiaphas and Annas as religious judges cannot pride themselves on military might or territorial claims as Pilate or Herod do, they are boastful of their legal power and knowledge as the York Caiaphas claims at the beginning of Play 29:

Pees, bewshers, I bid no jangelyng ze make,
And sese sone of youre sawes, and se what I saye;

And trewe tente vnto me þis tyme þat ze take,
For I am a lorde lerned lelly in youre lay.

By connyng of clergy and casting of witte
Full wisely my wordis I welde at my will,
So semely in seete me semys for to sitte,
And þe lawe for to lerne you, and lede it by skill,
Right sone. (1-9)

Ther is nowder lorde ne lady lerned in þe lawe,
Ne bisshoppe ne prelate þat preued is for pris,
Nor clerke in þe courte þat connyng will knawe,
With wisdam may were hym in worlde is so wise.

I haue þe renke and þe rewle of all þe ryal[té],
To rewle it by right, als reasoune it is.
All domesmen on dese awe for to dowte me,
That hase thaim in bandome in bale or in blis;
Wherfore takes tente to my tales, and lowt[e] me. (14-22)

In the Passion sequences of the four major cycles, these priests function as advisors learned in law to Pilate who is generally reluctant to support their demand to condemn Jesus to death but concedes grudging respect to their knowledge. It is noteworthy that in the last stanza this Caiaphas claims to have ‘þe renke and þe rewle of all þe ryal[té], / To rewle it by right’, and after the stanza he gives an order to his knights ‘Of þe bringyng of a boy [i.e. Jesus] into bayle’ (26). Therefore he is conceived not just as a professional judge of a religious court but an ecclesiastical lord of considerable power, or in terms of medieval England, probably a powerful bishop or prelate. In fact, later in the play, a knight calls Caiaphas ‘oure busshoppe’ (327) and Annas says Caiaphas holds ‘prelatis estat[e]’ (336). Their luxurious stage costumes would have been reminiscent of those worn by the real bishops even though historical distinction may also have been apparent to the audience as the well-known stage direction indicates in the N-town Play 26, ‘*Here xal Annas shewyn hymelf in his stage beseyn aftyr a busshop of þe hoold lawe in a skarlet gowne, and ouyr þat a blew tabbard furryd with whyte, and a mytere on his hed after þe hoold lawe*’ (26/164 SD). The playwright may well be stressing the comfortable and worldly lifestyle of ecclesiastical lord in a bedding scene in the York

Caiaphas's court which is very similar to the equivalent episode staged in Pilate's court (30/124-39):

- CAYPHAS I will do as ze [Annas] saie,
Do gette vs wyne of þe best.
- I MILES My lorde, here is wyne þat will make you to wynke,
Itt is licoure full delicious, my lorde, and you like;
Wherfore I rede drely a draughte þat ze drynke,
For in þis contré, þat we knawe, iwisse, ther is none slyke;
Wherfore we counsaile you this cuppe sauerly for to kisse.
- CAYPHAS Do on dayntely, and dresse me on dees,
And hendely hille on me happing,
And warne all wightis to be in pees,
For I am late layde vnto napping. (29/74-84)

The two priests in the Towneley cycle are also quite worldly. As in York, Caiaphas, speaking to Jesus in Play 21, *Buffeting*, boasts of his high status, noting that he is served by knights:

Lad, I am a prelate,
A lord in degré:
Syttys in myn astate,
As thou may se,
Knyghtys on me to wate
In dyuerse degre.
I myght thole the abate,
And knele on thi kne
In my present. (222-30)

The Towneley Caiaphas stands out as having a particularly violent temper. Exasperated by Jesus's refusal to speak, he gets extremely vexed while Annas, more rational and conniving, tries to reason with him. In the following exchange rich in dramatic tension and nuances, Caiaphas repeatedly expresses his desire to strike Jesus himself physically while Annas, behaving as a legal professional, tries to cajole the colleague into seeking other more legal methods to undermine Jesus's power:

Cayphas. No, bot the wordys he has saide
Doth my hart great dere.

Anna. Sir, yit may ye be dayde.

Cayphas. Nay, whils I lif, nere!

Anna. Sir, amese you.

Cayphas. Now fowll myght hym befall!

Anna. Sir, ye ar vexed at all,
And perauentur he shall
Hereafter pleas you.
We may bi oure law
Examyn hym fyrst.

Caiphas. Bot I gif hym a blaw
My hart will brist.

Anna. Abyde to ye his purpose knaw.

Cayphas. Nay, bot I shall out-thrist
Both his een on a raw.
Syr, ye will not, I tryst,
Be so vengeabyll;
Bot let me oppose hym.

Cayphas. I pray you – and sloes hym!

Anna. Sir, we may not lose hym
Bot we were dampnabill.

Cayphas. He has adyld his ded;
A kyng he hym calde.
War! let me gyrd of his hede! (265-89)

Later when Caiaphas says without any pretension of decorum, ‘I myself shall hym kyll,
/ And murder with knokys’ (298-99), Annas preaches him about his status and of the
use of law with rather strong terms partly in Latin:

Anna. Sir thynk ye that ye ar
A man of holy kyrk;
Ye shuld be oure techere,
Mekenes to wyrk.

Cayphas. Yei, bot all is out of har,
And that shall he yrk.

Anna. All soft may men go far;
Oure lawes ar not myrk,
I weyn.
Youre wordys ar bustus;

*Et hoc nos volumus,
Quod de iure possumus.
Ye wote what I meyn –*

It is best that we trete hym
With farenes. (300-14)

Caiaphas's anger at Jesus is overpowering even to himself so that it makes him physically sick:

My hart is ful cold,
Nerehand that I swelt.
For talys that ar told
I bolne at my belt –
Vnethes may it hold
My body, and ye it felt! (404-09)

There is nothing in the text which suggests these characters are partly modelled on any specific medieval bishops. But their power-hungry worldliness and belligerence may have reminded the contemporary audience of a number of bishops and high-ranking priests of their time. For the historical context of this study, the most interesting example of these worldly and militaristic bishops may be Thomas Arundel, the key figure of Lollard persecution at the same time when the mystery plays started to be performed. He was a close ally of Henry Bolingbroke in his exile and, when the usurper returned to England, cooperated closely with him to hunt down, negotiate with, and finally depose Richard II (McNiven 1987: 68; Richardson 1936: 17-19; Saul 1997: 413-17, 422). But Arundel is only one of quite many Caesarian bishops around the late fourteenth and early fifteenth century. For instance, the king's half-brother Henry Beaufort, bishop of Lincoln, supported Richard's expedition to Ireland. Another worldly bishop was 'Thomas Merks of Carlisle, a blatant non-resident who had, in fairness, more excuse than most for his absence from his uncongenial and impoverished see, was said by his detractors to owe his exalted standing to his role as one of Richard's foremost drinking companions' and was 'one of the king's most genuine friends' (McNiven 1987: 71). Henry Despenser, bishop of Norwich, was notorious for

his ruthless suppression of the Peasants' Revolt in East Anglia and 'acquired and cultivated the image of a prelate who was prepared to employ the sword in whatever cause he chose to espouse' (ibid., 71). Since the exalted status in the church hierarchy was one of the practical career passes for the sons of the nobility other than the eldest, it would have been unreasonable to expect them to leave behind the worldly concerns of his secular brothers and kinsmen or to embody evangelical qualities personally. For the Crown, trained churchmen were still the important, and nearly exclusive, source of literate intellectuals to fill the major positions of the royal bureaucracy. Since the higher clergy were a valuable human resource for major posts of the royal government, there were far more 'ambidextrous' bishops who once held secular offices or even held secular and religious offices simultaneously. Discussing the Wycliffite accusation of such practices, Anne Hudson informs us that it is more of a rule to appoint clerics to high secular offices than exceptions: 'Of the seventeen English bishops in post for all or most of the period 1390-5, thirteen held or had held some major secular office' (1997: 44).

In the characters of the high priests, there were obviously elements of the tradition of the anti-clericalism widely shared in the late medieval literature, and familiar to us in Chaucer's somewhat humorous portraits of religious characters, especially the lordly and pleasure-loving Monk. Other writers are much more critical. In his *Vox Clamantis*, Gower seems to accuse the contemporary bishops of worldly desires, sumptuous lifestyle and aggressive behaviours:

Inter prelatos dum Cristi quero sequaces,
 Regula nulla manet, que prius esse solet.
 Cristus erat pauper, illi cumulantur in auro;
 Hic pacem dederat, hii modo bella mouent:
 Cristus erat largus, hii sunt velut archa tenaces;
 Hunc labor inuasit, hos fouet aucta quies:
 Cristus erat mitis, hii sunt tamen impetuosi;
 Hic humilis subiit, hii superesse volunt:
 Cristus erat miserans, hii vindictamque sequuntur;
 Sustulit hic penas, hos timor inde fugat [. . .].
 [. . .]

Cristus aquam peciit, hii bona vina bibunt:
 Et quotquot poterit mens escas premeditari
 Lautas, pro stomacho dant renouare suo. (III 9-18, 26-29)¹

Elsewhere the poet specifically inveighs against the bishops waging wars, recalling the historical bishops whom we have just mentioned and the characterisation of aggressive Caiaphas in York and Towneley:

Militis officium non aris thurificare
 Est, neque presbiteri publica bella sequi.
 Si valet in bello clerus sibi ferre triumphum,
 Ammodo quid validi militis acta valent?
 Quem decet orare clerum pugnare videmus,
 Curam de bellis, non animabus habent.
 Quid si vulneribus superaddat homo tibi vulnus,
 Num dici medicus debeat ipse tuus?
 [. . .]
 Quos reperare decet pacem, si bella frequentent,
 Nescio quo pacis tutus inire viam. (III 389-96, 401-02)²

The York Caiaphas who savours the best wine recalls the generic portrait of the bishop whom Gower portrays in the *Mirour de l'Omme*:

Pour le phesant et le bon vin
 Le bien faisant et le divin

¹ 'As I seek for followers of Christ among the prelates [I find that] none of the rule [i.e. monastic order] remains which used to be in force. Christ was poor, but they are overloaded with gold. He used to make peace, but they now wage war. Christ was generous, but they are as close as a money-box. Work occupied Him, but plentiful rest pampers them. Christ was gentle, but they are violent. He suffered humbly, but they desire to be superior. Christ was compassionate, but they seek after vengeance. He endured His torments, but hear of such torment puts them to flight. [. . .] Christ asked for water; they drink choice wines, and they replenish their bellies with as many sumptuous delicacies as the mind can conceive of.' (116-17) The Latin original is from Macaulay (1902). All the quotations from the *Vox Clamantis* are from this edition. The above and all following translations of the *Vox Clamantis* are from Stockton (1962).

² 'It is not the function of a knight to offer sacrifice at the altar, nor that of a priest to carry on wars of state. If it is good for the clergy to win triumph for itself in battle, then what good are the deeds of a valiant knight? We see the clergy fighting, which ought to be praying. They have care for wars, not of souls. Why should the very man who dealt you one wound after another be called your physician? [. . .] If those who ought to restore peace practice war, I do not know how one can safely enter upon the path of peace.' (126)

L'eveque laist a nounchalure,
 Si quiert la coupe et crusequin,
 Ainz *que* la culpe du cristin
 Pour corriger et mettre en cure [. . .]. (19501-06)³

Contemporary critics are keen to point out that many clerics are ambidextrous, working royal and aristocratic administration and judiciary, serving earthly masters while neglecting the care of humble parishioners whose spiritual care they are supposed to oversee, just as William Langland describes in the prologue to the B text of *Piers Plowman*:

Bisshopes and bachelers, bothe maistres and doctours –
 That han cure under Crist, and crowynyng in tokene
 And signe that thei sholden shryven hire parrishens,
 Prechen and praye for hem, and the povere fede –
 Liggen in Londoun in Lenten and ellis.
 Somme serven the King and his silver tellen,
 In Cheker and in Chauncelrie chalangen hise dettes
 Of wardes and of wardemotes, weyves and streyves.
 And somme serven as servaunts lordes and ladies,
 And in stede of stywardes sitten and demen.
 Hire messe and hire matyns and many of hier houres
 Arn doone undevoutliche; drede is at the laste
 Lest Crist in Consistorie acorse ful manye! (87-99)⁴

In the four major cycles, Caiaphas and Annas play the role of the members of Pilate's council and appear as powerful politicians rather than spiritual leaders. Contemporary audiences may well have seen in them the stereotypes of the 'bisshopes and bachelers' whom Langland describes.

Wycliffe and his followers also denounced the lordly lifestyle and ambidextrous power of higher clergy and their institutions. Wycliffite critiques of the clergy were relevant to this study of ecclesiastical judges in the mystery plays because, 'It was a

³ 'The bishop cares not for good deeds and divine things – he prefers pheasant and good wine. He seeks the cup and jug rather than the "culpa" of the Christian, which is to be corrected and cared for . . .' (265). The French original is from Macaulay (1899). All the quotations from the *Mirroure de l'Omme* are from this edition. The above and all following translations of the *Mirroure de l'Omme* are from Wilson (1992).

⁴ Schmidt (1978). All the quotations from *Piers Plowman* are from this edition.

theme expressed in many of his [Wycliffe's] works which found a resonance in the anti-clerical mood of late fourteenth-century society' (Jurkowski 1997: 169).⁵ A Lollard tract from the early fifteenth century in MS Trinity College Cambridge B. 14. 50, in which the author lists sixteen points on which the bishops accuse them simply warns that high-ranking clergy should not have worldly possessions: 'it is azens þe lawe of God þat bischopis and oþer prelati of þe chirche schulden haue temperal possessions, for by Goddis lawe þei schulden go oon fote preching þe worde of God' (Hudson 1978: 19). The Lollard author of the *Twelve Conclusions of the Lollard*, which were 'affixed to the doors of Westminster Hall during the session of Parliament in 1395' (Hudson 1978: 150), and recorded in Roger Dymmok's *Liber contra duodecim errores et hereses Lollardorum*, criticises the clergy doubling secular posts:

þe sexte conclusion þat mayntenith michil pride is þat a kyng and a bisschop al in o persone, a prelat and a iustise in temperel cause, a curat and an officer in wordly seruise, makin euery reme out of god reule. Þis conclusiun is opynly schewid, for temperelte and spirituelte ben to partys of holi chirche, and þefore he þat hath takin him to þe ton schulde nout medlin him with þe toþir, *quia nemo potest duobus dominis seruire*. Us thinkith þat hermofodrita or ambidexter were a god name to sich manere of men of duple astate. Þe correlari is þat we, procuratouris of God in þis cause, pursue to þis parlement þat alle manere of curatis boþe heye and lowe ben fulli excusid of temperel office, and occupie hem with here cure and nout ellis. (Hudson 1978: 26)

Thus, the type of dramatic tyrant exemplified by Herod, Pilate and others already discussed in Chapter 1 also colours the representations of the ecclesiastical judges in the Passion plays and these religious judges also seem to be influenced by the contemporary images of Caesarian bishops and the anti-clerical literature.

The Cooperation between the Religious and Secular Authorities

In the Passion sequence of the mystery plays, the two Caesarian bishops closely work with Pilate as his advisors in order to take advantage of his secular mandate to have

⁵ See also Forrest (2005: 202).

Jesus executed. The leitmotif of this religious-secular liaison is described by the evangelists. In the Bible, the Jewish high priests, near the time of the Passover, begin to conspire against, and plan to kill, Jesus as they are afraid that he is agitating the general populace as, for instance, Luke describes: ‘Now the feast of unleavened bread drew nigh, which is called the Passover. And the chief priests and scribes sought how they might kill him; for they feared the people’ (22. 1-2).⁶ Their intent to kill Jesus is clearly stated at the beginning of the conspiracy in the three other gospels as well (Matt. 26. 3-4; Mark 14. 1; John 45. 53). However, it seems that the priests in the gospels are not allowed to execute a criminal on their own so that they need the power of the secular authorities such as Pilate to achieve their aim. Only the gospel of John is very clear about the distinction of secular and religious authorities regarding the death penalty even though the other gospels also seem to imply the same. In John, Pilate asks the priests what accusation they brought against Jesus, and says, ‘Take ye him, and judge him according to your law. The Jews therefore said unto him, It is not lawful for us to put any man to death’. (18. 31) This specific passage is clearly reflected in the mystery plays as the generally simple Chester cycle even touches on it:

PILATUS

Yee prelates here everychonne,
what will ye do? Lett him gonne?

CAYPHAS

Nayle, nayle him to the crosse anonne
and deeme him or thou leeve.

PILATUS

Takes ye him, that binne so gryme,
and afer your lawe deeme ye him.

ANNAS

Nay, that is not lawfull, lyth ne lymme
for us no man to reeve. (16/243-50)

⁶ The motif of the priests’ fear that Jesus is agitating the populace against them is particularly strong in John 45-50, whose implication in the mystery plays will be discussed later in this chapter.

The York plays dramatises it more than once, one of which is:

PILATUS Now I recorde wele þe right, 3e will no rapere refuse hym
 To he be dreuen to his dede and demed to dye;
 But takes hym vnto you, forþé,
 And like as youre lawe will you lere,
 Deme 3e his body to abye.

ANNA O, sir Pilate, withouten any pere,
 Do way;
 3e wate wele, withouten any were,
 Vs falles not, nor oure felowes in feere,
 To slo no [m]an – youreself þe soth say. (33/314-23)⁷

This division between the secular and religious authorities in respect of possible punishments imposed by the respective judges must have been easy to understand for the medieval audience since the late medieval ecclesiastical courts were not allowed to administer the death penalty, and, in fact, the religious crimes which church courts frequently dealt with such as perjuries, defamations, marital transgressions, non-observance of church customs or misbehaviours of clerics were not so serious as to merit the death penalty even by medieval standards. To summon those who were judged in religious courts, the Church had its own officials, namely apparitors (summoners), but they had no effective policing force. However, in the tightly knit communities of medieval England where the Church was the supreme authority in both worldly and spiritual lives of ordinary parishioners, it was very difficult to ignore the judgements of ecclesiastical authorities. Excommunication, the heaviest punishment imposed by the Church, ‘was retained as the reserve penalty for continued obstinacy or followed a previous monition which had stipulated it as a penalty’ (Woodcock 1952: 94). It was a very powerful punishment as the excommunicate could not receive the sacraments, could not have a Christian burial, and was cut off from the community entirely so that his or her economic activities could not be carried out (ibid., 94). The most serious crime in the ecclesiastical jurisdiction was heresy, but the English Church had been spared any large-scale heretical movement such as Cathars and Waldensians which the

⁷ Similar passage are found in 29/340-43, 30/430-32 in York; 21/401-03, 420-09 in Towneley; 30/95-98 in N-town.

continental Church had had to confront since the twelfth century. In order to persecute and punish contumacious offenders, especially recalcitrant heretics, who were relatively rare before the Wycliffite movement in the late fourteenth century, the English Church could seek help from secular authorities such as sheriffs and magistrates through the writ called *de excommunicado capiendo*, which dictated the sheriff to ‘detain the offender in prison until he made his peace with the Church’ (McNiven 1987: 36).⁸ The playwrights may well have been recalling such a writ when they were writing about the cooperation between Caiaphas and Annas and Pilate in the mystery plays. However, there was a serious caveat: the procedure took a long time to complete and was very cumbersome as Henry Gerald Richardson explains:

The process was dilatory in an age of leaden-footed justice. There must be trial and sentence and the accused must show himself contumacious: and before even the bishop applied for the king’s writ, the offender must be cited, after a lapse of forty days, to show cause why application should not be made for his arrest by the secular arm. In most cases a writ seems to have followed a certificate almost as a matter of course, but the chancellor certainly exercised his discretion, especially, it may be supposed, if the parties appeared and opposed the application. (1936: 5-6)

Therefore this conventional measure could not entirely satisfy either the ecclesiastical or secular authorities in order to suppress the tenacious and widespread movement of Lollardy. Since 1382 they started to issue and institute a series of statutes and measures designed specifically to counter the heresy. After the Blackfriars council held in May 1382 where Wycliffe’s doctrines were publicly condemned, Archbishop William Courtnay ‘proceeded to petition the king in parliament against heretics’ (Richardson 1936: 5). The exact contents of the petition was unknown, but it is certain that ‘it demanded additional powers to arrest and imprison heretics, and that such powers were granted’ (ibid., 5). The roll of the parliament from the same month expressed the warning against those wandering preachers who ‘seek by their slanders to cause discord and dissention among the different estates of the realm’ and who ‘will not obey any

⁸ See also Woodcock (1952: 95-96); Thomson (1993: 80).

summons or command to appear before their ordinaries', and issued a statute which allowed bishops to enlist help of sheriffs, royal officers and other secular law-enforcement personnel to arrest and imprison heterodox preachers (ibid., 7-8). In March 1388, a new commission was created to suppress heresy under the supervision of the King's Council. In this measure, the secular authorities began seriously to commit themselves to the problem of heresy: 'Offenders were to be arrested and detained pending further instructions. The usual authority to call on sheriffs and other officers for assistance was added.' (ibid., 11) Finally, when Arundel returned to England with Henry Bolingbroke, who soon ousted Richard, he was ready to introduce the death penalty as the heaviest sanction on recalcitrant heretics, resulting in the issue of *de heretico comburendo* in 1401.

The Passion Plays and the Prosecution of Heretics

It is hard to evaluate how conscious the playwrights of the four major cycles were of Lollardy and whether they drew some motifs from the persecution of the Lollards in describing the trials of Jesus. In the Passion sequences of the four cycles, only the N-town playwright uses the word, 'heretic' (26/170, 309) and 'heresy' (28/114) and these appear only in Passion Play I, and not once in Passion Play II. In all the other cycles there seems to be no word exactly designating heresy or heretic. As for 'Lollard' or 'Lollardy', the sole occurrence amongst the four cycles is in the Towneley Play 30, *Judgment*, where the devil Tutiullus says,

I was youre chefe tollare
 And sithen courte-rollar;
 Now am I master Lollar,
 And of such men I mell me. (309-11)

But in this example, the word 'Lollar' seems to be used simply as a derogatory term and does not seem to indicate any influence of the persecution of Lollardy on the writing. Thus, it may well be significant that the three northern cycles, York, Towneley and

Chester, contain no words which directly connect these plays to the Lollardy of that time. It may have been because the heretical movement in the fifteenth century was, as has been demonstrated by John A. F. Thomson throughout his book, mostly limited to the South and Midlands while ‘There is little evidence that Lollard doctrines made much headway in the dioceses of the northern province’ (1965: 192). The playwrights and audiences of these cycles must have heard about the heresy in the South and Midlands, but the news may well not have given them such an impact as to influence the play texts. Or they may have intentionally avoided using words like ‘heretic’ or ‘Lollard’ in designating Jesus in order not to draw unwanted attention of the authorities. However, it is clear that, in all the four cycles, the priests and their subordinates initiate accusation against Jesus, citing his religious crimes such as making miracles, understood as devilish sorceries, and disrupting their temples which the gospels describe. Since they are terribly afraid that Jesus and his sect are capable of overwhelming their religion and therefore wish to sentence him to capital punishment, they need Pilate’s help.

In the York and Towneley cycles, in the initial scenes of the conspiracy against Jesus, Caiaphas and Annas are with Pilate, and they discuss how to go about dealing with Christians. This assembly summoned by a secular leader consulting with two high-ranking clerics and several knights in these two cycles can be construed as a royal or baronial council, in terms of the medieval political framework, where the ruler seeks information and counsel from his councillors. In the York Play 26, *The Conspiracy*, at the end of the boasting rant, Pilate actively seeks advice from his councillors such as Caiaphas, Annas and the doctors:

[PILATUS] And þus, sen we stande in oure state,
 Als lordis with all lykyng in lande,
 Do, and late vs wete if ze wate
 Owthir, sirs, of bayle or debate
 þat nedis for to be handeled full hate,
 Sen all youre helpe hanges in my hande.

CAIPHAS Sir, and for to certefie þe soth in youre sight,

As to zou for oure souerayne semely we seke.
 PILATUS Why, is þer any myscheue þat musteres his myzt,
 Or malice thurgh meene menn vs m[i]sters to meke?
 ANNA 3a, sir, þer is a ranke swayne whose rule is nozt right,
 For thurgh his romour in þis reme hath raysede mekill reke. (23-34)

Roger Hall Nicholson (1986) indicates the close similarity of the trial of Jesus in the mystery plays and the procedures of the King's Council, especially in the case of Eleanor Cobham, Duchess of Gloucester, and Thomas Southwell and Roger Bolingbroke, astrologers, along with other defendants in 1441, which involved suspected sorcery and treason. Just as the case of Jesus in the Bible and mystery plays, Eleanor was accused of sorcery and treason by the tribunal consisting of prelates and secular lords:

The Cobham trial consisted of a string of hearings, apparently before tribunals of both secular and ecclesiastical jurisdiction, one capable (after a fashion) of sentencing the accused to death, the other interested only in imposing penance; yet the personnel of the two were closely associated by virtue of belonging to Council itself, which in turn was responsible for the entire proceedings (Nicholson 1986: 154).

Jesus is accused of sorcery or witchcraft in all the four cycles especially in reference to his raising of Lazarus. For instance, Annas in the Chester Play 18 says to Pilate, 'I sawe him [Jesus] and his companye / rayse men with sorcerye / that longe before were dead' (59-61).⁹ but the repeated emphasis placed on this charge in the York trial plays (29/58, 30/293, 33/288-89) suggests some possibility that the York playwright may have framed the trial of Jesus in this historical case of treasonous sorcerers.

On the other hand, Pamela King compares the York trials of Jesus before Pilate with the procedures of the Court of Chancery. One reason she cites for it is that Annas calls Pilate a 'domysman nere and nexte to þe king' (29/341), which designation, she writes, 'could only be properly be applied to the Chancellor, or his delegated Keeper of the Great Seal, one of the Chief Justices of the King's Bench' (1999: 207-08). Also, as in

⁹ Other examples can be found in Chester 18/62-65; N-town 30/45-48, 271-72, 401-04; Towneley 21/122-26, 144-50.

the trial plays of the cycles, the Court of Chancery used the procedure of summary trial without jury, giving judgements based on the conscience of the justice, rather than statute laws (King 1999: 208). Simon Walker succinctly explains the characteristics of the Chancery procedure:

The court of chancery developed out of the general responsibility that the chancellor possessed, as head of the royal secretariat, for the supervision of the king's administration and, in particular, for the correction of any defects of justice that might occur in the due process of the common law courts. By the 1380s, the chancery had developed a distinctive procedure for dealing with such cases – *based on the submission of bills of complaint, the interrogation of witnesses, and a judgement delivered, without a jury verdict, according to the requirements of conscience* – that proved increasingly attractive to litigants by virtue of its speed and informality. (S. Walker 2006: 95, my emphasis)¹⁰

Moreover, Thomas Arundel, one of the foremost persecutors of the Lollards, was the Chancellor of England, first from 1386 to 1389, and again from 1391 to 1396. In 1385, in the double capacity of Archbishop and Chancellor, Arundel had a number of heretics take an oath to abjure Lollardy. As Richardson writes, 'Here the archbishop of York seems plainly to be acting in a double capacity, in a secular capacity as king's chancellor, and in an ecclesiastical capacity as ordinary, and two stages in the procedure, which would normally be consecutive, are here rolled into one' (1936: 19). Archbishop William Courtnay, who played an important part in initiating Lollard persecution in England, also briefly held the office in 1381.

The similarity with the Chancery procedure is, as King writes at the beginning of her learned essay, one of a number of possible subtexts which the trial plays may contain (201). It is difficult to prove that the playwright of any of the cycles definitely used a particular contemporary legal court as the model of the trial plays. However, the use of the words 'heresy' and 'heretic' in the N-town cycle to indicate Christ and his followers firmly associates at least this cycles with the contemporary heresy trials. The dialect of the N-town cycle is from south-central Norfolk, and thus the cycle is generally believed to have been written and possibly performed in East Anglia, whose major towns

¹⁰ For a fuller explanation on the Court of Chancery, see Baker (2002: 97-116).

includes Norwich and Bury St. Edmunds although Norwich as the possible site of the performance of this cycle has been clearly discounted (Fletcher 2008: 184-87). East Anglia is well-documented as the area where Lollardy firmly took root. A large-scale inquisition of Lollards was carried out in the early fifteenth century in the diocese of Norwich whose records still survive to this day (Tanner 1977).

If Jesus in the mystery plays, and especially in the N-town cycle, is viewed as a heretical preacher like Lollard preachers in the late Middle Ages, there were some interesting correspondences between the two. In the Bible, Luke writes, those who brought Jesus in the court of Pilate accuse him: ‘He stirreth up the people, teaching throughout all Jewry, beginning from Galilee to this place’ (23. 5), which appears to highlight the power of Jesus as a popular preacher and religious leader. The fear towards Jesus as not only a religious leader capable of overwhelming the mainstream Jewish religion but also a powerful and rebellious agitator repeatedly appears in all the four cycles. The York Caiaphas in Pilate’s court claims that Jesus incites a great number of people to act wickedly:

Sir, fro Galely hidir and hoo
 The gretteste agayne hym ganne goo,
 Yone warlowe to waken of woo,
 And of þis werke beres witnessse, ywis. (30/509-12)

In the Towneley cycle where Pilate is unique in that he is as hostile towards Jesus as are the priests from the outset, he voices the fear of Jesus as a magnetic preacher who might destroy their law if allowed to live:

He prechys the pepyll here,
 That fature fals, Iesus,
 That if he lyf a yere,
 Dystroy oure law must vs. (20/53-56)

In the N-town Play 26, Caiaphas is impressed with Jesus as a preacher, who could destroy their law:

But þer is on Cryst þat [in] oure lawys is varyable;

He perverte þe pepyl with his prechyng ill.
 We must seke a mene onto hym reprevable,
 For yf he procede, oure lawys he wyl spyll! (217-20)

In Play 27 of the same cycle enacting the conspiracy, Annas is very afraid that their efforts to contain Jesus's influence have been futile, and thus they will have to do 'Some othyr sotylté' (81). He thinks that if they let Jesus act freely, then, the Romans will take advantage of the weakness of the Jewish religious authority. This is closely based on John 11. 48 ('If we let him thus alone, all men will believe on him: and the Romans shall come and take away both our place and nation'), but the playwright also seems to remind the audience of the power of Jesus over 'all the people' as a religious leader:

For þe Romaynes þan wyl us myscheve,
 And take oure astat and put us to repreve,
 And convey all þe pepyl at here owyn request.
 And þus all þe pepyl in hym xal beleve. (84-87)

Since Pilate is not persuaded that Jesus poses a serious danger to the secular authority as long as the priests accuse him of religious transgressions, they try emphasising that Jesus threatens imperial rule, by claiming the kingship and advocating the refusal to pay tax, as is described in the gospels.¹¹ In the Chester Play 16, when Caiaphas appears before Pilate, he first impresses the Roman prefect that Jesus and his followers are agitating people against Caesar and his taxation:

Tribute may be given nonne
 to Caesar for him here.
 Whersoever he and his fellowe gonne,
 they turne the folke to them eychone.
 Nowe aske we donne here him upon
 of that he hasse power. (120-25)

Annas also stresses Jesus causing trouble to Caesar by his claim of kingship:

¹¹ For instance Luke 23. 2-3: 'And the whole multitude of them arose, and led him unto Pilate. And they began to accuse him, saying, We found this fellow perverting the nation, and forbidding to give tribute to Caesar, saying that he himself is Christ a King.'

Whersoever he goeth, to or froo,
 that he is Christ, and kinge also,
 he preaches apertlye.
 Wist Caesar that, he would be woo,
 such a man and we let goo. (126-31)

In the York Play 30, *Christ before Pilate I*, the priests harp on Jesus's religious offences such as breaking the Sabbath (418-19), healing the lame and hurt by witchcraft (441-45), and raising the dead Lazarus (446-48). But, since Pilate is not impressed by such an argument, they then accuse him of treason, saying:

ANNA Miplese noȝt youre persone, yhe prince withouten pere,
 It touches to tresoune þis tale I schall tell:
 Yone briboure, full baynly he bed to forbere
 The tribute to þe emperoure, þus wolde he compell
 Oure pepill þus his poyntis to applye.
 CAYPHAS The pepull he saies he schall saue,
 And Criste garres he calle hym yone knave,
 And sais he will þe high kyngdome haue –
 Loke whethir he deserue to dye. (459-67)

In the N-town cycle, the enemies of the Christians repeatedly accuse Jesus of claiming to be the king of Jews, thereby rebelling against Caesar as Caiaphas says in Play 26:

I cannot dem hym withouth trespase
 Because he seyth in every a place
 þat he [is] Kyng of Jewys in every degré.
 Perfore he is fals, knowe wel þe case:
 Sesar is kyng, and non but he! (304-08)¹²

The motif in the mystery plays that Jesus, a charismatic preacher, is threatening not only the ecclesiastical authorities but also the Roman imperial power has a certain contemporary resonance. Thomas Arundel, the Bishop of Ely in 1380, who was to become one of the most important persecutors of Lollards, was deeply concerned with disorderly activities of some unlicensed preachers even before the Great Rebellion

¹² The same accusation is made against Jesus by Leyon in 27/113-16, and by the first Doctor in 30/49-52.

(Aston 1967: 49). In letters addressed to the clergy of his diocese in 1380, he warns that, according to the report of the faithful (*relacione fidignorum*), those preachers were pretending to be bishops and archbishops and deluding the naive populace. Arundel continues, '[. . .] absque nostra seu aliorum diocesanorum licencia puros de facto confirmant ordines conferunt Indulgencias concedunt confessiones audiunt, punias salutare per locorum diocesanos impositas commutant et in questum pecunie per ipsos inbursande convertunt' (ibid., 400).¹³ We can see in his letters that, on the eve of the Great Rebellion, there were certain disorderly, uncontrolled activities amongst lay preachers without licence of the diocesan authorities, and Arundel was particularly alarmed by them. In the late fourteenth to the early fifteenth centuries, when the Great Rebellion and Oldcastle's insurgency threatened the Crown and when the kingship itself was mistrusted and precarious as Richard II was deposed by the usurper, Henry Bolingbroke, the religious heterodoxy could have been easily associated with political and popular dissent as Margaret Aston writes:

It was nothing if not easy to read into Wycliffe's philosophy ideas for a programme of devastating revolution. His theories upon dominion, on the grace of the righteous as the basis of authority, the exaltation of the power of the state over the church, and the right of temporal rulers to correct ecclesiastics, were, as the church was not slow to realise, far-reaching. And their implications [. . .] were not confined to the church and its members. If property could be removed from a delinquent church in time of necessity, might not the same argument equally well be applied to secular owners? If tithes could be withheld from a sinful priest, could not rents and services be withheld from a tyrannical and unjust overlord? And if lay lords could and should correct churchmen, might not others in turn claim the power to correct them? (1984: 3)

After the Great Rebellion of 1381, chroniclers tried to see Wycliffite elements amongst the rebels, claiming that John Ball was his disciple. Thomas Walsingham, a Benedictine monk at St. Albans, writes about John Ball: 'Docuit et peruersa dogmata perfidi Iohannis Wyclif, et opiniones quas tenuit, et insanias falsas, et plura que longum foret

¹³ '[. . .] without the licence of us or other diocesans, they confirm boys, confer orders, grant indulgences, hear confessions, commute salutary penances imposed by diocesans, and, in the quest for money, collect funds for themselves' (ibid., 50).

recitare' (2003: 544).¹⁴ Henry Knighton, an Augustinian canon at the abbey of St Mary of the Meadows, Leicester, also writes, 'Hic habuit precursorem Iohannem Balle ueluti Cristi Iohannem Baptistam qui uias suas in talibus opinionibus preparauit et plurimos quoque doctrina sua' (1995: 242).¹⁵ The claim by these monastic chroniclers that the revolutionary preacher John Ball was a Wycliffite is generally considered groundless by modern historians (Aston 1984: 7; McNiven 1987: 31; Hudson 1988: 67). But Anne Hudson also thinks that 'it seems possible that disclaimers of Wyclif's involvement may have gone too far' (1988: 68). As Peter McNiven writes, at least 'its inclusion in his chronicle, and Walsingham's implicit acceptance of the truth of Ball's confession, must be taken seriously as indications of contemporary clerical beliefs and fears' (1987: 31).¹⁶ *Fasciculi Zizaniorum*, a Carmelite compilation of texts about Wycliffe, not only insists that Ball was a follower of Wycliffe but also is more pronounced about the fear of a new insurrection by heretics:

Tanta divisio facta est ubique, et dissensio in Anglia per Johannem Wyclyff, et suos complices, ut etiam eorum prædicationibus timebant catholici novam esse futuram insurrectionem contra dominos et ecclesiam. Et præcipue cum [esset] dilectus sequax Wyclyff sacerdos dominus Johannes Balle, qui incarceratus erat per Simonem Cantuariensem archiepiscopum, et Willelmum Londoniensem episcopum, propeter hæreses quas prædicavit.' (Shirley 1858: 273)¹⁷

¹⁴ 'He [John Ball] also preached the perverse doctrines of the perfidious John Wyclif as well as the opinions and false ravings which Wyclif held, and many other things which it would be tedious to relate'. The quotation and translation are from the edition by John Taylor, Wendy B. Child and Leslie Watkiss (2003: 545).

¹⁵ 'He [Wycliffe] had John Ball as his precursor, as Christ had John the Baptist, who prepared the way for him in people's minds, and it is said that he subverted the beliefs of many with his teaching .' The quotation and translation are from the edition by G. H. Martin (1995: 243).

¹⁶ See also Aston 1984: 4-5; Taylor, Child and Watkiss's introduction to *The St Albans Chronicle* (2003: xc).

¹⁷ 'So serious and extensive was the division and dissention within England produced by John Wycliffe and his accomplices that orthodox men feared that their preaching would provoke yet another insurrection against the lords and the church in the future. They believed this more especially because of a beloved follower of Wycliffe, a priest named John Balle, who was imprisoned by Simon, archbishop of Canterbury, and William, bishop of London, on account of the heresies that he preached.' (Dobson 1970: 377)

Even if John Ball was not directly acquainted with Wycliffe, it seems likely that he heard of the series of sermons given by Wycliffe in London. By 1382, the authorities were aware of preachers disseminating what they saw as Wycliffite errors in churches as well as open spaces (Hudson 1988: 71). Initially the possibility of a Lollard rebellion may well have been a spectre raised by the fear of the rebels of 1381, but it became real as Sir John Oldcastle rebelled against the Crown in 1414. Margaret Aston also points out various other seditious attempts which followed Oldcastle's rebellion (1964: 27-33), and 'The objective of these insurgent Lollards included, as earlier, religious disendowment' (ibid., 33). In 1431, at one of these failed seditions led by William Perkins, alias 'Jack Sharpe of Wigmoreland', the rebels 'not only aimed at religious disendowment but also depriving the Crown and the secular lords of their properties (Aston 1984: 33-34; Thompson 1965: 58-60). Thus, being a Lollard came to be equated with being a seditious traitor to the Crown (Aston 1984: 8). Both in the contemporary society and in the Passion plays, especially of the N-town cycle, heretical movements and treason were considered as intersecting.

The authorities' strong concern with possible insurrections by organised religious groups led by wandering preachers is also apparent in the text of *de heretico comburendo* in 1401, which instituted the death penalty for recalcitrant heretics. In January of that year, Arundel, as does Annas in the N-town cycle (27/76 SD), summoned a convocation in Canterbury, and declared that 'the main business of the Convocation would be to tackle the problem of heresy among both the clergy and the laity' (McNiven 1987: 80). Simultaneously around the time of this convocation, a petition was submitted by the clergy to parliament which 'called upon the Crown to take the most radical and far-reaching measures to date for the eradication of heresy. [. . .] The petition specifically asserted that the Lollards were inciting men to sedition and insurrection, and causing divisions and dissensions among the people. It asked the lay authorities to "do what was necessary" to deal with the problem of the obdurate heretic' (McNiven 1987: 87). The enacted statute itself, like the anxieties of the Jewish priests and their subordinates in the mystery plays, reflects this concern with the organised and

sedition nature of the heretical group:

[. . .] de hujusmodi secta nephandisque doctrinis & oppinionibus conventiculas & confederaciones illicitas faciunt, scolas tenent & exercent, libros conficiunt atque scribunt, populum nequiter instruunt & informant, & ad sedicionem seu insurreccionem excitant quantum possunt, & magnas dissenciones & divisiones in populo faciunt.¹⁸

The statute states that the diocesan authorities need the help of royal counterparts because the dangerous heretics move from one diocese to another:

[. . .] per quas quidem sectam falsasque & nephandas predicaciones doctrinas & opiniones dictorum perfidorum & perversorum nedum maximum periculum animarum, verum eciam quam plura alia dampna scandala & pericula eidem Regno quod absit poterunt evenire, nisi in hac parte per regiam Magestatem uberius & celerius succurratur; Presertim cum Diocesani dicti Regni per suam jurisdictionem spiritualem dictos perfidos & perversos absque auxilio dicte Regie Magestatis sufficienter corrigere nequeant nec ipsorum maliciam refrenare, per eo quod dicti perfidi & perversi de diocesi in diocesim se transferunt & coram dictis diocesanis comparere diffugiunt.¹⁹

The statute prescribes that anyone suspected of heresy is to be detained in prison until he or she should abjure his or her belief. But some heretics refused to do so, and others relapsed. They are then to be burnt in a public place by secular authorities like sheriffs, bailiffs or mayors.²⁰ Thus, after the promulgation of this statute, the secular authorities (sheriffs, bailiffs, and mayors) were supposed to help the diocesan authorities not only

¹⁸ *The Statutes of the Realm*, 2 Henry IV, AD 1400-01, p. 126. '[. . .] of such sect and wicked doctrine and opinions they make unlawful conventicles and confederacies, they hold and exercise schools, they make and write books, they do wickedly instruct and inform people, and as such they may excite and stir them to sedition and insurrection, and make great strife and division among the people. . .' (Peters 1980: 212).

¹⁹ *Ibid.*, p. 126. '[. . .] by which sect and wicked and false preachings, doctrines, and opinions of the said false and perverse people, not only greatest peril of the souls, but also many more other hurts, slanders, and perils, which God prohibit, might come to this realm, unless it be the more plentifully and speedily helped by the King's majesty in this behalf; namely: Whereas the diocesans of the said realm cannot by their jurisdiction spiritual, without aid of the said royal majesty, sufficiently correct the said false and perverse people, nor refrain their malice, because the said false and perverse people do go from diocese to diocese and will not appear before the said diocesans.' (Peters 1980: 212-13)

²⁰ *Ibid.*, p. 128; Peters 1980: 215.

in pursuing heretics but also in punishing them with death.

Another watershed in the heresy persecution, the Oxford Constitutions of 1407 (promulgated in 1409), initiated by Archbishop Thomas Arundel, has been especially noted by scholars for prohibiting vernacular translations of the Bible and beginning the censorship of other vernacular religious literature.²¹ Yet it also exhibits the Church authorities' acute fear of the fractious activities of unauthorised preachers. Previously, the statute, *de heretico comburendo*, has warned against the threat posed by dangerous wandering preachers, but it says very little about how actually to control preachers. On the other hand, the very first of the Constitutions prescribes that anyone who preaches must be licensed by the diocesan authority:

Quod nullus secularis (aut regularis) ad praedicandum verbum Dei a jure scripto minime auctorizatus, privilegio speciali munitus, officium sive exercitium praedicationis ejusdem verbi Dei in se assumat, populove aut clero quovismode praedicet, in Latino sermone, seu vulgari, in ecclesia, aut extra, nisi primo dioecesano illius loci, in quo sic praeedicare nititur, se praesentet, et examinationem subeat; sicque deinde tam moribus, quam scientia repertus idoneus, per ipsum dioecesanum ad praedicandum mittatur ad aliquam certam parochiam, vel ad plures, prout eidem ordinario secundum qualitatem personae videatur expediens [. . .] (Wilkins 1737: 315).²²

The Constitutions primarily targeted the university dons in Oxford, and were not intended for the country, but in 1408 the archbishop continued to campaign against the

²¹ See McNiven (1987: 116), Hudson (1998: 82-85) and Watson (1995: 822-63; 1999: 343-45).

²² 'That no secular or regular, unless authorized by the written law, or by special privilege, take to himself the office of preaching the word of God, or do in any wise preach to the people or clergy in Latin, or in the vulgar tongue, within a church, or without it, unless he present himself to the diocesan of the place in which he attempts to preach and be examined; and then being found qualified both by manners and learning, let him be sent by the diocesan to preach to some certain parish or parishes, as to the same ordinary shall seem expedient, in respect to the qualifications of the man. And let none of the aforesaid presume to preach, unless assurance be first given in proper form of their being sent and authorized; so as that he who is authorized by written law, do come according to the form therein limited; and that they who say they come by special privilege, do really shew that privilege to the rector or vicar of the place where they preach; and that they who pretend to be sent by the diocesans of the places, do shew the letters of that diocesan drawn for that purpose under his great seal.' Originally translated by John Johnson (1851), revised by Michael Marlowe (2012).

heretical preachers in many counties of the province of Canterbury:

The archbishop suspected that Lollards were still at large in the Midlands, and on 20 January the relevant local officials in Warwickshire, Leicestershire and Coventry were ordered to proclaim that no-one 'should preach or teach new and unheard-of opinions contrary to the Catholic faith', and that offenders were to be detained until further order from the king. Similar instructions went out to Norfolk and Suffolk in May, and to London and the diocese of Bath and Wells in August. (McNiven 1987: 117)

In such an atmosphere, when the playwrights fashioned the parts of the Jewish priest and Jesus, and when the contemporary audience saw them enacted, they may well have thought about their bishops and the persecution of heretical preachers in their time.

The N-town Passion Plays and the Contemporary Heresy Persecution

The N-town trials of Jesus are mainly conducted by the initiative of Annas and Caiaphas and their subordinates. It is noteworthy that this Annas seeks two secular judges in conspiring against and arresting the heretical suspect, thereby illustrating the religious and secular cooperation from the outset of the investigation. The N-town version of the Passion is also striking in its ceremonial atmosphere, with the use of a messenger, processional movements, convocations and specific places designated for political and judicial meetings such as 'cownsel hous' and 'mothalle', all corroborating the idea that the N-town Passion plays display the late medieval ecclesiastical trials. In Play 26, after Lucifer's prologue, Annas begins the sequence of the conspiracy against Jesus, defining his power as a judge of Jewish law, of the law of Moses (165-76). He is now gravely concerned with Jesus who seems to threaten their law and asks for counsels of the two doctors present:

Therefore be ȝoure cowncel we must take hede
 What is be[st] to provyde or do in þis case.
 For yf we let hym þus go and ferdere prosede,
 Ageyn Sesare and oure lawe we do trespace. (181-14)

One of the doctors advises him:

Serys, þis is myn avyse þat ze xal do:
 Send to Cayphas for cowncel, knowe his intent.
 For yf Jesu proce[de], and þus forth go,
 Oure lawys xal be dytroyd, thes se we present. (185-88)

The second doctor advises that Annas should also seek for counsels of two ‘temporal’, i.e. secular, judges as well as putting heavy political pressure on Annas in bold terms:

Sere, remembre þe gret charge þat on zow is leyd,
 Þe lawe to ke[pe], which may not fayle.
 Yf any defawth prevyd of zow be seyd,
 Þe Jewys with trewth wyl zow asayl.
 Tak hed whath cownsayl may best provayl.
 After Rewfyn and Leyon I rede þat ze sende –
 They arn temporal jewgys þat knowyth þe perayl –
 With zoure cosyn Cayphas þis matere to amende. (189-96)

In this process, Annas as a baronial bishop seems to be observing the protocol of medieval ecclesiastical council. He is pleased to hear the doctors’ advice, and sends Arfexe, a messenger, to Caiaphas and the two temporal judges, summoning them to come to speak with him (197-204). The movements of the messenger in the wider staging area, or, in terms of liturgical drama, *platea*, and the use of the scaffold, or *sedes*, for each character must have intensified the sense of procedural formality and visualised the ecclesiastical law in action for the contemporary audience. The spatial expansion of the staging must also have made the audience understand the ecclesiastical hierarchy. Meanwhile, on an another scaffold, Caiaphas delivers his speech in which he wishes to seek advice of ‘þe jewgys of Pharasy and of my cosyn Annas’ (203). The first and second doctors again put strong pressure on Caiaphas with more forceful, or even threatening, words.²³ In this manner, the N-town judges and the subordinates make a point of formalities and weigh political realities in which they have to manoeuvre; they

²³ While Annas stays at his scaffold at this point, the doctors may have moved with the messenger from the area just before Annas to the area before Caiaphas’s scaffold, making a procession in the wide staging area.

proceed to persecute Jesus step by step, carefully measuring their expected role, status and political clout, and asking for the views of the other lords and experts, both secular and ecclesiastical, around them. Thus, for instance, the first doctor says:

My lord, plesyt zow to pardon me for to say
 Þe blame in zow is, as we fynde,
 To lete Cryst contene þus day be day,
 With his fals wichcraft þe pepyl to blynde.
 [. . .]
 It is zoure part to take hym and do hym bynde,
 And gyf hym judgement for his gret syn. (225-32)

The second doctor also blames Caiaphas forcefully:

Onto oure lawe ze don oppressyon
 Þat ze let Cryst from zou pace
 And wyl not don on hym correxion.
 Let Annas knowe zoure intencion,
 With prestys and jewgys of þe lawe;
 And do Cryst forsake his fals oppynyon –
 Or into a preson lete hem be thrawe! (234-40)

Thereafter, Annas's messenger reaches Caiaphas's scaffold and addresses him with very formal language (245-48, 253-54). The messenger then goes to the two judges, Rewfyn and Leyon, and again addresses them formally (257-60, 269-70). He comes back to Annas and reports to him that he has done his duties and that the judges and Caiaphas are coming to meet him (273-76). Everyone meets at an oratory in the middle of the open staging area and they have a council meeting as a stage direction indicates: '*Here þe buschopys with here clerkys and þe Pharaseus mett [at] þe mydplace, and þer xal be a lytil oratory with stolys and cusshonys, clenly beseyn lych as it were a cownsel hous*' (288 SD). The slow processional movements and formal language of the envoy allow the audience to grasp how the specialist group of inquisitors of heretics, a team of ecclesiastical judges, intellectuals, and, crucially, 'temperal jewgys þat knowyth þe perayl' is being formed.

Although no ecclesiastical assembly can be a specific model for such a dramatised

version of a biblical meeting, this assembly of the ecclesiastical and temporal judges may recall the Blackfriars Council held in May in the year after the Great Rebellion, ‘a hand-picked synod of bishops, theologians and lawyers’ which William Courtenay, Archbishop and Chancellor, summoned to examine Wycliffe’s works (McNiven 1987: 34). Considering the fear of impending revolts of the heretical sect that these *bishops*, as they are called in the plays, and doctors are feeling, some members of contemporary audience may have detected certain resemblances between contemporary synods like the Blackfriars Council in 1382 and the gathering of biblical Jews in the plays. H. G. Richardson speaks of the significance of the timing of the Blackfriars Council:

Government and lords and all respectable folk were yet under the terror of the revolt of the previous year. In May a provincial council [the Blackfriars Council] [. . .] condemned Wyclif’s doctrines, and then the archbishop [Courtenay] proceeded to petition the king in parliament against heretics. (1936: 5)

The exact contents of the petition are unknown, but it is certain that ‘it demanded additional powers to arrest and imprison heretics, and that such powers were granted’ (ibid., 5). The familiar material objects which they saw in the churches, abbeys and cathedrals in their vicinity or on the occasions of pilgrimage such as ‘*a lytil oratory with stolys and cusshonys, clenly beseyn lych as it were a counsel hous*’ are likely to have strengthened the contemporary relevance of the biblical event enacted before the audience.²⁴ Another stage direction, this time in Play 27 where the Last Supper and the conspiracy with Judas are simultaneously enacted side by side on the same staging area, describes the scene that, while Jesus is with the disciples partaking of the Last Supper, Annas presides over the meeting of the ecclesiastical and secular judicial personnel in the council house which has already appeared in the previous play: ‘*in þe menetyme þe counsel hous beforneyd xal sodeynly onclose schewyng þe buschopys, prestys and jewgys syttyng in here astat lych as it were a convocacyon*’ (76 SD). Rewfyn and Leyon, the two secular judges summoned in the course of Play 26, are actively advising and

²⁴ It should be remembered that secular and ecclesiastical trials were often held in churches and cathedrals in the Middle Ages as remarked in the introduction.

cooperating with the *buschopys*. There is an additional character named as Gamalyel, who appears in Plays 27 and 28 along with Rewfyn and Leyon so that he may have been viewed as another temporal judge by the audience.²⁵ These two or three (if Gamalyel is included) secular judges are also a part of the party of officials who are to arrest Jesus in Play 28, making them look like members of a special task force of inquisitors. Placed in the late medieval contexts, they may be modelled after contemporary magistrates or sheriffs who were instructed by the Crown to assist inquisitions. Already in the 1380s, such cooperation between the ecclesiastical authorities and the royal officers in localities was accelerated. Ian Forrest writes that ‘In May 1382 [just after the quashing of the Rebellion] Richard II instructed sheriffs and other royal officers to capture suspected heretics who had already been cited by their bishop and had failed to appear’ (2005: 35). On the other hand, ‘by a royal letter in June 1382, it became possible for bishops to ‘make arrests themselves and keep the suspects in their own prisons while they awaited trial’ (ibid., 35). As each case of heresy demanded, bishops and secular officials cooperated in detecting and arresting heretics (ibid., 35). In the continental inquisitions against the Cathars, Pope Gregory IX, ‘realising the inadequacies of episcopal inquisitions, [. . .] resorted to special agents equipped with full powers from the papacy to hunt out heretics’ (Lambert 1992: 100), but, coming much later than the continental inquisition, the English Church created the system of heresy persecution based on the secular and religious cooperation. It was crucial for the Church to enlist the help of secular officials since they did not have sufficient policing force to apprehend heretical suspects for interrogation, and, as the Jewish judges in the mystery plays repeatedly confess, they could not give the death penalty. On the other hand, even if the Crown were afraid of religious heterodoxy turning into armed insurgency and would have liked to arrest and try heretics in secular tribunals, secular justices or local magistrates may not have had sufficient theological

²⁵ Stephen Spector, the editor of the EETS edition, writes, ‘Gamalyel [. . .] is presumably one of the priests mentioned in 76 s.d. A Gamaliel is listed in the *Gospel of Nicodemus* among the delegation of Jews who come to Pilate to accuse Jesus.’ (Note to 27/101, II 496) However, as the text stands, it is difficult to define his social status exactly.

knowledge to separate true heretics from other minor blasphemers and non-conformists (*ibid.*, 40); thus they also needed officials from religious courts to hunt down and try heretics so that they could eventually prevent treasonous insurrections originating from religious heterodoxy. In Norwich heresy trials, secular justices of peace played very active roles as ‘they arrested and imprisoned at least some of the suspects; they conducted a preliminary inquiry into their heretical beliefs and activities, and they handed them over to the bishop’ (Tanner: 1977, 10).

Thus the participation of the secular judges in their arrest of Jesus in the N-town Play 28 may reflect the contemporary heretical persecution. In the Bible, the four gospels vary regarding who was present when Jesus was arrested. In Matthew (26. 47-56) and Mark (14. 43-50), Jesus was caught by the crowd sent by ‘the chief priests and elders of the people’ (Matthew 26. 47), and then brought to the court of the priests. Similarly, in John (18. 1-12), ‘a band of men and officers from the chief priests and Pharisees’ (18. 3) arrested Jesus and then led him to Annas’s court. However, in Luke (22. 47-54), ‘the chief priests, and the captains of the temple, and the elders’ (22. 52) were present amongst ‘a multitude’ of people (22. 47) at the time of Jesus’s apprehension. In the mystery plays, Jesus is arrested by Jews in the Chester Play 15 and appears in the court of the priest in the next play. In other words, only the subordinates take part in the arrest. In the Towneley Play 20, the soldiers (*1 and 2 Miles and Malcus*) arrest Jesus while Pilate speaks immediately before and after the scene of the arrest so that it is likely that Pilate is standing by when his subordinates capture the suspect. If Pilate is present at the scene of the arrest, it is not based on the gospels and unique in the cycle. Since Pilate is characterised as very evil and corrupt by the Towneley author, it is dramatically plausible for him to lead the persecution of Jesus at the scene even though it deviates from the gospel descriptions. In the York Play 28, while the soldiers and Jews apprehend Jesus, as in Luke, Caiaphas looks on. In terms of medieval law-enforcement, as has been indicated, it was possible for bishops to arrest and imprison heretics, and ‘The actual division of labour in detecting and arresting heretics remained open to choice according to what was deemed most likely to succeed in any given case’ (Forrest

2005: 35). Archbishop Chichele, one of the leading figures of heresy persecution in the early fifteenth century, 'is reported to have ridden for several days and nights hunting down suspects' (Tanner 1977: 7). The limited space on and around the stage of pageant wagon in the three cycles may have been a factor restricting the number of actors at the scene. On the other hand, in the N-town Play 28, which is designed not for a pageant wagon but for a fixed staging, the author could have mobilised quite a few actors to represent the arresting party. The stage direction after 28/80 describes them:

Here Jesus with his dyscipulis goth into þe place; and þer xal come in a x personys weyl beseen in white arneys and breganderys, and some dysgysed in odyr garmentys, with swerdys, gleyvys, and other straunge wepoun, as cressettys, with feyr, and lanternys, and torchis lyth [. . .].

Thus they are ten heavily armed soldiers, or in medieval terms, knights, three of whom, namely Gamalyel, Leyon and Rufyne, are given a speech during this sequence. Viewed as a scene of arresting a criminal suspect in late medieval England, this group of armed men may be construed as a sheriff or a magistrate and the men under his command who have been asked to bring a suspected heretic to the ecclesiastical court.

An interesting contemporary feature of the speeches of the judges and officials in the N-town Passion plays is that they submit much more elaborate ideas about how to punish Jesus, the heretic. In the other three cycles, the priests and other Jews are intent on executing Jesus, for the whole point of bringing Jesus to the secular court of Pilate is to have the heretic sentenced to death by the Roman judge. But in the N-town cycle, the prosecutors not only want a death penalty for Jesus but also propose a variety of possible penalties for Christians, which must reflect the contemporary judicial punishments. While the Jews are conspiring against Jesus in Play 27, Caiaphas 'had levyr he were brent' (27/95) than Jesus should overwhelm them while Gamalyel and Rewfyn suggest several punishments in more realistic and elaborate manner:

GAMALYEL Late us no lenger make delacyon,
 But do Jesu be takyn in hondys fast,
 And all here folwerys to here confusyon,
 And into a preson do hem be cast.

Ley on him yron þat wol last,
 For he hath wrough azens þe ryth.
 And sythyn aftyr we xal in hast
 Jewge hym to deth with gret dyspyth!

REWFYN For he hath trespacyd azens oure lawe,
 Mesemyth þis were best jewgement:
 With wyld hors lete hym be drawe,
 And afftyr in fyre he xal be brent! (101-12)

Gamalyel suggests that Jesus should be brought ‘in hondys fast’ and put in prison. He also wants Jesus to be tortured before a trial as he is in the mystery plays, presumably so that he would confess his crime. Rewfyn proposes that Jesus should be drawn by horses as traitors were in the Middle Ages, and thereafter burnt as a heretic. In Play 28, Ruffyne also predicts that Jesus shall be ‘hangyn upon a tre’ (127) as happens in the Bible. In the N-town Play 29, Herod Antipas tells all the possible punishments which he wants to inflict on the Christians:

ʒef ony Crystyn be so hardy his feyth to denye,
 Or onys to erre ageyns his lawe,
 On gebettys with cheynes I xal hangyn hym heye,
 And with wylde hors þo traytours xal I drawe!
 To kylle a thowsand Crystyn I gyf not an hawe!
 To se hem hangyn or brent to me is very plesauns;
 To dryvyn hem into doongenys, dragonys to knawe,
 And to rend here flesche and bonys onto here sustenauns! (29-36)

Except for the tyrannical hyperbole of feeding dragons with Christians, the basic lineup of hanging, drawing with horses, burning and imprisonment are the same as the proposals of Gamalyel and Rewfyn and were also being practised in the late Middle Ages after the issue of *de heretico comburendo*. It is noteworthy that all these specific and contemporary methods of capital punishments, except the burning which Caiaphas *wished* to occur (27/95), were proposed by the temporal judges²⁶ and Herod, a secular ruler, indicating that the N-town Passion plays may reflect the cooperation between the religious and secular authorities in punishing heretics.

²⁶ That is, if we consider Gamalyel as a temporal judge.

What were the actual punishments to which the heretics were sentenced in the inquisitorial trials? Norman Tanner lists penances imposed on Kentish Lollards by Archbishop Warham from 1511 to 12. They include punishments to humiliate the guilty men and women before the eyes of their community such as ‘carrying a faggot on a public occasion’ or ‘wearing a badge with a faggot on it’ as part of procession (1997: 235). The ceremonial and dramatic nature of such occasions cannot but recall the public humiliation in front of the citizens of Jerusalem suffered by Christ, and consequently, the painful scenes of Christ being beaten by soldiers as a heretical suspect or his carrying the cross to Calvary after the sentencing. The medieval penitents were

[. . .] carrying a real faggot, with head feet and shins bare, on three occasions: in the market-place of Canterbury on the following Saturday, at the front of the procession and during the sermon in Canterbury cathedral on the following Sunday, and at the front of the procession in their parish churches in the Sunday after that (Tanner 1997: 237).²⁷

This type of ceremonial and processional penance in public was not limited only to heretics but generally given to other penitents by church courts. Ralph Houlbrooke explains that at a church court a penitent may have been ordered to

[. . .] perform penance, barefoot and dressed in sheet. He often had to declare why he was doing the penance or carry an explanatory placard or symbol. The typical pre-Reformation penitent preceded the cross borne in procession round the church, carrying a candle which he subsequently placed before the principal image or took to the high altar at the time of the offertory. Winchester penances *frequently included a beating administered by the penitent's parish priest or rural dean.* (1979: 46, my emphasis)

As Houlbrooke writes, priests were allowed to beat penitents as a punishment although shedding of blood was not. Richard M. Wunderli, in his study of the pre-Reformation church court, stresses the dramatic nature of the public display of penance:

Public penance became a cosmic – comic – drama of sin and redemption acted openly with all London as a stage. Almost invariably public penance in London

²⁷ Such *performances* of ceremonial and processional punishments were also given after the Coventry heresy trials 1486-1522 (McSheffrey and Tanner 2003: 7).

involved a convicted person, now officially contrite, leading his parish procession on Sunday, looking foolish in only a smock, and carrying a lighted candle: this then was repeated for two or three Sundays. The entire drama was played out weekly in a hundred London parishes. (Wunderli 1981: 50-51)

The stage directions of the N-town Passion plays allow us to glimpse at the similarity between the rites of public humiliation such as the above and Christ's sufferings in Passion plays as, for instance, the scene of the 'temporal' judges and their subordinates dragging Jesus forward to Caiaphas after the arrest: '*Here þe Jewy lede Cryst outh of þe place with gret cry and noyse, some drawyng Cryst forward, and some bakward, and so ledying forth with here weponys alofte and lytys brennyng* (28/148 SD).²⁸ And before the final trial in Pilate's court begins, and while Satan speaks, the Jews again drag Jesus around the staging area apparently to emphasise the humiliation: '*Here enteryth Satan into þe place in þe most orryble wyse. And qwyl þat he pleyth, þei xal don on Jesus clothis and ouyrest a whyte clothe, and ledyn hym abowth þe place, and þan to Pylat be þe tyme þat hese wyf hath pleyd.* (31/0 SD)

A similar punishment of dramatic humiliation is flogging. In the records of the Norwich heresy trials in 1428-31, it was 'the most common punishment. It featured in over half the sentences'. (Tanner 1977: 22) Like carrying the faggot, this was also performed as part of procession in public in a dramatic manner:

Usually they [floggings] were to be received in the penitent's parish church, or its cemetery, during the solemn procession of the parish on one or more Sundays, or in the market-place of his home town of one or more market-days (ibid., 22-23).

Again, such beatings of heretics were extensions of performances of penance designed to humiliate sinners in public places which medieval parishioners regularly witnessed as Rosalind Hill writes:

A good many laymen had to undergo public beatings for their sins. John of Heyford, who had debauched a nun, was to be beaten three times in the

²⁸ Ian Forrest also extensively discusses the similarities of various ceremonial punishments and drama (2005: 134-45).

market-place. Richard Bishop was beaten five times for dragging a fugitive from sanctuary. A similar offence earned for Walter the under-bailiff six beatings at Oxford, three at the door of the church of St. Giles which he had violated and three in the market-place. (1951: 219)

The medieval audiences, who saw the representation of the flagellation of Christ in the Passion plays in the streets of York, Chester and other cities, may also have witnessed real beatings of sinners in and around their churches and other public places. The scenes in the drama therefore may have seemed familiar to them as a ceremony of public humiliation.

The representation of Judas in the Passion plays who helps the judges identify and arrest Jesus may recall late medieval informers in inquisition. The inquisitorial investigations were often launched with reports of suspected heretics by well-regarded and trusted members of community, or *viri fidedigni*, who, as Ian Forrest describes, were ‘expected to be upright and honest, not suspected of any crime, and chosen without fraud, disregarding their popularity amongst the people of the parish’ (Forrest 2005: 71). Besides, there were other, less respected members of the society, ‘namely excommunicates, perjurers, and condemned heretics’ who were also employed as reporters of heretics, presumably as a kind of spy (ibid., 72). Although occurring late in the period of the mystery play performances, the records of heresy trials from Coventry in 1486-1522 include cases involving spies used as witnesses. A case recorded in Bishop Blyth’s visitation book in 1515, one Ralph Lowe, a servant with Thomas Rowley, the sheriff of Coventry in 1513-14, seems to have shadowed and spied on a woman called Joan Smyth, who was an abjured heretic’ (McSheffrey and Tanner 2003: 282). But this case is similar to the modern police investigation using someone working upon instructions of superior officials. More usually, however, the persecutors of heretics exploited information gained from the Lollard insiders. As Shannon McSheffrey and Norman Tanner write on the Lollards of Coventry, ‘the persecutors traced the social connections among the Lollards through testimony offered by insiders. This was the tactic most likely to ferret out heretics’ (2003: 11). The depositions taken in earlier trials of Lollards were often used against suspects in later interrogations and

the persecutors sometimes brought in these earlier Lollard witnesses to confront later suspects (ibid., 11). In the Kent Lollard trials in 1511-12, one of the penances frequently imposed was ‘the obligations of informing the archbishop and his successors of any persons suspected of heresy and of any books belonging to such persons – duties that were included in all the abjurations’ (Tanner 1997: xvii). These facts came from the descriptions of records in the early sixteenth century and are unlikely to have had direct influence on the texts of the mystery plays. Nevertheless, they could indicate the general characteristics of heresy detection, namely, the use of insider knowledge rather than the formal policing and investigations by officials, and may be relevant to understanding the background of the character of Judas, especially in the N-town cycle, who is one of Jesus’s followers, but decides to report their leader to the authorities.

With that in mind, let us look at Judas in the cycles. In the Towneley Play 20, *Conspiracy and Capture*, Pilate seeks all kinds of shady informers, namely, ‘all fals indytars, / Questmangers and iurers, / And all thise fals outrydars’ (36-38), and adds, ‘More nede had I neuer / Of sich seruand now’ (40-41) because there is a false prophet who could destroy their law (46-56). In the Chester Play 14, Caiaphas seems to want to recruit informers with rewards who sell intelligence:

Amonge our wittes lett us see
to take him with some subteltye.
Hee shall have sylver, gould, and fee,
this thinge that would fulfill. (377-80)

In the N-town cycle, Annas is more specific about deploying ‘spyes’. In the conspiracy scene of Play 26, the Doctors vociferously propose how to capture and execute Jesus, but Annas tells them they should first gather intelligence on the suspect to assure a solid prosecution:

Now, bretheryn, þan wyl ze here myn intent?
These ix days let us abyde.
We may not gyf so hasty jugement,
But eche man inqwere on his syde:
Send spyes abouth þe countré wyde

To se, and recorde, and testymonye.

And þan hese werkys he xal not hyde,
Nor haue no power hem to denye. (333-40, my emphasis)

Later when Judas comes to see Pilate, the priests and their subordinates, he initially gets a chilly reception in York and Towneley. The porter in York is full of animosity towards Judas from the outset, saying, ‘Go hense, þou glorand gedlyng, God geue þe ille grace, / Thy glyfftyng is so grymly þou gars my harte growe’ (26/157-58). In Towneley, it is Caiaphas who first responds to Judas, again aggressively: ‘Go! – otheregatys thou has to gang / With sorrow! Who send after the?’ (20/200-01). As the latter example shows, in these cycles the judges and their subordinates have not been expecting Judas to appear, indicating that he is not one of their own informers; Judas, spurred by greed, comes to see them on his own will, wanting to sell his master to the enemies. On the other hand, in N-town, when Gamalyel and Rewfyn receive Judas, they appear to have been already acquainted with him and prepared with the reward which they would give him for betraying his master:

GAMALYE[L] Now welcome, Judas, oure owyn frende!
Take hym in, serys, be þe honde.
We xal þe both geve and lende,
And in every qwarel by þe stonde.

REWFYN Judas, what xal we for þi master pay?
Bi sylver is redy and we acorde.
Þe payment xal haue no delay,
But be leyde down here at a worde. (27/293-300)

Moreover, Judas in N-town sounds not only greedy enough to sell his master but also very angry with Jesus himself as he tells the secular judges that he shares with them the intention to kill Jesus and destroy his law:

ʒyf ʒe wole folwe myn intent,
My maystyr, Jesu, I wele ʒow selle,
Hese intent and purpose for to felle.
For I wole no lenger folwyn his lawe.
Lat sen what mony þat I xal telle,
And late Jesu my maystyr ben hangyn and drawe. (27/287-92)

Perhaps there is not enough evidence to consider the N-town Judas as a full-fledged spy sent by the authorities, but the above quotations seem to indicate that he shows traces of medieval informers.

Finally, it may be worth examining the location of the trial of Jesus before Annas and Caiaphas, especially in the N-town cycle, and see whether there were indications of medieval ecclesiastical trials or inquisitions of heretics. In the Chester, York and Towneley cycles, there are hardly any stage directions and extremely few clues leading to the material locations of the court so that it is very difficult to conceive what kind of trial venue the authors and audiences may have visualised in their minds while writing or watching the trial before the priests. Moreover, as these cycles are designed to be performed on pageant wagons, the small space on and around the wagon may have had to be left intentionally ambiguous and versatile in order to represent varied locations. However, the two N-town Passion Plays employ a fixed staging in the traditional model of a wide staging space dotted with several scaffolds occupied by the major characters such as Annas, Caiaphas, Herod and Pilate, the model with which the authors of Latin liturgical plays also represented the ancient biblical world. In the N-town cycle, the two priests with their subordinates examine Jesus in ll. 118-80 in Play 29, the first play of the larger Passion Play 2. The play shows no clear indication of its location, yet begins with this stage direction: *‘What tyme þat processyon is enteryd into þe place and þe Herowdys takyn his schaffald, and Pylat, and Annas and Cayphas here schaffaldys also, þan [xal] come þer an exposytour in doctorys wede, þus seyng [. . .]’* (29/0 SD). Therefore we can assume that Jesus is escorted into the open space in front of the scaffolds where Annas and Caiaphas have taken their positions, and there, albeit briefly, the ecclesiastical trial of the heretic takes place, but no words indicating a location are used. Later in Passion Play 2, Jesus is taken to Pilate’s court and given the final judgement. Interestingly, at Pilate’s court, there are quite a few occurrences of words suggesting a judicial location. At the beginning of Play 30, the area where Pilate is to try Jesus is repeatedly called ‘þe mot-halle’ (5, 14, 21, 35). Whether a purpose-built architecture or not, the ‘mot-halle’ must have meant a courtroom. In the next Play 31,

Pilate wants to question Jesus alone, away from the other clamorous court audience, and, as a stage direction describes, he *'takyth Jesu and ledyth hym into þe cowncel hous'* (117 SD). Later in Play 31, as discussed in Chapter 1, we find a *'þe barre'* along with *'þe cowncell hous'* in Pilate's court, suggesting that, presumably, the bar is a fixture of the council house when used as a courtroom (31/170 SD). In contrast, there is no such material fixture of a judicial nature in the scenes of Jesus's trial before the priests in the mystery plays.²⁹ Presumably, the locations of these scenes are religious buildings, and, translated into late medieval England, cathedrals, churches or residences of the bishops. The medieval and early modern ecclesiastical courts were at least as ambulatory as the royal courts if not more so, and they used parts of existing multi-purpose ecclesiastical structures. The scarcity of architectural or other material evidence in the texts may well reflect the fact that ecclesiastical courts did not have characteristic attributes of materiality such as special bars, benches or tables as did the royal courts. Or it may have had to do with the exigencies and limitations of dramatic representation. Discussing the ecclesiastical courts in the dioceses of Winchester and Norwich, Ralph Houlbrooke writes about the ambulatory nature of the consistory court:

In both dioceses the consistory court usually sat in the cathedral, but sometimes elsewhere, in an episcopal residence, the chancellor's house, or another church in the cathedral city. In the diocese of Winchester post-visitation sessions were held in a number of local centres, while in that of Norwich they sometimes took place at Ipswich in synod time. (1979: 27)

In London, the consistory court *'convened weekly – sometimes biweekly – in the Long Chapel of St. Paul's Cathedral'* (Wunderli 1981: 7) while the commissary court *'sat several days per week – usually in St. Paul's Cathedral'* (ibid., 13). In any case, these church courts used parts of existing ecclesiastical buildings. In the case of inquisition, they were tried in specially organised ecclesiastical tribunals, but were held in similar venues as were the other church courts. Most of the Norwich heresy trials of 1511-12

²⁹ The plays and scenes where Caiaphas, Annas and their subordinates question Jesus without Pilate are Chester 16/1-117, Towneley Play 21, York Play 29 and N-town Play 29/118-80.

‘were held in the Bishop’s Palace in Norwich, usually in the chapel’ (Tanner 1977: 9).

A few of them convened in some other places like a parish church or a secular college or even in the private house of a scribe named John of Exeter, and ‘half a dozen took place in the bishop’s manor house at Thorpe’ (ibid., 9). The trials of heretics in Coventry in 1511-12 are recorded to have been held at the priory of Maxstoke in North Warwickshire or, simply, at Maxstoke (McSheffrey and Tanner 2003: 5). Later, from 22 January 1512 the trials moved to Coventry and were held ‘in the chapter house or in the church of the cathedral priory on most other occasions’ (ibid., 5). Also Norman Tanner shows that the Kent heresy trials in 1511-12 occurred in a variety of religious buildings and of residences of Archbishop Warham:

They were held in various places in the diocese of Canterbury and at the archbishop’s residence at Knole near Sevenoaks, a fair number at Lambeth palace, and the remainder variously in Canterbury cathedral, the archbishop’s residence in Canterbury, Maidstone and Offord, the collegiate church of All Saints at Maidstone, and the parish church of Saltwood (1997: xi).

Thus we could suppose that the lack of any material markers of medieval ecclesiastical courts in the scenes of Jesus’s trial before Caiaphas and Pilate may well be mirroring the ambulatory nature of the church courts and the versatility of cathedrals, churches and residences of bishops where various church courts and inquisitional tribunals took place.

In this chapter, we first discussed the characterisation of the ecclesiastical judges as medieval dramatic tyrants. Like Herod and Pilate whom we examined in the previous chapter, the high priests in the plays are tyrannical, boast of their secular and ecclesiastical power, and indulge in worldly comforts and pleasures. They may be compared with ‘Caesarian’ bishops of the late Middle Ages such as Thomas Arundel or Henry Despenser; both the dramatised bishops in the mystery plays and many of the historical bishops were militaristic and aristocratic. Their representations may also been influenced by the anti-clerical literature as exemplified in passages from John Gower, *Piers Plowman* and Lollard tracts. Then, we have discussed the contemporary cooperation of the religious and secular authorities as regards persecuting religious

heterodoxy. After the Great Rebellion, both the religious authors and the Crown tended to see Wycliffite influence over the insurgents led by a preacher like John Ball, and instituted measures and statutes to hunt out and punish heretics. Such contemporary political and religious circumstances may well have influenced the texts of the mystery plays, especially the N-town cycle. The biblical characterisation of Christ as a powerful preacher who is threatening both secular and religious establishments resonated with the contemporary threat of religious rebels which the authorities felt, and in turn, may have influenced the drama texts. The cooperation of religious and secular authorities to conspire against and arrest Jesus, especially prominent in N-town, may also have been a reflection of late medieval heresy prosecution. Furthermore, the tortures and punishments planned or actually given to Jesus may recall the dramatic penances meted out on the penitents of regular ecclesiastical trials and inquisitions. So does the character of Judas as a kind of spy perhaps mirror the use of inside informers in inquisitions. Finally, we have looked for any material traces of medieval church courts or inquisitions in the scenes of the trial of Jesus in the mystery plays, but there do not seem to be any. This lack of such physical indicators may reflect the ambulatory nature of the church courts and the versatility of medieval religious buildings. These connections between the dramatised trials of Christ and the contemporary ecclesiastical judges and their courts must have been exploited to convince the medieval audience of the historical truth of the staged events and arouse the empathy with Christ as the victim of the tyrannical and inhumane judges and their legal power which they also must have been witnessing in their communities.

Chapter 3

Corruption in the Law Courts in the Mystery Plays and Related Literature:

The Towneley Pilate and the Subordinates of the Tyrants

Pilate in the Towneley Cycle is one of the wickedest characters in the all mystery plays in English.¹ Unlike the Pilate of the other three major cycles who may be interpreted as defending Jesus at times, the Towneley Pilate is consistently hostile to him throughout from the conspiracy to the crucifixion. Moreover, what makes him unique amongst the characterisations of Pilate in the English mystery cycles is that he is corrupt through and through, declaring that he would change his judgements depending on the bribes he gets. As Arnold Williams found in his classic examination of the character (1950: 37-51), a crucial element of this Pilate is derived from the tradition of the venality satire against the law court and legal personnel often found in late medieval English literature. In this chapter, we shall probe the broader contexts of the character by examining not only the expressions of the satire in contemporary literature but also the historical backgrounds that gave rise to these expressions. We shall pay particular attention to the relationship between the judge and his followers who may take on the roles of witnesses, jurors and other constituent members of the legal system. Those minor participants in law may also be susceptible to corruption and/or political pressure. By means of examining the

¹ He is perhaps on a par with Herod the Great in his pursuit of evil. Many studies have delved into the characterisations of the Pilates in the mystery plays, especially about the variations of the relatively 'good' Pilate, who tries to resist the pressure from the Jews to execute Jesus, and the evil Pilate who spearheads the persecution. See, for instance, Brawer (1972: 289-303), Kolve (1966: 231-34), Griffin (1970: 234-44), Woolf (1972: 246-49), and Suematsu (1985: 197-24). The most thorough study of the characterisation of Pilate is still Arnold Williams's monograph (1950).

Towneley Pilate and the corruption which he embodies, we can perhaps grasp the strengths and weaknesses of the medieval law court.

The Towneley Pilate as a Corrupt Judge

As earlier scholars demonstrated, the Pilates of the Chester, York and N-town cycles are generally characterised as the reluctant judge of Jesus and seem to be pushed into sentencing him to death by the mounting pressure from the Jewish ecclesiastical judges and the other trial attendants. In a sense, this characterisation is relevant to the late medieval English society as the secular judges, sheriffs and magistrates in localities were instructed by the Crown to cooperate with the ecclesiastical authorities in order to prosecute religious rebels as discussed in the last chapter. However, from his first appearance, the Towneley Pilate is consistently hostile to Jesus and eager to execute him. Unlike in the Chester cycle (Play 14) and N-town cycle (Play 27), where the priests initiate the persecution of Jesus, in the York cycle (Play 26) and Towneley cycle (Play 20) Pilate participates in the conspiracy against Jesus. But the York Pilate only presides over his council and receives advice from his councillors whereas the Towneley Pilate in his very first speech (20/1-77) attacks ‘a lurdan ledyr’ (a lazy lout), ‘That fature fals, Iesus’ (that false impostor Jesus) (20/46, 54). Since the central dynamic of the extant English Passion plays is the power struggle between Pilate, the secular lord, and Caiaphas and Annas, the ecclesiastical judges, if Pilate had been at one with the priests, a significant part of the dramatic impetus would have been lost. However, to the credit of the Towneley author’s genius, this Pilate feigns to be siding with Jesus while actually wanting to kill him as he confides to the audience:

I shall fownde to be his freynd vtward, in certayn,
And shew hym fare cowntenance and wordys of vanyté;
Bot or this day at nyght on crosse shall he be slayn. (22/31-33)

Thus the Towneley Pilate keeps up the deception of resisting Jesus’s execution. He is the Christ killer, an evil incarnate comparable to Lucifer. In fact, while in the York and

N-town cycles the audience is reminded that the devil is machinating behind the persecution of Jesus,² the Towneley author, who in many places follows the York plays as his source, entirely excises the part of the devil in the plays of Christ's trials and highlights the human wickedness of Pilate as the primary mover of the evil in the Passion. This Pilate's wickedness is particularly manifest in his abuse of judicial power for profit: he is a corrupt judge, unashamedly declaring his venality to the audience. It is significant that in a large scale community drama such as the mystery cycle the political and legal corruption personified in the character of the Towneley Pilate represents the depths of the human depravity leading to the killing of Christ;³ it shows how detested venality generally, and legal corruption in particular, was by the late medieval people. Therefore, in order to understand the iniquity of this dramatic character, it seems necessary to comprehend the nature of the corruption of the law court and legal personnel in late medieval England and what medieval people felt about it. In the following pages, we shall examine not only texts of the mystery plays but also a range of medieval non-dramatic texts on legal corruption and modern studies on this topic which illustrate the contexts where this character is generated and received so that we can better understand the nature of the human and social evil embodied by the Towneley Pilate.

The characterisation of the Towneley Pilate is a part of the traditional satire against legal corruption going back to the Roman period,⁴ and was continued in many works in the late medieval literature in England.⁵ In the initial rant in Play 23, *Scourging*, he boasts of his greed, duplicity and amorality to the audience:

² See York 30/157-175 and N-town 26/1-124.

³ A similar dramatic treatment of the evil of judicial corruption is seen in the Vice called Maintenance in the play, *Wisdom, Who Is Christ*, which will be discussed in Chapter 4.

⁴ On the origin and development of the satire against legists in the Roman literature, see Yunck (1963: 13-45) and Brundage (2002: 56-103, especially 56-64).

⁵ An early work is Williams (1950), especially Chapter 3 'The Towneley Pilate as Social Satire', pp. 37-51. On medieval satirical literature on legal personnel generally, see Owst (1961: 339-49), Yunck (1963), Scattergood (1971: 316-25) and Brundage (2002). I owe much to these works to prepare for this chapter. Owst also mentions the Towneley Pilate in his discussion about the relationship between sermon and drama (1961: 494-95).

I am full of sotelty,
 Falshed, gyll and trechery;
 Therfor am I namyd by clergy
 As *mali actoris*.

For like as on both sydes the iren the hamer makith playn,
 So do I, that the law has here in my kepyng:
 The right side to socoure, certys, I am full bayn,
 If I may get therby avantege or wynyng;
 Then to the fals parte I turne me agayn,
 For I se more vayll will to me be risyng. (10-19)

In the Towneley cycle, Caiaphas is also suspected of corruption. In Play 21, *Buffeting*, while interrogating Jesus in his court, he seems to imply that he could be lenient to Jesus if a bribe were paid:

As euer syng I mes,
 Whoso kepis the law, I gess,
 He gettys more by purches
 Then bi his fre rent. (231-34)⁶

However, albeit he himself may be swayed by bribery, Caiaphas is very suspicious of Pilate's professional integrity, and moves to keep an eye on how Pilate judges Jesus. At the end of this play when they are about to take Jesus to Pilate's hall, Caiaphas is fearful that Pilate may let Jesus go for a bribe:

For I am euer in drede,
 Wandreth and wo,
 Lest Pylate for mede
 Let Iesus go.
 Bot had I slayn hym indede
 With thise handys two
 At onys,
 All had bene qwyt than.
 Bot gyftys marres many man;
 Bot he deme the sothe than,

⁶ In the note to these lines, the EETS editors suggest the possibility of Caiaphas wanting to pocket the fees which, one solidier suspects, Christ may have collected in return for his sorceries (1994: II 558). Cf. 21/118-21.

The dwill haue his bonys! (627-37)

In Play 24, *Play of the Dice*, where Pilate and his subordinates haggle over the possession of Christ's coat, the action which is itself a measure of Pilate's greed and wickedness, it is one of Pilate's own soldiers, here called *Tortor*, who criticises his master. While Pilate tells his soldiers to surrender the coat to their master as a gift, the second soldier expresses their mistrust of Pilate's crafty character: 'How, all in fageyng? In fayth, I know of youre featte!' (271). Thus, complaint against legal corruption comprises a major part of the Towneley Pilate's characterisation, which in turn owes much to the contemporary tradition of the same nature and perhaps to some extent reflects the realities of the late medieval legal system.

The Corruption of Judges and Lawyers in Writings in Late Medieval England

The accusations of corrupt judges and lawyers like the Towneley Pilate abound in writings in late medieval England. William Langland in his Prologue to *Piers Plowman* typically condemns serjeants-at-law for seeking monetary gain and ignoring the love of the Lord:

Yet hoved ther an hundred in howves of selke –
Sergeants, it seemed, that serveden at the Barre,
Pleteden for penyes and pounded the lawe,
And noght for love of Oure Lord unlose hire lippes ones.
Thow myghtest bettre meete myst on Malverne Hilles
Than get a 'mom' of hire mouth til moneie be shewed! (B Prol 211-16)

As this passage shows, Langland, like classical and medieval Latin writers,⁷ expects them to work for the love of God, i.e. follow a priestly lifestyle, but, to his dismay, finds them to be greedy jobbing technocrats. The legal professions tend to be criticised by medieval authors mainly from ethical and religious viewpoints, which, however, ignore the economic realities surrounding men of law. Typical examples can be found in

⁷ On the classical and medieval Latin tradition of complaints against judicial corruption, see Yunck (1963) and Brundage (2002) as previously cited.

repeated invectives by John Gower who, in *Mirour de l'Omme*, says that the legal men, including judges and several types of lawyers, are the worst among the secular estates; like the Towneley Pilate, they disgrace the profession 'by trickery and subtlety' ('En cautele et soubtilité'):

Le pledour ove le president
 Et l'apprentis et l'attourné
 Le noun portont inproprement
 Du loy; car loy deins soy comprennent
 Verray justice et equité,
 Mais ils la loy ont destourné
 En cautele et soubtilité,
 Dont its pilont trestoute gent;
 [. . .]
 Om dist *que* tout estat enpire,
 Mais certes nuls est ore pire
 Des tous les seculers estatz
 Que n'est la loy [. . .]. (1899: 24794-808)⁸

Gower's criticisms are the representative showcase of the traditional satires on legal men, repeating the leitmotifs of craftiness, greed and amorality as in this passage from *Vox Clamantis*:

Legis sub clamide latet ars, qua lex sine iure
 Vertit vt est velle quolibet acta die;
 [. . .]
 Iuris in effigie sunt omnia picta colore,
 Quo magis occultum fert sibi lucra forum:
 Iusta vel iniusta non curant quomodo causa
 Stat, set vt illa lucris fertilis astet eis. (1902: VI 19-26)⁹

⁸ '[. . .] lawyers, presiding judges, apprentices, and attorneys are all improperly called men of law; for law includes true justice and equity within itself, but they have perverted the law into trickery and subtlety, by which they plunder all the people. [. . .] It is said that every estate is degenerating, but none of all the secular estates is now worse than the estate of the law' (Wilson 1992: 325). All passages from *Mirour de l'Omme* are cited from Macaulay (1899) and their translations from Wilson (1992).

⁹ 'Under the cloak of law hides cleverness, whereby a law without justice daily devotes itself to carrying out its wishes somehow. [. . .] Everything is tinted in the guise of justice, whereby their sly administration of justice brings them the more profit. They care not in what way a case is just or unjust, but that it be rich in returns for them.' (Stockton 1962: 220-1) All passages from *Vox Clamantis* are taken from Macaulay

According to the poet, lawyers do not care where justice lies; they are willing to use tricks and harassment to win cases unjustly:

Nunc cum causidicus aduerse ius fore partis
 Scit, tunc cautelas prouocat ipse suas:
 Quod nequit ex lege, cautelis derogat ipse,
 Cum nequeat causam vincere, vexat eam [. . .]. (1902: VI 27-30)¹⁰

Thus, for Gower, the lawyers' expertise is amoral and 'skilful chicanery' ('cautela perita') (1902: VI 39), a merchandise to be sold for right price:

Sergantz du loy sont sourd et mu
 Avant *que* l'orr eiont resçu,
 Que l'en leur baille *prest* au main [. . .]. (1899: 24421-23)

O *comme* le siecle ad poesté,
 Quant tiel miracle ad demoustré
 Sur son sergant q'ensi l'orr donne:
 Sa langue en ce devient dorré,
 Qe *jammis* puis sanz orr ne sonne.
 La langue q'ensi s'abandonne
 Bien porra porter la coronne,
 Car un soul mot au bon marchée
 Valt d'un escut *que* l'en guerdonne. (1899: 24433-42)¹¹

Gower's criticism of the legal profession is moral as are most other medieval criticisms and complaints of this topic. He does not look at the underlying social causes of the legal corruption or of lawyers' supposed greed; he is writing 'a moral tract in verse, which redefines the king's role in a law-bound society' (Coleman 1981: 135). He fully respects the importance of law, which compels him to accuse all the more harshly the

(1902) and their translations from Stockton (1962).

¹⁰ 'Nowadays when a lawyer knows that right is on the other side of the opposite party, then he summons up his tricks. He disparages by his tricks what he cannot by law. When he cannot win a case, he harasses it.' (1962: 221)

¹¹ 'Sergeants-at-law are deaf and dumb until they have received the gold which is pressed into their hands' (1992: 320). 'For now that the gold has been given, the sergeant's tongue becomes gilded by it, so that never afterwards does his tongue utter a sound without gold. The tongue which thus sells itself might bear the crown. A single word is readily worth a shield as a reward.' (1992: 320)

legal professionals who seem to him to handle it as merchants handle their wares on market stalls:

La loy de soy est juste et pure
Et liberal de sa nature,
Mais cils qui sont la loy gardant
La *pervertont* et font obscure,
Si la vendont a demesure,
Q'a *lour* marché n'est un marchand
Des povres gens q'est sufficient [. . .]. (1899: 24601-07)¹²

Ironically, Gower himself was a member of the newly emerging class of urban, highly literate and legally skilled professionals, if not exactly a lawyer by trade. John Fisher even thinks that, at some period in his life, Gower 'held some legal or civil office' (1964: 55). The poet himself writes in *Mirour de l'Omme*: 'I am dressed with striped sleeves' ('ai vestu la raye mance' [1899: 21774]), and in his major works, he is inordinately concerned with law and displays specific firsthand knowledge on a contemporary legal case (Fisher 1964: 57). Gower's condemnation of judges and lawyers, Fisher thinks, signifies that he profoundly respects these professions and expects very high standards from them (1964: 158) as the poet writes in *Vox Clamantis*:

Qui tamen ad veras leges vacat, et sine fraude
Iusticiam querule proximitatis agit,
Vt psalmista canit, est vir magis ille beatus [. . .]. (1902: VI 9-11)¹³

As Fisher suggests, Gower may well have had close knowledge of the legal sphere in London where multifarious law courts thrived, making his accusations more persuasive. Thomas Hoccleve, who wrote in the first quarter of the fifteenth century, must also have intimately known the working of the Westminster courts, as he was a career clerk of the Office of the Privy Seal throughout his adult life. His major work, *The Regiment of*

¹² 'The law, in itself, is just and pure and liberal in its nature; but those who keep the law pervert it and obscure it and even sell it at an exorbitant price, so that in their market no purchaser who is poor can pay the price' (1992: 322).

¹³ 'But the one who devotes himself to the true law and honestly furthers the justice of his neighbour's complaint is, as the Psalmist sings, a man most blessed' (1962: 220). Cf. Fisher (1964: 158).

Princes, written between 1410 and 1413 for Prince Henry, and classified as a ‘advice-to-princes’ poem, contains passages criticising justices. A Westminster insider and a royal clerk repeatedly petitioning for income in his works, Hoccleve could not have been as forthright as was Gower about legal injustices. He does not seem to accuse judges generically. Instead, he writes how judges should and should not behave, invoking them that

Nat oghte a juge for hate or for love
 Othir way deeme than trouthe requerith,
 But, at the reverence of God above,
 Right ay favoure whan that it appeerith. (Bryth 1999: 2689-92)¹⁴

However, the example of the bad judge which he describes shows us the same images as Gower and the Towneley playwright decry, namely, those selling judgement for the ‘love of meede’:

What juge in doom eek geveth just sentence
 Awaytyng upon a golden dragee,
 To God he dooth desplesance and offense;
 For the justice which of duetee
 He sholde do, cursidly sellith he,
 For love of meede him provokith therto,
 And rightwisnesse nothyng so to do. (1999: 2696-2702)

Often financially struggling, Hoccleve may have understood the lure of extra rewards and gifts which their offices may bring them. Some of his lines seem to reveal his personal feelings about the prevailing behaviours of judges and imply that many of them accept gifts and give legal advice for reward, which is ‘leefful’ but undesirable:

Cristen men yilde oghten just jugement
 Freely, for unleefful is it to selle,
 Thogh it be leefful and convenient
 A wys man for reward his reed to telle.
 A juges purs with gold nat sholde swelle.
 If on justice he shape his doom to bilde,

¹⁴ All the quotations from *The Regiment of Princes* are from Blyth (1999).

His jugementz he giftlees muste yilde. (1999: 2710-16)

In the medieval drama, the Chester author, who does not usually criticise the ills of the contemporary society, still portrays a corrupt judge among those generic characters damned perpetually on the Judgement Day; in Play 24, which dramatises the Last Judgement, the Justiciarius Damnatus confesses he took silver and rich gift ('sound') from all strata of the society as well as robbing the Church of its possessions:

Alas! While that I lyved in land,
wrought] to worke I would not wond
but falsely causes tooke in hand
and mych woe dyd elles.
When I sought sylver or rych sound
of baron, burges, or of bound,
his moote to further ever I would found,
were yt never so false. (301-08)

All my lyeffe ever I was bowne
to trouble poore in towre an towne,
payre Holy Church possession
and sharpely them to shend.
To reave and robbe relygion,
that was all my devotyon. (317-22)

The Towneley Pilate and the corrupt judges and lawyers portrayed by Gower, Hoccleve and the Chester playwright all touch the problem of gift ('meede') and bribery, and the capitalistic trade plied in every court of law. Such an amoral, unprincipled marketing of law is best embodied in the allegorical person of Meed in *Piers Plowman*. In Passus III of the poem, Meed epitomises the corruption of legal and administrative branches of the government as well as ecclesiastical institutions.¹⁵ Speaking of Meed in the presence of the king, the poet tells us how the men at Westminster ingratiate her in defiance of Conscience's efforts:

That wonyeth at Westmynstre worshipeth hire [Meed] alle.
Gentilliche with joye the justices somme

¹⁵ The following discussion on Lady Meed in *Piers Plowman* owes much to Yunck (1963), Chapters 1 and 7 and Mitchell (1969).

Busked hem to the bour ther the burde dwellede,
 Conforted hyre kyndely by Clergies leve,
 And seiden, ‘Mourne nocht, Mede, ne make thow no sorwe,
 For we wol wisse the Kyng and thi wey shape
 To be wedded at thi wille and wher thee leef liketh
 For al Consciencences cast or craft, as I trow.’ (B III 12-19)

The king appreciates the merits of Meed as long as she is correctly ruled. Therefore he wants to marry her to Conscience the knight, but Conscience refuses it and, in a long speech, harshly enumerates Meed’s vices, especially her changeableness and wantonness (B III 120-69). He particularly disparages her association with legal and law-enforcement personnel:

By Jesus! with hire jeweles justice she shendeth
 And lith ayein the lawe and letteth hym the gate,
 That feith may nocht have his forth, hire floryns go so thicke.
 She ledeth the lawe as hire list and lovedaies maketh,
 And doth men lese thorough hire love that lawe myghte wynne –
 The maze for a mene man, though he mote evere!
 Lawe is so lordlich, and looth to maken ende:
 Withouten presents or pens he pleseth ful fewe. (B III 155-62)

Meed thereupon aggressively retorts to Conscience (B III 179-227). She especially stresses that all men, including the king himself, depend on using her to do their works and duties, and that the kingdom is ruled by law, thanks to Meed:

It bicometh to a kyng that kepeth a reaume
 To yeve men mede that mekely hym serveth –
 To aliens and to alle men, to honouren hem with yiftes;
 Mede maketh hym biloved and for a man holden.
 Emperours and erles and alle manere lordes
 Thorough yiftes han yonge men to yerne and to ryde.
 The Pope and alle prelates presents underfongen,
 And medeth men hemselves to mayntene hir lawes,
 Servaunts for hire servyce, we seeth wel the sothe,
 Taken mede of hir maistres, as thei mowe acorde. (B III 209-18)

In a sense, Meed is astutely pointing out that the notion of reward is not fully systematised in the medieval government so that the culture of gifts, and consequently,

of bribes which may have often been hard to distinguish from innocent gifts and legitimate remunerations, are necessary in order to ‘mayntene hir lawes’. The problem with Meed’s claim is that she seems to find no difference between due reward and bribe. The crux of the matter is that Meed is not inherently evil, but is amoral, a recurrent motif in the complaints against legal men: as the Towneley Pilate claims, she distributes her favours to whoever flatters her. As A. G. Mitchell writes, one striking feature of Meed’s character is ‘her own unawareness of wrongdoing’ (1969: 190). ‘Meed is almost morally neutral. She has no secure attachments and no antipathies that are dictated by moral principles. She is incapable of faithfulness’ (ibid., 191). On the other hand, Conscience, perhaps speaking for the poet, makes a clear distinction between two kinds of gifts: one is the unearthly rewards from God given to the faithful, another is the immoderate gifts, or ‘mede mesurelees’ (B III 246), of which Conscience does not approve. But on the ground amongst working judges and lawyers, as well as other officials of the government, the line separating the due rewards and innocent gifts and the ‘mede mesurelees’ must have seemed very fine indeed.

The Historical Background of the Corrupt Judges and Lawyers in Medieval English Literature

These and many other complaints against the corruption of law in medieval literature seem to indicate that medieval people expected the law courts to be impartial and incorruptible, judges and lawyers priestly and without blemish, but in reality the English royal justice system was intensely personal, a kind of profit-making branch of the Crown. The general ‘eyre’, a regular but infrequent circuit court held by a judge in the twelfth and thirteenth centuries, was primarily designed to protect the king’s rights, and the Crown used it to enrich the royal coffer (Powell 1989: 111). In the fourteenth century, trailbaston commissions, irregular special commissions chiefly organised to deal with ‘violent breach of peace’ (ibid., 13), were exploited for enriching the royal coffers through severe fines in exchange for remission of imprisonment (Powell 1989: 13-14,

111). Magnates and the powerful gentry also drew profit from courts such as manor courts, quarter sessions and peace commissions. After the enforcement of the Statutes of Labourers, magnates used their manor courts to exact stiff fines to raise their income (Powell 1989: 111). In such a legal system where profits for the rich and powerful mattered greatly, it is no wonder that royal justices and legal clerks of the royal courts exploited their offices to increase both the Crown revenues and their own private gains through fees and retainers from litigants (Powell 1989: 18).

John Bromyard, a contemporary of Langland, is a Dominican preacher and scathing social critic who also depicts the Westminster courts as ‘the head and fount of all falsity’ in his preacher’s manual, *Summa Predicantium*: ‘[. . .] in aula westmonasterii: tanquam caput et fontem totius falsitatis. Ibi enim lacerata est lex: et impius prevalet adversus iustem’ (A. 14. 5) (Walls 2007: 262, note 41).¹⁶ Can we really trust these moralistic accusations of judges as substantive and truthful? It seems true that, considering their social standing, royal justices in late medieval England were not sufficiently remunerated by the Crown, and therefore had to rely on other incomes, some of which may or may not be suspected as bribes. G. O. Sayles writes, ‘Though payments seem on the whole to have been made with fair punctuality, the salaries were absurdly low and must have been regarded as merely nominal’ (1957: xxiv). Some justices in secular courts were beneficed ecclesiastics and thus obtained regular payments, but most others were lay legal professionals with no such privilege. The vestigial assumption, inherited from Roman and the earlier Middle Ages, of judges supporting themselves with ecclesiastical benefices and their legal duties being pure public service seems to have remained,¹⁷ but in reality ‘By 1300 royal judges had largely ceased to be clerks content with benefices and were exploiting their wealth and expertise to accumulate large estates’ (Powell 1989: 19 footnote). Since legal and

¹⁶ ‘[. . .] in Westminster Hall, as it were the head and fount of all falsity: for there the law is torn to shreds and the ungodly prevails against the just’ (Walls 2007: 244). All the Latin quotations and their translations of Bromyard’s *Summa Predicantium* are from Walls (2007).

¹⁷ For a survey of the historical problem of remuneration for intellectuals including judges from the Roman period to the Middle Ages, see Post et al. (1955: 195-234).

administrative functions of central and local governments often overlapped, some justices seem to have supplemented their salaries with other public duties: for instance, Geoffrey Scrope, a powerful chief justice of the King's Bench in the fourteenth century, also took on twenty diplomatic missions to Scotland and overseas (Vale 1990: 98). Moreover, highly placed legal professionals like justices and sergeants-at-law in the Westminster courts were routinely drafted to preside over special commissions in provinces. However, 'the indirect profits of office by way of pensions and retaining fees from noble houses and monasteries or of confiscated lands or royal grants were enormous' (Sayles 1957: xxx). Thus those highly-placed legal professionals made considerable fortunes and became substantial landowners (Sayles 1957: xxv). Chief Justice Geoffrey Scrope received pensions from various institutions such as Westminster Abbey and Durham Cathedral Priory, which was not unusual at that time, and did not mean corruption or partiality in his work as a justice. Yet contemporaries were aware that there might arise possible conflicts of interests and 'there were attempts to outlaw the granting of gifts and fees to royal justices and Scrope's later pensions were probably in breach of these regulations' (Vale 1990: 95). Magnates and religious houses paid annual retainers to Westminster justices for them to be their legal advisors. Nigel Ramsey suggests, 'Since the king's judges so largely made the law, by both drafting and interpreting the statutes, it was a prudent course to turn for legal advice to the same judges – or to their clerks' (1985: 96).

In the age of bastard feudalism, John of Gaunt used his enormous political power to arbitrate disputes, yet he also twisted the legal system to his advantage, the most disliked aspect of which is his retaining of judges and other legal officials (S. Walker 1990: 120).¹⁸ The duke particularly took advantage of special judicial commissions of oyer and terminer. 'For John of Gaunt, such commissions were the most effective means of protecting his local rights and interests from attack' (S. Walker 1990: 121). In the commissions of oyer and terminer, plaintiffs were able to choose the justices to inquire about the cases, and the duke frequently chose his own estate officials and the

¹⁸ This is called 'maintenance', which we shall discuss in detail in Chapter 4.

judges whom he retained and were under his control. Simon Walker cites some of the egregious example of this practice: ‘Sir William Finchdean appeared on nine such commissions between 1362 and 1374; John Mowbray on seven between 1362 and 1370; Roger Meres on five between 1372 and 1380’, and, ‘Sir Godfrey Foljambe, his chief steward of lands, was nominated to 10 such commission between 1362 and 1374; Sir Robert Swillington, his chamberlain, appears on 9 between 1363 and 1380’ (S. Walker 1990: 121). The Towneley Pilate is, to a large extent, a caricature, but he may well have personified the existing social grievance among medieval English populace against judges and lawyers who, they thought, were greedy and twisted law courts to the advantage of wealthy and powerful clients.

The Corruption of Sheriffs and Juries:

The Towneley Pilate and his *Questmangers* and *Iurers*

In his initial rant at the beginning of Play 20, *Conspiracy and Capture*, the Towneley Pilate blatantly confides in the audience that he is a double-dealing, deceitful judge, willing to change his judgement overnight:

For I am he that may
 Make or mar a man,
 Myself if I it say,
 As men of cowrte now can:
 Supporte a man today,
 To-morn agans hym than.
 On both parties thus I play,
 And fenys me to ordan
 The right;
 Bot all fals indytars,
 Questmangers and iurers,
 And all thise fals outrydars,
 Ar welcom to my sight. (20/27-39)

At this moment he does not say why he sways judgements, but ll. 14-19 in Play 22,

Scourging, which is previously quoted, he professes that he readily helps the side who gives him ‘avantege or wynyng’ or ‘vayll’ (benefit), thus admitting that he takes bribes or changes his verdicts in favour of the suitors who pay him off. Thereafter he again calls for ‘All fals endytars, / Quest-gangars and iurars, / And thise outrydars’ to come to him (22/ 23-25). In these speeches, Pilate mentions the several types of legal men. The ‘outrider’, according to the *The Oxford English Dictionary*, is a sheriff’s subordinate and, in addition to collecting taxes and practising other administrative chores, summons the accused to court, but this is a ‘fals’ one of that trade. The ‘questmonger’, according to *The Middle English Dictionary*, is a pejorative term for ‘one who profits from an inquest or a trial, especially by initiating an unjust action or giving false verdict for pay’. The ‘questganger’, again by *The Middle English Dictionary*, is ‘one who attends or participates in an inquest or a trial’, but as again modified by the adjective ‘fals’, it practically means the same as ‘questmonger’. The Towneley Pilate also summons ‘fals’ indictors and jurors. Now, which figures play the roles of these false outriders, questmongers/-gangers, indictors and jurors in the Towneley Passion plays, or in the other Passion plays in any of the three other major cycles? Most of those who actually accuse and testify against Jesus are, in addition to Annas and Caiaphas, the soldiers (or ‘knights’) and Jews. It is therefore likely that the soldiers and Jews, at least in the Towneley cycle but possibly also in the other cycles, are, to some extent, reflective of the roles and behaviours of medieval outriders, questmongers, indictors and jurors just as the tyrannical judges from the Bible take on the some characteristics of various types of medieval judges.

What did the authors, performers and audiences of the mystery plays possibly have in mind as those accusers, jurors and witnesses? As discussed in the introduction, a majority of male adults and quite a few female adults must have regularly attended at least some sessions of manor, hundred and borough courts, and may have occasionally been to quarter sessions of magistrates and sessions of church courts such as the diocesan consistory court or the archdeacon’s court. It seems reasonable to think that, when portraying or watching the soldiers and Jews in the biblical drama, they may have

projected their images of the attendees in medieval courts on to those characters in the drama. Amongst previous studies, Pamela King has indicated the similarity between Pilate's soldiers in the York cycle and medieval jurors (1999: 210-11), and Olga Horner, in her detailed analysis of the York *Resurrection* play (Play 38), suggests that the playwright may have seen a parallel between the soldiers who act as witnesses and accusers and 'the dual roles of the English juries of accusation and trial' (1998: 31). One might speculate on what kind of people in late medieval English communities would have been assigned to jury duty. As John G. Bellamy, a historian of medieval law and crime, writes, they were selected from the important, and relatively better-off members of the community where the suit originated:

Jurors were supposed to own land to the value of 40 shillings and, where freehold was at issue, four out of the twelve must possess it in the hundred where the suit had had its origins, unless, that is, one of the parties was lord of the hundred in which case they were summoned from hundreds adjacent. A panel seems to have comprised twelve jurors from the part of the shrieval bailiwick close to where the land at issue lay and the other twelve from the other side of that territorial unit. (1989: 66)

Therefore the same people repeatedly performed the jury duty. According to Edward Powell, based on the data from the fifteenth-century gaol deliveries,

In Leicestershire 24 per cent of trial jurors had served on presenting juries, in Warwickshire 37 per cent. Many trial jurors were drawn from the lesser gentry: in Derbyshire 35 per cent of all jurors, and nearly 60 per cent of those who served more than once, were of gentle status. (1989: 79-80)

If many of them were 'of gentle status', it would not be unreasonable to see the similarities between some of the contemporary jurors and the soldiers in the mystery plays since they are frequently called 'knyghtes'. As jurors these wealthy men were repeatedly selected for different types of judicial sessions such as assizes, peace sessions and sheriff's tourn. Furthermore, they often performed other judicial, administrative and law-enforcement offices such as coroners, bailiffs or constables (Powell 1989: 79). The soldiers and Jews in the mystery plays arrest Jesus, take him to

the courts of the priests and magnates, torture and finally execute him; they are thus performing the various tasks which would be termed as law-enforcement. If that had been the case, many of the law-enforcement personnel and jurors were probably drawn from the somewhat fixed, upper echelon of the community and regularly attended various local courts as ‘questmongers’, whereas more lowly members of the community may have understandably seen these regular jurors as dominant and oppressive cliques conniving with judges, sheriffs and other local rulers. To take one example, in medieval secular courts, indictments were done by presentment juries, either by their own initiative or in response to a bill of complaint submitted to them (Powell 1989: 67-68). Although little is known about how the presentment juries collected information about the cases they dealt with, Edward Powell surmises on the role of constables in informing juries:

Constables and townships had the responsibility of making offences known to them [presentment juries]; constables frequently served as jurors, and sometimes entire juries were composed of them. Individual jurors had no hesitation about putting forward offences of which they themselves had been the victims. (1989: 68-69)

If this was true, it would have been hard to expect impartial judgements from presentment juries.

Pilate as a judge of the central government in a locality can certainly be analogous to a royal justice working in a local assize court, commission of gaol delivery or oyer and terminer. Besides, his role as a powerful lord within a specific locality wielding considerable judicial and administrative power can also be compared to that of the sheriff. The sheriff, the most important of the local officials, was not a ‘magnate’ in late medieval England, but he was ‘drawn from the ranks of the upper and middle gentry’ (Acheson 1992: 116). Though the sheriff’s power seems to have declined towards the end of the Middle Ages, his jurisdiction being eroded by the Justice of the Peace and coroner, his judicial and law-enforcement functions were still wide-ranging and significant and recall those of Pilate in the drama. He presided over the shire court and his tourn, i.e. the circuit court of the sheriff, as Helen M. Jewell describes:

His magisterial powers at the tourn remained valuable until the 1460s, and his role as an agent in the preparation of business before the visitation of the locality by itinerant justice on various commissions grew in importance as the local courts declined. In this capacity the sheriff was occupied taking pledges to prosecute, summoning defendants and juries, making attachments and distrains, arresting criminals and keeping them in custody, investigating essoins, preparing record of pleas for justices and enforcing the courts' orders. (1972: 186-87)

If the Towneley playwright and the audience of his plays were seeing various images of the contemporary sheriff behind the greedy and amoral Pilate of the cycle, Gower's generic accusation of the office would throw some more light on this character; he complains that the sheriff (*visconte*) would stall or expedite trials, depending on bribes as he gets like the Towneley Pilate:

O comme visconte ad grant vertu!
 S'il voet, l'enqueste ert tost venu,
 Et s'il ne voet, ne vendra mye,
 Dont meint homme ad esté deçu:
 Car qant visconte ad l'orr resçu
 Pour tort aider de sa partie,
 Lors jeuera la jeupartie
 De fraude, siq'au departie
 Le droit, ainz q'om l'ait aparçu,
 Met en deslay par tricherie
 De son office, ou il le plie,
 Au fin q'il serra tout perdu. (1899: 24925-36)¹⁹

Gower's literary expression is endorsed by Bellamy: he informs us that sheriffs controlled the handling of writs, thereby delaying the trial procedures. It is known that they were 'sometimes in coven with one of the contesting parties' and 'From the fifteenth century there is evidence that [. . .] a sheriff might demand a substantial bribe before he would serve a writ or implement its instructions when the matter was a suit

¹⁹ 'O, what great strength a sheriff has! If he so desires, the trial takes place quickly; and if he desires not, the trial never comes up, whereby many a man is frustrated. When a sheriff has received gold to give his help to wrong, then he will play the game of fraud, and, before he can be detected, he will delay (by deceit of his office) the case of the right, or he will twist it so that in the end it will be a lost cause.' (1992: 327)

between parties' (1989: 13). Alan Harding, drawing from records concerning the trailbaston commissions in the fourteenth century, writes that the legal powers of sheriffs and bailiffs were exploited in baronial struggles. The sheriff and his bailiffs may have connived by summoning the defendant too late or forcing him or her to appear at a far distant place. Failing to fulfil such an unreasonable summon, the defendant could be charged a huge fine or imprisoned for a long period (1984: 170-71). Helen M. Cam explains how sheriffs exploited the system of fee-charging legal procedures to impose heavy fines for their private gain:

All the civil litigation brings in revenue. Men have to pay for failure to appear, for failure to pursue a claim, for leave to come to terms out of court, for bringing a false complaint, and so on. They are 'in the king's mercy' as to the amount to be paid; but ever since Magna Carta the amercement is not supposed to be fixed by the sheriff, but by the neighbours, who know each man's resources, and 'affeer', or assess, the amount he is to pay. A fourteenth-century sheriff of Lancashire, instead of calling on good and lawful men, sworn in the county court, to affeer the amercements, took to himself three or four of his bailiffs and fixed the penalties high or low according to his hate or love for the parties, to the great oppression of all the community [. . .]. The Hundred Rolls, without giving so much detail, allege repeatedly that the sheriff imposes oppressive amercements. (1963: 117)

Amongst the Paston letters, a letter sent in 1451 to John Paston I from John Osborn, a yeoman of Warham and John's servant, indicates that Osborne is putting not-so-subtle pressure on a sheriff, John Jermyn, regarding a judicial proceeding involving Paston and the powerful Lord Moleyn who attacked Paston estates in 1448. Osborn, on behalf of his master, is obviously trying to give a monetary bribe to Jermyn, who, on the other hand, seems somewhat hesitant to accept it, perhaps weighing the powers of each of the parties in dispute and the amount of bribes offered by them:

Plese it *your* masterchep to wete that I have spoke wyth the shereff at hese place, mevyng to hym, as for that that was left wyth hese vndere-shereff, it is *your* wyl he shuld send a man of hese for it; for thow it were more ye wold gladly he shuld take it. He thanked yow, and sayde hese vnder-shereff was at London, and hym-selff had non deserved; and if he had he wold a take it. And whan I departyd from hym I desyerid hym a-yen to send therffore, *and* than

he seyde it shuld abyde tyl ye come hom; wherby I conceyve he wo<lde> have it *and* be gladde to take it. (Davis 2004: No. 479, II 72-73)

Osborn proceeds to discuss giving the bribe without mincing his words. As the sheriff is wavering between the two sides, John and his servant are raising the stakes to win the sheriff's favour:

Item, I remembred hym of the *promyses* that he hath made to Temperley, and that if he wold make yow very trew *promys*, ye wold rewarde hym as meche as he wold desire, or any other resonable man for him, and asmoche *and* more then any *aduerserry* ye have wold gef hym. Than he seyde he toke neuer no mony of non of hem: alle there was *proferid* hym at Walsyngham for the Lord Molyng xx nobles, he had not a peny. Moreouer, I *proferyd* hym if he wold make yow *promys* that ye myght veryly trust vpon hym ye wold geff hym in hande as he wold desire, or to leve a *summe* if he wolde a named it in a mene mannys hand, and seche as he hath trust to. And then he seyde if he myght do for yow, or if he do any thyng for yow, then he wol take yowre mony wyth a good wyl [. . .]. (ibid., 73-74)

As one of the important duties of the sheriff is empanelling of a jury, it is natural for the Towneley Pilate to summon jurors (22/24). By cherry-picking jurors, the sheriff 'could control their composition, thereby affecting the outcome of indictment' (Acheson 1992: 110). But it is doubtful that the jurors chosen by a corrupt sheriff like the Towneley Pilate can deliver a fair judgement. In fact, empanelling of jury was often an extremely controversial aspect of his mandates. In *Piers Plowman*, when the motley bunch of Lady Meed's retinue go to Westminster with allegorical riders and horses of Vices, Favel (Deceit) sets Meed on a horse that is 'a sherreve'. Alongside this pair is Fals riding on another horse called 'a sisour' (a juror), suggesting the close connection between sheriffs, jurors and 'Meed' which binds the two (B II 163-65). As in the case of judges, Gower, in *Mirour de l'Omme*, has much to speak against sheriffs, accusing them of avarice and perjury:

Viconte jure en son endroit
La loy solonc justice et droit
Guarder sanz faire falseté,
Au *proufit* de *communalté*:

Mais om dist q'il s'est perjuré,
 Et qu'il le pueple plus deçoit;
 Car de nul droit s'est appaié,
 Ainçois q'il soit del orr paié,
 Ne chalt comment il le reçoit. (1899: 24820-28)²⁰

Gower keeps upbraiding sheriffs in various expressions in *Mirour de l'Omme*; he claims that, greedy and duplicitous, they deceive the king and plunder the populace for their own good (ibid., 24841-52), and that, only out to get profits no matter how, they utterly ignore the poor (ibid., 24865-76). Gower certainly does not neglect to point out the frequently criticised abuse of sheriffs' prejudiced empanelling of juries, thinking that this practice is again motivated by greed:

N'as pas en vein ton argent mis,
 Dont le visconte as fait amys,
 Car lors aras tu la douszeine
 Des fals questours du deable apris,
 Ly quel, qant scievont bien le pris,
 Qe tu leur dorras large estreine,
 Ja n'aras cause si vileine,
 Qe perjurer du bouche pleine,
 N'en vuillent les ewangelis
 Qe ta querelle soit certaine [. . .]. (ibid., 24877-86)²¹

J. G. Bellamy explains how Gower's accusation is justified. When a bribe is paid to a sheriff in private actions, 'the design was that the sheriff in return for the bribe should install on the jury kinfolk, friends, associates, tenants, or former servants of one of the parties involved', and 'much store was set on the obtaining of the jurors' names before the court sat' so that a party of the suit can influence them beforehand (1989: 14). The accused may have even tried to prevent the bill of his crime from proceeding forward by

²⁰ 'A sheriff swears to keep the law according to justice and right, for the profit of the community, without doing anything false. But it is said that he has perjured himself and that he deceives the people. For he is not satisfied with right. Provided he be paid in gold, he cares not how he gets it.' (1992: 325)

²¹ 'The money with which you have made a friend of the sheriff has not been spent in vain, for in that case you shall have twelve false jurors, taught by the devil, who, when they know that you are giving them a generous gift, will decide the case in your favour, no matter how evil it may be and even if they perjure openly the entire gospel' (1992: 326).

bribing the sheriff into empanelling a grand jury favourable to him so that the jury should dismiss it (*ibid.*, 14).

Thus there seems to have been much ground for corruption in the selection of late medieval juries in England, called ‘embracery’. In fact, perhaps the most conspicuous complaints about legal corruption in medieval literature in England are made against it. In criminal trials of most of the secular courts, including central royal courts, county courts and manorial courts, juries decided the final verdict. Thus, it is quite understandable that desperate parties did their utmost to sway the verdict by exerting influence on, or, in the contemporary term, ‘labouring’, jurors of the trial, and that some jurors took economic or other advantage of their position. Therefore it is no surprise that many medieval writers decry corrupt juries. In *Piers Plowman*, jurors or assizers (‘sisours’) are among the most stalwart followers of Lady Meed. Together with the summoner and a sheriff’s clerk, they follow Meed when she is expelled from the king’s court (B II 59, 63-64). The author of the fifteenth-century sermon manual, *Jacob’s Well*, denounces assizers’ duplicity: ‘[. . .] false cysourys gon vp-on qwestys, & puttyn a man fro his ryzt through a fals verdyzte, & wytnessen azens trewthe’ (1900: 131). *The Simonie*, another late medieval vernacular sermon manual, speaks more blatantly:

Many of þe assisours þat seweþ shyre and hundred
 Hangeþ men for seluer; þerof is non wonder.
 For wan þe riche iustice wol do wrong for mede,
 Þan þynkeþ hem þei mow þe bet for þei haue mor nede
 For to wynne. (C 421-25)²²

The poem’s editors remark that the legal system was so rotten that the laymen imitate the corrupt practices of the rich professional judges (Embree et al. 1991: 140) reminding us that the Towneley Pilate’s subordinates must be imitating those of their master in their devilish hatred and cruelty towards Jesus. As in the case of other aspects of legal injustices, Gower has much to say against corruption of the juror (‘questour’), who, he thinks, is the worst among the company of the corrupt legal personnel:

²² All quotations from *The Simonie* are from Embree et al. (1991).

Et sur toute la compaignie
 Pis font encore ly questour;
 Car leur falsine et leur destour
 Fait que le tort se magnifie. (*Mirour de l'Omme* 1899: 25017-20)²³

He attacks the immoral and avaricious collusion between sheriffs and jurors as has been already quoted (*Mirour de l'Omme* 1899: 24877-84). According to Gower, not only could suitors bribe sheriffs to empanel a favourable jury, but they could directly buy jurors' favours just as you go out to buy any service available on the market:

Vtque bouem, precio qui stat conductus aratro,
 Sic tibi iuratos munere ferre vales:
 Hii tibi proque tuis vendent periuria nummis,
 Sic aurum iura vincit in vrbe mea:
 Diuitis iniustam causam sic cerno quietam,
 Et iustam causam pauperis esse ream.
 [. . .]
 Nec sibi iurati sapiunt quid, sit nisi lucri,
 De sale conditum quod dabis ante manum [. . .].
 (*Vox Clamantis* 1902: VI 427-38)²⁴

The marketisation of the legal system is a leitmotif frequently cropping up in various works in Middle English literature and Gower most blatantly expresses it.

An excellent literary illustration of the corrupt collusion of a sheriff and his jurors is *Gamelyn*, an anonymous Middle English romance from Midlands written in the fourteenth century. It expresses people's hostility towards regional legal establishments controlled by the wealthy gentry and their minions who act as sheriffs and juries. In this tale, the eponymous Gamelyn, the basically honest but very naive protagonist, is persecuted by one of his elder brothers, a local sheriff, and the brother's henchmen, who sat on juries at the trial to prosecute Gamelyn. At the beginning of the tale, their father

²³ 'And the worst of all the company are the jurors, for their lying and distortions cause wrong to be magnified' (1992: 328).

²⁴ 'You can bring jurors into your service for a price, just as an ox is hired for the plow. And they will sell you false oaths for your money – thus does gold vanquish justice in my city. So I see the rich man's unjust case allowed and the poor man's just case condemned. [. . .] Nor do jurors have a taste for anything, unless it is seasoned with the salt of the money you will furnish beforehand.' (1962: 229)

dies and the wicked brother deprives Gamelyn of his due inheritance and fetters and confines him in the family's mansion, but with the help of Adam, a loyal follower, he escapes to the forest where he becomes a Robin Hood-like leader of outlaws. Later, he naively tries to clear his name and gets arrested again. Another, yet righteous brother of his, Sir Ote, tries to help him and bails him out on his pledge. While Gamelyn is again reunited with his followers and having a merry time, his wicked brother is busy rigging the next inquest:

Whil Gamelyn and his men make merthes rive,
The fals knight his brother – ivel mot he thrive! –
For he was fast about bothe day and other,
For to hire the quest to hangen his brother. (783-86)²⁵

At the end of the tale, Sir Ote himself is fettered and about to be hanged, but Gamelyn comes out of the forest with his band of outlaws and rescues his good brother. He takes over the court, practically becoming a self-appointed justice 'on [his] quest'. This is a world upside-down, reminiscent of the rebels of 1381 who pursued, tried and executed justices and lawyers:

‘Brother,’ saide Gamelyn, ‘so God yif me good rest.
This day they shuln been hanged that been on thy quest;
And the justice bothe, that is jugge-man,
And the sherreve bothe – thurgh him it began.’
Than saide Gamelyn to the justise,
‘Now is thy power y-don; thou most nedes arise;
Thou hast yeven domes that been ivel dight;

I will sitten in thy sete and dresen hem aright.’ (841-48)

Interestingly, Gamelyn is not out to inflict a random revenge on his enemies, but is clearly intent on following proper judicial protocols which, a moment ago, were about to be used to condemn him to death. He seats Sir Ote next to him as a kind of associate justice and Adam beside him, who has previously been appointed as his ‘clerk’ (828) while his outlaw companions who terrify the others stand by as if they were jurors. This

²⁵ All quotations from *Gamelyn* are taken from Sands (1966: 154-81).

is, as it were, a counter assize court, which has set forth, not from London but from the green forest ruled by the prince of outlaws:

Gamelyn sette him doun in the justices sete
 And Sire Ote his brother by him and Adam at his feet.
 Whan Gamelyn was y-set in the justices stede,
 Herkneht of a bourde that Gamelyn dede.
 He leet fettre the justice and his fals brother
 And dede hem come to the barre, that oon with that other. (855-60)

Gamelyn does not rest until he finds out whereabouts of the jurors who condemned Sir Ote to hang: 'But as sone as Gamelyn wiste wher they were, / He dede hem everichone fettere in feere [. . .]' (865-66). Finally Gamelyn judges the sheriff, the royal justice and all the jurymen to death. For him, the jurors are not fair evaluators of testimonies and proofs but corrupt partisans of his evil brother.

Dubious and Partisan Jurors and Witnesses in the Mystery Plays

When the Towneley Pilate, possibly a medieval equivalent of a royal justice or sheriff, call out for 'All fals endytars, / Quest-gangars and iurars, / And thise outrydars' (22/23-25), in addition to jurors he may well be summoning witnesses to come forward to testify against Jesus. In fact, medieval jurors were, like witnesses, drawn from the neighbours who were somewhat expected to know the circumstances of the case or at least the community where the suitors resided (Baker 2002: 75). Although in the late Middle Ages, the role of juries was increasingly confined to their collective judicial one, they were 'still allowed, even expected, to inform themselves before coming to court' (ibid., 75). In the medium of the biblical drama, it seems likely that the playwrights might have projected the duplicate images of both jurors and witnesses on to the soldiers and Jews in the Passion plays. The use of the soldiers and Jews as partisan witnesses is seen throughout the Passion plays of the four major cycles, but it is particularly explicit in the second trial of Jesus in the York cycle (Play 33) when Annas and Caiaphas want to bring in the witnesses whom they want Pilate to hear. Although

the two priests enumerate charges against Jesus (88-104) as they have been repeatedly doing, Pilate hesitates to agree with them, saying, ‘For no schame hym [Jesus] to shende will we shon’ (105).²⁶ Annas thereupon proposes to bring in witnesses: ‘Sir, witsnesse of þis wanes may be wonne, / þat will telle þis withowten any trayne’ (106-07). This is followed by Caiaphas, who enumerates the concrete names of witnesses who would certainly testify to support the prosecution:

I can reken a rable of renkes full right
 Of perte men in prese, fro this place ar I pas,
 þat will witsnesse, I warande, þe wordis of þis wight,
 How wikkidly wrought þat þis wrecche has:
 Simon, ʒarus and Judas,
 Datan and Gamaliell,
 Naptalim, Leui and Lucas,
 And Amys þis maters can mell
 Togithere.
 þer tales for trewe can they telle
 Of this faytour, þat false is and felle,
 And in legying of lawes full lithre. (108-19)

The citation of these names seems to give the scene a very contemporary atmosphere. Without the meticulous forensic examination of material evidences on which the modern criminal trials so much depend, the focus of medieval and early modern trials must have centred on the quality of witnesses and their trustworthiness. In this trial, Pilate very coldly reacts to the offering of witnesses, suggesting the emptiness of the priests’ argument: ‘ʒa, tussch for youre tales, þai touche not entente’ (120). He also strongly suspects that the priests bribe (‘wage’) the witnesses whom they want to bring in, so that they are predetermined to execute the defendant:

þer witsnesse I warande þat to witsnesse ʒe wage,
 Some hatred in ther hartis agaynes hym haue hent,
 And purpose be this processe to putt doun þis page. (121-23)

²⁶ The meaning of the line is somewhat ambiguous. Richard Beadle and Pamela King’s translation is: ‘If he is not guilty, we (I) refuse to condemn him (?)’ (a footnote to the line in their modern spelling edition [1984: 196]).

Caiaphas defends his witnesses whom he claims to be honest and true: ‘Sir, in faith, vs fallith not to fage, / Þai are trist men and true þat we telle zou’ (124-25). Although the specific witnesses named by Caiaphas do not actually materialise on stage, this exchange between the priests and Pilate betrays an aspect of witness statements in medieval trials and how untrustworthy or political contemporary audiences may have regarded them.

Although not in trial plays, another intriguing dramatisation of witness manipulation in the mystery plays occurs in an episode of the soldiers (or ‘knights’) as *witnesses* at the resurrection of Christ, which may well have been reflecting, in terms of the late medieval English society, the clandestine politicking of a judge or official of the central government like Pilate and the local gentry (the *knyghtes* in the mystery plays) as witnesses or jurors. In the Bible, all the evangelists necessarily narrate the resurrection, but only Matthew reports how Pilate and the Jewish authorities react to it. Even before the fact of Christ’s rising is known, the high priests and Pharisees (Matt. 27. 62) seem to be afraid of his prophesy and possible posthumous idolisation amongst populace; the leitmotif of the authorities’ fear of popular rebellion in the gospels which is discussed in the previous chapter is again apparent here. They go to Pilate and say to him:

Sir, we remember that deceiver said, while he was yet alive, After three days I will rise again. Command therefore that the sepulchre be made sure until the third day, lest his disciples come by night, and steal him away, and say unto the people, He is risen from the dead: so the last error shall be worse than the first. (27. 63-64)

Thereupon, Pilate tells them, ‘Ye have a watch: go your way, make *it* as sure as ye can’ (27. 65). After Christ has risen, some of the watch report to the priests ‘all the things that were done’ (28. 11). Although Matthew does not write about the reactions of the watch, he narrates the behaviour of the chief priests after hearing of the resurrection:

And when they [the chief priests] were assembled with the elders, and had taken counsel, they gave large money unto the soldiers, saying, Say ye, His disciple came by night, and stole him away while we slept. And if this come to the governor’s ears, we will persuade him, and secure you. So they took

the money, and did as they were taught [. . .]. (28. 12-15)

Despite this particular scene being reported only in Matthew, all the four major cycles dramatised it with imaginative elaboration, showing its appeal to medieval dramatists and audiences. To make an effective dramatic scene, the playwrights meticulously write how threatened the tyrannical judges are feeling about the possible occurrence of the prophesied miracle and the scandal and uproar which could ensue because of, what we would call, a miscarriage of justice. They also add their interpretations of the kind of pressure the knights as witnesses of the miraculous event feel, and the process with which they come to reach the decision of reporting the incident to their superiors. Along with the narrative of the eventual bribery of the soldiers by the authorities, the scene involving the witnesses of the resurrection seems to reverberate with the pressure and corruption surrounding contemporary legal testimonies.

In the Chester Play 18, as if the playwright were preparing the ground for the later development, Pilate is portrayed to be nervous about his decision to execute Jesus. He says he only followed Emperor Tiberius's directive 'when that he sent Jesus to me [i.e. Pilate] / to delyver him to the dead' (17-20). Soon afterwards, he also blames Jews for his decision (21-24). Pilate confesses his uncertainty about Jesus's miraculous power, and tells Caiaphas his anxieties. Although he was weary of their pressure to kill Jesus, he continues to rely on their advice: 'And therefore, syr Cayphas, yett I dread / leste there were parrell in that deed [i.e. action of executing Jesus]' (33-34). Caiaphas reassures Pilate and tries to conceal any uneasiness on their part:

Syr Pilate, all this was donne,
as we sawe after sone;
but betyme at afternoone
the wedder begane to cleare.
And, syr, yf yt be your will,
such wordes you lett be still
and speake of another skyll,
least any man us heare. (50-57)

Annas and Caiaphas in turn advise Pilate to have the tomb guarded securely (58-73).

Pilate thanks them as saying, ‘methinke your counsell wonderous good’ (75). All these signs of Pilate’s moral dilemma and lack of self-confidence suitably prepare for what is to come when Christ is resurrected. In order to have the tomb guarded, Pilate calls for three soldiers whose names are specifically mentioned:

The best men of kynne and blood
 anonne I wyll in.
 Syr Colphram and syr Jeragas
 Aroysiat and syr Jerophas,
 we praye you, syrs, here in thys case
 anonne looke you ne blynne.

A, my knightes styffe and stearne of hart,
 you be bould men and smart.
 I warne you nowe at wordes short,
 with you I have to donne. (76-85).

Pilate’s concrete naming of the three soldiers and addressing them as ‘my knightes’ seem to add some individuality and contemporary quality to the witnesses. Then, having realised that Christ has risen, the soldiers feel great strain as to what they should tell their superiors. The third soldier admits that Jesus is the Son of God, and that he should tell the truth to Caiaphas (18/226-31). The first soldier speaks similarly, but he mentions Pilate as the superior to whom he has to report:

We to lenge here ys no boote,
 for needes to syr Pilate we moote
 and tell him both croppe and roote
 so soothly as wee wist.
 For and they Jewes knewe as well as wee
 that he were rysen through his postie,
 then should the last errour bee
 worse then was the firste. (234-41)

The first soldier says that they should go to Caiaphas whereas the second, to Pilate as above. This suggests that, although not clearly enunciated, the soldiers may be feeling torn between the contesting jurisdictions of the secular Roman judge and the religious lords, which must have put more pressure on them. Eventually they go to Pilate (‘Tunc

adeunt Pilatum' [241 SD]). Whereas the York and Towneley soldiers in the resurrection plays are probably frightened of Pilate's ire as we shall see, the Chester soldiers seem more afraid of the fact of Christ's resurrection itself than whether their masters get enraged with them. As one can expect, Pilate, hearing the soldiers' report, becomes extremely angry and upset, cursing the soldiers, as 'traytour', 'feynd', and 'feature' (266-69). The uneasy Pilate here seeks advice from Caiaphas and Annas and, relying upon their counsel, speaks very courteously to the soldiers in order to bribe them into silence as described in Matthew:

Nowe I praye you, syrs, as yee love mee,
 keepe this in close and privetye
 untyll our counsell and tyll wee
 have hard howe hee is scaped. (305-08)

A stage direction immediately following this speech indicates that eventually the soldiers are given money ('Tunc tradet eis pecuniam [. . .]' [308 SD]), and thus made to keep quiet about the resurrection. The extraordinary length with which the Chester playwright spends on dramatising the episode appears to indicate the strong interest of the contemporary audiences in the strain of being witnesses in medieval England.

The treatment of the same episode in the N-town Plays 34 and 35 also shows authorities' profound concern with the possible resurrection of Christ and the ensuing disturbance made by him and his followers. Furthermore, set against the late medieval frame of reference, the scene is also remarkable in its detailed description of the political contestation between the 'knights' (i.e. the soldiers) who are witnesses and Pilate, their lord. Whereas the Chester version is cursory in the dramatisation of the bribery of the soldiers at the end of the scene, the N-town playwright turns it into detailed exchanges between Pilate and the high priests, who repeatedly stress the irresistible power of 'meed'. In Play 34, Pilate orders the soldiers to guard the grave securely and, if any disciples of Jesus come to fetch Jesus's body, he says to them, 'Bete hym [the disciples] down! Have 3e no fere – / With shamful deth do hym day!' (192-93) Then he continues to declare that he will deprive the soldiers of everything, including

even their children and wives, if they fail to fulfil his order (194-97). Finally at the end of Play 34, Pilate and others come to the grave of Jesus, and Pilate seals it with wax (242-45), a ceremony which again demonstrates his firm resolve in this matter. In the next Play 35, when the soldiers guarding the grave awaken to find Christ's tomb empty, they are greatly agitated, but are still willing to tell the truth to the superiors at that point. For instance, the third soldier says:

Lete us now go
 Pilat ontoo,
 And ryght evyn so
 As we han sayn,
 Þe trewth we sey:
 Þat out of clay
 He is resyn þis day
 Þat Jewys han slayn. (153-60)

However, when they come to report the event to Pilate, they all together make up a big hoax of Christ rising and manifesting terrifying power; the third soldier says that Christ would have frightened away a big army:

Ȝa, it was hyȝ tyme to leyn oure bost.
 For when þe body toke aȝen þe gost,
 He wold a frayd many an ost,
 Kynge, knyght and knave.
 Ȝa, whan he ded ryse out of his lake,
 Þan was þer suche an erthequake
 Þat all þe worlde it gan to shake!
 Þat made us for to rave! (209-16)

The soldiers, probably realising that they now have information which is very painful to their master, start threatening Pilate; the fourth soldier continues:

Ȝa, Ȝa, herke, felawys, what I xal say:
 Late us not ses be nyght nor day,
 But telle þe trewth ryght as it lay
 In countré where we goo.
 And than I dare ley myn heed
 Þat þey þat Crystys lawys leed,

They wyl nevyr ses tyl they be deed
His deth þat brought hym too. (217-24)

They then say they will spread the news: ‘Lett us go tellyn with on assent / He is resyn up þis day’ (227-8). In line with the overall characterisations of the N-town Jews, soldiers and Pilate, these soldiers are very impudent in pressuring Pilate while their supposed master is weak, vacillating and dependent on his counsellors. The soldiers here behave in the manner of modern witnesses who hold crucial legal information in plea bargaining. Intimidated by their reactions, Pilate hesitates and seeks counsel from the two priests (233-36, 241-44). Annas advises Pilate that he should tell them to hide the fact and that ‘[. . .] upon þis zeve hem good mede, / Bothe golde and sylver also’ (255-56). The magnates then briefly remove themselves from the soldiers, and exchange counsels amongst themselves. Annas shows himself to be a venal counsellor, reminding us of Lady Meed in *Piers Plowman*:

For mede doth most in every *qwest*,
And mede is maystyr bothe est and west.
Now trewly, serys, I hold þis best –
With mede men may bynde berys. (261-64, my emphasis)

Caiaphas praises this counsel and elaborates it by telling Pilate that he should give the soldiers ‘golde, feste, and food, / And þat may chaunge þer wytt’ (267-68). Pilate adopts the advice and immediately talks to the soldiers, who gladly accept the bribery. The word ‘qwest’ in line 261 is glossed as ‘pursuit’ and the whole line is suggested to be a proverb by the editor of the EETS edition (1991: II 522). But, as it also means ‘trial’ or ‘jury’ (Cf. *MED* ‘quest[e’]), Annas’s speech possibly reflects the prevalence of corrupt manipulation of witnesses and jurors in contemporary courts. Moreover, Caiaphas’s suggestion of giving not only money but also feast and food is also in line with the custom of lavish hospitality offered to legal personnel in medieval and early modern law suits (Bellamy 1989: 71; Cockburn 1972: 104-05). This whole sequence shows the N-town soldiers’ considerable independence and audacity as well as their dexterity to exploit their position as key witnesses and the vulnerability of their master, Pilate, who

is most concerned with how this news appears to the central government as if an assize judge or sheriff would have been concerned with the reaction of Westminster. Although the soldiers initially intend to tell the truth, eventually that truth is only to be used as a bargaining chip and their moral or professional rectitude is nowhere detected, the repeated use of the word, 'meed' showing the power of bribery combined with the political pressure from the masters. It is conceivable that the scene may have reminded the medieval audience of legal and political bargaining and chicanery that they may have been aware of in their localities.

In the York Play 38, *The Resurrection*, when the soldiers know that Christ has gone while they were asleep, they are particularly frightened of how Pilate would react to this mishap, fearing that they would lose their life for their negligence. In the panic, they initially think that they should make up a lie:

II MILES	Witte sir Pilate of þis affraye, We mon be slone.
III MILES	Why, canne non of vs no bettir rede?
IV MILES	þer is not ellis but we be dede.
II MILES	Whanne þat he stered oute of þis steede, None couthe it kenne.
I MILES	Allas, harde happe was on my hede, Amonge all menne.
	Fro sir Pilate witte of þis dede, þat we were slepande whanne he zede, He will forfette withouten drede All þat we haue.
II MILES	Vs muste make lies, for þat is nede, Oureselue to saue.
III MILES	3a, that rede I wele, als motte I goo.
IV MILES	And I assente þerto alsoo. (309-24)

However, in contrast to the N-town version where the potential witnesses hardly show any truthfulness, one of the York soldiers is startlingly honest. Initially, they agree to tell a lie that, although they slept through the miracle and did not witness it, more than a

hundred armed men came and took away Christ's body (329-34), but, at this point, one soldier declares that they should tell Pilate the truth with such a determination that he is willing to stake his own life on his integrity: 'So rede I – if he vs sloo, / We dye but onys' (337-38). Others agree to the decision; the fourth soldier exhibits a refreshing camaraderie, wanting themselves not divided:

Go we þanne, sir knyghtis hende,
 Sen þat we schall to sir Pilate wende.
 I trowe þat we schall parte no frende
 Or þat we passe. (341-44)

However, this honesty instantly crumbles when they see their masters and tell lies to Pilate as happened in the N-town plays. Hearing the knights, Pilate sounds worried and asks for advice from Caiaphas (396-400), who in turn tells him that Pilate should make the knights revoke the report about Christ's miraculous rising and conceal it (401-06), followed by advice by Annas:

Now sir Pilate, sen þat it is soo,
 þat he is resynne ded vs froo,
 Commaundis youre knyghtis to saie wher þei goo
 þat he was tane,
 With xx^{ti} ml. men and mo,
 And þame nere slayne;

And therto of our tresorie
 Giffe to þame a rewarde forthy. (407-14)

The specific source of the bribery, 'of our tresorie', i.e. possibly illegal expenditure of public funds, adds a contemporary touch to the speech. Pilate tutors Annas's lie to the soldiers. He also promises, as Annas suggests, a thousand pounds for them to keep quiet about Christ's rising (419-30), to which the soldiers acquiesce. In this manner, the judge Pilate has created false witnesses out of his soldiers who initially sounded startlingly honest. Again this playwright is showing his audience that even decent witnesses could stumble under the pressure from masters and the temptation of venal rewards.

The Towneley Play 26, *Resurrection*, is a heavily edited version of the York

counterpart from which, in some parts, words are taken verbatim. However, significantly different is the character of Pilate, especially in his opening rant, which is entirely added by the Towneley author. As the Pilate in the earlier trial plays in Towneley which we have examined, the Pilate in this play also betrays that he is an exemplar of human wickedness and, unlike the Pilates in the other cycles, has been totally intent on persecuting Jesus. Having Jesus executed on Calvary, he now gloats on his death: ‘Now sen that lothly losell is thus ded, / I haue greatt ioy in my manhede (19-20). Thereafter, the soldiers’ confused reaction when they awake to find Christ’s body disappeared is borrowed largely from the York cycle, or from the version which both the York and Towneley authors possibly used as their source. In Towneley, however, due to the loathsome characterisation of Pilate, the soldiers’ panic and their fear of their superior appears even more convincing.

In Matthew’s description of the event already quoted (28. 12-15), the soldiers go to report the event to the priests but do not meet Pilate, nor are their ludicrous panic and deceit reported in the gospel. Matthew’s account of the soldiers faced with the fact of Christ’s resurrection apparently gave some interesting twists to the characterisations of Pilate as the representative of the central government and the soldiers, i.e. the gentry, as local witnesses or jurors. Pilate seems consistently afraid of the central government and is willing to make a false report and to bribe the witnesses. The soldiers, after some hesitation and debate amongst themselves, decide to offer false testimonies to their masters. They are, in the end, happy to exploit the information they hold and accept the bribe. This may well be a reflection of the contemporary politics of witnessing and the corrupt collusion of a sheriff / judge and jurors in the mystery plays.

The legal or illegal manipulation of witnesses by means of lavish hospitality, gifts, threats or outright bribery may have been common in late medieval England. John Paston I, in his letter on 29 October 1479, addressed to Margaret, but actually intended for John III, writes that he paid his ‘cheffe wittnessis’ twenty shillings regarding his suit with the Duke of Suffolk:

[. . .] *and* then I rode be-yonde Donstaple *and* there spake wyth on off my

cheffe witnessis, whyche promysed me to take labore *and* to gete me wryghtyngys towchyng thys mater bytwyen me *and* þe Duke off Suffolk, *and* I rewardyd hym xx s. [. . .] (Davis 2004: No. 315, I 515).

As the York soldiers greatly feared the reprisal from Pilate, some medieval witnesses may have been physically or in some other manners threatened and forced to change or withhold their testimonies. John Bromyard, in his manual for preachers, *Summa Predicantium*, confirms:

Nonnulli vero [. . .] quando in visitationibus vel peccatorum inquisitionibus vel assisis vel duodenis onerantur in periculo animarum de veritate dicenda, ad quam dicendam iuramento astringuntur, dicunt quod non audent dicere veritatem ne verberentur vel occidantur vel ne domus illorum comburatur. (V. 1. 9) (2007: 262)²⁷

The threat against juries may well have occurred more frequently in the Middle Ages than later because the jurymen at that age partly functioned as witnesses who often came to court, knowing something of the case. In that capacity, they were probably unable to maintain the stance of neutral and disinterested observers as are modern jurors. Therefore, just as vulnerable witnesses in some criminal trials who need to be protected by the modern police, medieval jurors were at least equally or even more in peril of attacks from parties involved in suits, as a Lollard sermoniser writes: ‘[. . .] for ȝif þer be a trewe man *in* a contre he schal not come on his queste ȝif he may deuoyde hym, & ȝif he seie þe soþe he schal haue his hate, sclaudrynge, loos of his catel or of his lif *in* þis world [. . .]’ (1902: 182). Alan Harding, a historian of medieval law courts, also testifies to the vulnerability of medieval jurors. Discussing the special trailbaston commissions before the Great Rebellion, he outlines the plight of jurors selected from the middling class, who were threatened by the social superiors and detested by more lowly members of the society:

²⁷ ‘But some men [. . .] when burdened in visitations and inquisitions of sinners or assizes or jury duty in peril of their souls with telling the truth – to telling which they are bound by oath – say they dare not tell the truth in case they are beaten up or killed or have their house burnt down.’ (2007: 243-44)

The jurymen, browbeaten as ‘rustics’ or prosecuted for corruption, were also victims. The ‘poor men of the land of England’ petitioned the king against jurors ‘who were so commonly corrupted by the gifts of the rich that no truth could be known by them’, and against the ‘conspirators’ who suborned them; but the ‘middle people’ who actually ‘served the king before the justices of trailbaston’ complained rather that they were scared to tell the truth by threat of indictment of conspiracy by juries composed of the very men they had ‘faithfully indicted’. (1984: 172)

A literary expression of the manipulation of witnesses and their perjuries is also found in Peter Idley’s *Instruction to his Son*, a fifteenth-century didactic treatise. Idley was a bailiff and a minor landowner in Wallingford in Oxfordshire, who was also appointed gentleman falconer and underkeeper of the royal mews and falcons in 1453, and the Controller of King’s Works in 1456.²⁸ As a bailiff, he must have regularly attended sessions of the honour court of Wallingford and several hundred courts in the district (D’Evelyn 1935: 8). Thus he seems well acquainted with law and, although most of the treatise is directly drawn from four main sources,²⁹ he inserts some personal comments on the state of law of his time. He seems gravely concerned with frequent perjuries made for the attraction of money, goods or favour in contemporary law courts:

Somme swere also at Sessions and at assise,
 Somme for mannes lyff and somme for londe,
 And beere fals wittenes in diuers wyse,
 To sey the trouthe they holde vp her honde,
 But for money they woll not wonde
 To be as fals as falshode hymself –
 A man shall fynde an hoole quest of twelff

But allas! it is a wofull thyng
 To be hadde in highe or lawe degre,
 ffor ludre of goode, for fauour, or othir thyng
 A man to fals his othe or vntrue bee [. . .]. (II A 2708-18)

²⁸ For the biographical information on Peter Idley, see Charlotte D’Evelyn’s introduction to her edition (1935: 1-35).

²⁹ Those are Albertanus of Brescia’s *Liber Consolationis et Consilii* and *Liber de Amore et Dilectione Dei et Proximi* for Book I, and Robert Mannyng’s *Handlyng Synne* and John Lydgate’s *The Fall of Princes* for Book II (D’Evelyn 1935: 36).

Idley also narrates a didactic exemplum, taken largely from Robert Mannyng's *Handlyng Synne*, of a man in London who attended a trial as a juror. In the suit between a rich and poor man over a piece of land, the rich man bribes this juror to commit perjury 'ffor certen money'. The juror does as he has promised, but drops dead in the court:

And at laste by laboure and subtill *instaunce*
 Of the man that was in the enqueste
 Made all his felawshippe by his purviaunce
 To applie vnto his subtile *requeste*
 He made the riche man suche a beheste,
 ffor certen money he hadde resceyued before,
 To begile the poore man he wolde be forswore

Anon as he hadde made his othe
 In open court before the Iugis audience,
 God to whom *periurie* is grevous and lothe
 Anon gave hem his mortall sentence –
 This man fille deede in all hir *presence*
 And neuer sterid after, hande nee foote
Ther was no medecine in that myght doo bote [. . .]. (II A 2743-56)

Since Idley was a man deeply immersed in the business of local law courts, such a tale may well reflect the prevalence of bribery in the legal culture of his time. However, these recurring complaints against bribery in courts are also a measure of the expectation which the people had of the legal system.

The Independent and Righteous Legal Personnel in the Mystery Plays

Finally in this chapter, it may be useful to look at fair and righteous men who are involved in the administration of law in the mystery plays as counterpoints to the evil and corrupt men like the Towneley Pilate and many of his soldiers. As seen in the previous examination of the soldiers in the resurrection plays, it is extremely hard for subordinates in feudal societies to resist the authority of the tyrannical judges in the plays: the resolve of righteousness of some witnesses after the resurrection instantly

evaporates when they actually meet Pilate and the high priests.

One salient example of the independence of legal personnel in the mystery plays is the characterisation of Pilate's beadle in the York cycle, whom we have discussed in detail in Chapter 1. The word 'beadle', appearing since late Anglo-Saxon period, may indicate 'the crier or usher of a law-court' or 'a messenger of justice, a warrant officer; an under-bailiff; a tipstaff' according to *The Oxford English Dictionary*. In York Play 30, he is primarily an officer of judicial court, a bureaucrat who is intent on righteously executing his office. He is eager to uphold the integrity of the judicial procedures and ceremonies. However, the medieval court of law was, as stated in the introduction and Chapter 1, an ad-hoc, amorphous institution, generally not attached to a purpose-built architecture, and there were constant distractions of non-legal matters intruding into the time and space set aside for judicial deliberation. Thus the righteous beadle of Judge Pilate's court insists that the judge's wife should leave the court as 'itt langis to oure la[y]es' (30/68), causing much friction between him and her as seen in Chapter 1. The beadle's independence again surprises the audience when the soldiers bring Jesus into the court: he worships Jesus 'with witte and with will' (30/311). However, he does not thereafter defend Jesus strongly; his attitudes may be characterised as that of a level-headed neutral bureaucrat who acts, based on the customs of the court and what he himself sees and hears.

Closely reminiscent of the beadle in Pilate's court in the York cycle is the Consultus in the Towneley Play 24, *Play of Dice*. The editors of the EETS edition comment in their note: 'The Wakefield playwright may have had the York plays of the Tapiters and Couchers, "The Dream of Pilate's Wife" (Play 30), and of the Litsters, "Christ before Herod" (Play 31), as his model for the tyrant who is awakened in his bed by his subordinate' (II 587). However, it may not be just the motif of the tyrant being awakened, but the characterisations of the York beadle which may have influenced the Towneley playwright when creating the Consultus in Play 24. If the York beadle's worshipping of Jesus is unexpected, this Consultus's candour about Jesus is no less surprising when he says to Pilate:

The cause of my callyng is of that boy bold,
 For it is saide sothely, now this same day,
 That he shuld dulfully be dede,
 Certayn;
 Then may youre cares be full cold,
If he thus sakles be slayn. (222-27, my emphasis)

The evil Towneley Pilate naturally becomes incensed at the Consultus's words, practically ordering him to learn his place. The Towneley Pilate is especially proud of his legal knowledge and does not want to hear about the advice of the humble clerk on it:

And of the law that thou leggys be wytty and war,
 Lest I greue the greatly with dyntys expres.
 Fals fatur, in fayth, I shall flay the!
 Thy reson vnrad I red the redres,
 Or els of these maters loke thou no more mell the. (230-34)

However, the Consultus is refreshingly confident as a legal advisor and is unafraid of stating his superior wisdom in that regard:

Why shuld I not mell of those maters that I haue you taght?
 Thoug ye be prynce peerles withoutt any pere,
 Were not my wyse wysdom, your wyttys were in waght;
 And that is seen expresse and playnly right here,
 And done in dede. (235-39)

Although he is very interesting to us, the Consultus is not a character derived from a concrete biblical basis, and therefore soon disappears in the narrative. However, the frank and harsh exchanges between the Towneley Consultus and Pilate, and those between the York beadle and his master indicate an intimate relationship between the judge and his household legal advisor, as opposed to Pilate's more formal relationship with the external councillors and advisors such as the high priests in the all four cycles and the secular judges in the N-town cycle. These court officers' pride in their expertise and moderate independence may well attest the emergence of various minor legal personnel in the administration of law in the royal offices in Westminster, local

governments and royal and baronial councils who were to be generically called 'lawyers'.

It is particularly important to remember that the regional magnates, possible equivalents of Herod and Pilate in late medieval England, held their own council to deal with administrative and legal businesses, many of whose members were legal experts. Carole Rawcliffe states: 'every baronial estate was, in effect, a small kingdom with its own chancery, exchequer, law courts, and, at the very centre, a council of state, presiding over the smooth running of the whole', and that the baronial councils were 'virtually an alternative form of legal system to the common-law courts' (1986: 158). Rawcliffe also writes that 'most, if not all, baronial councils included a group of lawyers, retained specifically for their professional services' (1979: 90). In these councils, there were lawyers retained specifically as legal experts, consulted when a need for them arose, and perhaps regularly worked in external institutions such as local and central courts, but there were other lawyers who belonged to the household and 'usually employed as estate staff as well as counsel in the legal sense' (*ibid.*, 90). Similar to the latter category of lawyers are the York beadle and the Towneley Consultus, who seem to take care of the master's personal life as his servants but also function as legal advisors.

Speaking of lawyers as a generic group of professionals, we need to realise that they were a rather amorphous set of men in legal spheres throughout the Middle Ages and the word, 'lawyer', does not appear as regularly as it does now. According to Nigel Ramsey, they were first called clerks or holders of some legal or administrative offices. Then in the fourteenth and fifteenth centuries, they may have been called 'gentlemen' (1990: 62). When authors use the term, 'lawyer', they may specifically mean pleaders or the precursors of modern barristers, and their apprentices, but the word may often be broadly applied to legal professionals, sometimes including judges. The serjeant-at-law is an officially recognised title given to very few elites of the profession in the central common law courts, numbering less than ten in the fifteenth century (Ramsey 1990: 66), and consists of only a tiny part of this vast and multifarious group of professionals.

Many clerks working in the central royal institutions, both judicial and administrative, in Westminster may well have been considered lawyers by their contemporaries and were indeed equipped with legal expertise as are the York beadle and Towneley Consultus. Ramsey cites an example of William Wakefield, who ‘was a Common Pleas prothonotary, with responsibility for the keeping of fines and files of writs, from Richard II’s reign onwards. He was appointed to the Commission of the Peace in Essex (1406), had various commissions of oyer and terminer, and was probably clerk of the justices of assize and of gaol delivery on the south-eastern and south-western circuits in the last years of Richard II’ (1990: 69). Geoffrey Martin, a Chancery clerk in the last decades of the fourteenth century, was appointed to the commission of the peace for Middlesex, and ‘Martin’s colleague Edmund Brudenell was subsequently appointed the king’s attorney in the two benches and presumably must have been a common lawyer’ (Storey 1982: 98). Such legal clerks in the centre of the Westminster bureaucracy must have had a high level of social standing and professional pride. Ramsey also raises the question that numerous local officials whose works were concerned, one way or another, with local courts and law-enforcement such as ‘coroners, undersheriffs, escheators or the like can be deemed likely to have been lawyers *ipso facto*’ (1990: 69). His research at least led him to suggest that ‘the office of undersheriff, and that alone, was commonly held by a lawyer (usually an attorney, although sometimes an apprentice or at least future apprentice)’ (1990: 69). Even some London scribes, handling legal documents may have been styling themselves as lawyers and regarded by others as such (1990: 69). The opening-up of Chancery litigation in the late Middle Ages led to more uses of written documents ‘because Chancery litigation was so largely dependent on written submissions’ (Ramsey 1991: 102), because of which the advisory role of the makers of such legal documents, i.e. scribes, must have strengthened. Ramsey indicates that, in London, the members of the Scribes’ Company ‘gained enough experience for them to be turned to in lieu of lawyers, at times, and they sometimes became highly prosperous’ (1991: 123-24). The trade guilds in London employed scribes to write legal and commercial documents such as deeds and contracts and to give advice for

them (Ramsey 1991: 125). For instance, one scrivener called Clifford was employed by the Goldsmith in 1468/9 in a property transaction, and ‘regularly engaged by the Carpenters in the late 1470s and subsequently, being paid several times for counsel, as well as for writing’ (Ramsey 1991: 126). It is conceivable that, behind the characters of the York beadle and Towneley Consultus, the guildmen who produced and acted in the cycle drama and their audience in the late medieval and early Tudor cities may have seen those emerging legal professionals whom they saw or had dealings with in their businesses.

Another memorable man of righteous spirit amongst the subordinates of the tyrants is the Roman centurion, who is one of the *witnesses* of the death of Christ and who speaks out his mind, undaunted by the threat of the masters. As a leader of law-enforcement officers, he is perhaps comparable to a medieval undersheriff, coroner or someone holding a similar office and thus can be more daring in speech than the mere beades of Pilate’s court. Furthermore, unlike the York beadle and Towneley Consultus, there are concrete, but brief biblical bases of this honourable character, briefly mentioned by Matthew (27. 54), Mark (15. 39, 44) and Luke (23. 47). Matthew records: ‘Now when the centurion, and they that were with him, watching Jesus, saw the earthquake, and those things that were done, they feared greatly saying, Truly this was the son of God.’ Mark and Luke also give a similar, very brief reference to him. As far as we can surmise from this passage, the centurion may well be the leader of the Roman soldiers, possibly guarding the cross, who is struck by the miraculous phenomena at the time of Jesus’s death to the extent that he thinks that Jesus is ‘the Son of God’ (*Dei Filius*) as in Matthew and Mark, or ‘a righteous man’ (*homo iustus*) as in Luke. The passage does not indicate that he is a clandestine Christian or a righteous rebel who harbours enmity against the tyrannical masters. Only in Mark does he directly speak to Pilate when Joseph of Arimathaea comes to ask Pilate for Jesus’s body: ‘And Pilate marvelled if he [Jesus] were already dead: and calling unto him the centurion, he asked him whether he had been any while dead. And when he knew it of the centurion, he gave the body to Joseph.’ (15. 44-45)

In the Chester Play 16A, the centurion has only one speech which closely follows the gospels: he states:

Lordings, I say you sikerlye,
 this was Godes Sonne almightie.
 No other, forsooth, leeve will I,
 for needes so yt must be. (360-64)

The playwright makes Caiaphas hear the speech. The priest is annoyed and mildly reprimands him: ‘Centurio, as God me speede, / thou must be smutted; thou canst not read’ (368-69), but Pilate does not speak to him. There is no further discord between the centurion and any of the magnates. The N-town playwright lets the centurion begin Play 34, again basically following the gospel description. The centurion says:

In trewth, now I knowe with ful opyn syght
 That Goddys dere sone is naylid on tre.
 These wundryful tokenys aprevyn ful ryght
 Quod vere Filius Dei erat iste. (1-4)³⁰

He does not seem to be addressing these speeches directly to any magnate although Pilate speaks soon afterwards. This centurion is antagonised neither by either Pilate nor the priests, but his character develops the biblical depiction slightly in that he is characterised as a new Christian convert, who is truly impressed by Christ’s holiness:

Þer was nevyr man but God þat cowde make þis werk
 Þat evyr was woman born,
 Were he nevyr so gret a clerk;
 It passeth hem all, þow þei had sworn.

Hese lawe was trewe, I dare wel saye,
 Þat he tawth us here amonge.
 Þerfore I rede 3e, turne 3oure faye,
 And amende þat 3e han do wronge. (29-36)

In York and Towneley, the playwrights widely depart from the biblical depictions

³⁰ It is interesting that he speaks a line in Latin albeit directly copied from the Bible. It may imply that he is not a mere soldier but construed by the playwright as a well-educated member of the gentry.

and thus their versions greatly differ from those in Chester and N-town. They assign many speeches to the centurion so that he is endowed with a distinctly rebellious and righteous character. The York centurion appears in two pageants, Play 36, *Mortificacio Christi*, and Play 38, *The Resurrection*. He has just one speech in Play 36 at the scene of Christ's death, where he witnesses the blind soldier, Longinus, miraculously given sight. Impressed by the miracle, the centurion believes Christ has been wrongly judged by law (317-21), and that he is 'Goddis sone verraye' (323), but no further exchanges occur between him and the magnates in this pageant. Play 38 begins with Pilate and the priests discussing the execution of Christ: despite their mutual assurances, they reveal hints of anxiety about the rightness of the judgement given and what would happen to Christ's body afterwards. Thus Pilate asks Caiaphas for advice and also reconfirms the high priest's complicity in the death penalty as if he wanted Caiaphas and Annas to share the burden of guilt:

And sir Cayphas, chiffe of clergye,
Of youre counsaill late here in hye.
By [y]oure assente sen we dyd dye
Jhesus þis day,
þat [3]e mayntayne, and stande þerby
þat werke allway. (7-12)

To Pilate who wants to know any news about Christ's body, Caiaphas says that they left the centurion to watch out for any suspicious movement:

We lefte hym þere *for man moste wise*,
If any rebelles wolde ought rise,
Oure rightwise for to dispise,
Or it offende,
To sese þame *till þe nexte assise*,
And þan make ende. (31-36, my emphases)

The high priest has thought highly of the centurion's wisdom, and he is charged to detain suspicious persons 'till þe nexte assise', a clearly medieval expression referring to sessions of assize, or circuit court of the Crown in localities, which strengthens the impression that the centurion is envisioned as a contemporary law-enforcement officer.

Pilate courteously addresses him as ‘Oure comely knyght’, and says, ‘Ȝe haue bene miste vs here among’ with the polite second person plural pronoun (54-55). Meanwhile, the centurion is most impressed by ‘þes meruayles’ (38) at Christ’s death and tells the judges that they ‘haue done wrang, / And wondir ill’ (59-60) by delivering the death sentence, and that they have slain ‘Þe rightwise mane’ (65). This statement is all the more alarming to the judges for the centurion is not a mere soldier but a legally proficient officer of considerable rank and possibly a key witness who can and ought to support their cause, as Pilate says, addressing him now with the second person singular ‘þou’:

Centurio, sesse of such sawe,
 Þou arte a lered man in þe lawe,
 And if we schulde any witnes drawe,
 Vs to excuse,
 To mayntayne vs euermore Þe awe,
 And noȝt reffuse. (67-72)

However, Pilate’s protestation seems only to strengthen the centurion’s resolution to stick to his ‘trouthe’:

To mayntayne trouthe is wele worþi,
 I saide ȝou, whanne I sawe hym dy,
 Þat he was Goddis sone almyghty
 Þat hangeth þore;
 Ȝitt saie I soo, and stande þerby
 For euermore. (73-78)

Thereupon, the centurion, undaunted, details the marvels that happened at the time of Christ’s death, which Pilate and Caiaphas brush off as an eclipse or works of sorcery. However, the centurion continues to hold his ground, saying, ‘All þat I tell for trewth schall I / Euermore traste’ (107-08). Despite the centurion’s temerity, the magnates do not fly into a rage or shout him down. Annas simply orders him to withdraw; they are more worried about his testimonies than angry with him and this will cause them to have Christ’s grave securely garrisoned. It may reveal a measure of reluctant respect which the magnates have towards the centurion and his truthfulness.

In the Towneley cycle, the centurion does not appear in the scene of Christ's death in Play 23, *Crucifixion*, as he does in York. The Towneley Play 26, *Resurrection*, where the centurion has several speeches, is much indebted to the York counterpart or a common source of the two versions according to the note of editors of the EETS edition (1994: II 600). Thus the scene of the centurion's report to the three magnates largely parallels the counterpart in York. The centurion's initial speech (26/45-75) is much expanded from the York version (38/37-52); he reports the marvels more elaborately, making him appear, if anything, more of a devotee of Christ. Thereupon the exchanges between him and the judges parallel with those in the York version, but when the judges finally become impatient with his testimony, the Towneley version slightly deviates from York:

Pilatus. A, sich tayles full sone wold make vs yrke,
If thay were told.

Harlot! Whereto commys thou vs emang
With sich lesyngys vs to fang?
Weynd furth! Hy myght thou hang,
Vyle fatur!

Cayphas. Weynd furth in the wenyande
And hold styll thy clattur. (140-47)

Pilate's lines 144-45 are found only in Towneley. Here the judge suddenly changes his attitudes from the controlled civility to the explosion of vile anger, reverting to the malicious and abusive character that he generally is in this cycle.

Although the appearances of the centurion in the Chester and N-town cycles are brief and scarcely depart from the skeleton depiction in the gospels, in the York version as well as the Towneley one which closely parallels York, the scene of exchanges between the centurion and the judges portrays him to be a respected officer learned in law, a forthright and confident knight who can speak his 'trouthe' even against Pilate while the judges feel obliged to treat him with respect. It seems that the playwrights' elaboration of this righteous and uncorrupted character allows us to glimpse at the ideal of legal personnel held by the creators and audiences of the mystery plays.

In this chapter, we have tried to examine the literary and historical background of Pilate in the Towneley cycle, one of the most evil characters in the mystery plays: situating this character within the wider contexts of the period, we have explored the pervasive culture of the legal corruption in late medieval England, an examination which is to be continued in Chapters 4 and 5. The Towneley Pilate is unique in being a self-proclaimed corrupt judge, biased toward those who pay him more than others. The corruption of legal personnel is a widespread topic taken up by various authors in late medieval England, typically appearing in the works of William Langland, John Gower and Thomas Hoccleve. As the Towneley Pilate and the allegorical character of Meed in *Piers Plowman* indicate, the satirical authors accuse the shameless and amoral marketisation of legal expertise. From the historical point of view, the contemporary system of law was financially private and designed to be self-financing and profit-making, benefitting the Crown and the local dignitaries. Moreover, the remuneration for judges and lawyers was not yet clearly systematised so that legal professionals had to charge fees for their services, which naturally worked against poor suitors. The Towneley Pilate's summoning false 'questmangers', 'iurers' and other 'fals' characters suggests the existence of covens of corrupt sheriffs, jurors and witnesses. Various influences of graft over jurors and witnesses exerted by the medieval sheriff is attested by Gower, the Paston letters and the Middle English romance of *Gamelyn* as well as by the studies of modern historians. We have discussed the plays dealing with Christ's resurrection as an episode in the mystery plays possibly suggesting the contemporary legal and political interaction between a sheriff or judge and jurors and witnesses. After the soldiers as witnesses of the resurrection vacillate over how they should report the event to their masters, they end up making a false testimony. The judges, frightened of the repercussion of the miscarriage of justice, also bribe the witnesses into silence. Finally we have discussed a few independent and righteous legal characters, namely, the beadle in Pilate's court, Pilate's Consultus in the Towneley *Play of Dice*, and the centurion who comes to report the death of Christ to the judges. All of them are proud of their legal wisdom and confident enough to speak their

mind despite incurring their masters' anger. These characters may well indicate the ideal of legal personnel which the medieval people held, and reflect the emergence of the class of proud legal specialists in the contemporary society.

Chapter 4

The Poor and the Powerful in Law Courts in Late Medieval Literature in England:

The Case of *Wisdom, Who Is Christ*¹

In the previous chapter, several instances of discourse on judicial corruption in the English mystery plays were examined mainly with reference to contemporary complaints against categories of legal and law-enforcement personnel such as judges, sheriffs, lawyers and jurors. We have paid particular attention to Pilate in the Towneley cycle as well as the subordinates of the tyrants; the Towneley Pilate obviously colludes with jurors and witnesses through bribery in law courts as revealed in his rants and in the play of the Resurrection (Play 26). Such collusion between the powerful men and their subordinates in handling legal disputes was called ‘maintenance’ by contemporaries and also by modern historians.² As the legal and administrative activities of the Crown, nobles and the gentry were inseparable in the Middle Ages, maintenance was not only legal but also political; it constituted the sinews and joints connecting the networks, or ‘affinities’, of magnates, gentry and their humbler supporters. As the traditional system of feudal relationships was gradually replaced by monetary contracts in late medieval England, subordinates of lords and other officials including legal personnel were ‘maintained’ by monetary payment. In that process, illegitimate backing of suitors by means of bribery, livery, political pressure and violence became commonplace. The

¹ Hereafter, we shall generally call the play *Wisdom*.

² For the development of the notion of ‘maintenance’, see Bellamy (1989, 80-81); for a wider cultural and literary application of the notion, see Kennedy (2009), especially 1-13.

upper estates of the medieval society could be said to control the common people, as well as struggling with each other, through exploiting the various apparatuses of maintenance.

‘Maintenance’ is significant in the study of medieval drama as it is the allegorical name of a Vice, one of the most important characters in the morality play, *Wisdom, Who Is Christ*. The character represents the worst sin of mankind from which, literally, other attendant characters, or allegorical Vices, are generated. In this chapter, various late medieval literary works including medieval drama will be examined from the viewpoint of how the rich and powerful controlled the poor and humble through law and legal courts so that we can illuminate the character of Maintenance in *Wisdom* and its social backgrounds.

The Exploitation of the Legal System by the Rich and Powerful

As has been stated in the introduction, in late medieval English society, law courts were the primary points of contact between the local and central authorities and the common villagers and burghers. Since the lords and Crown possessed very limited organizations of bureaucracy and administration in comparison with post-industrial counterparts, they governed the people largely through law and legal courts. At the local level, by means of manor courts, quarter sessions, peace commissions, and sessions of church courts, magnates, the gentry and ecclesiastical institutions governed the people who lived in their domains and the other areas of their influences.

In such a society, the law courts and the professionals who worked in them may often have seemed to be oppressors of the poor and the powerless. The late medieval polemical literature abounds in accusations of courts, judges and lawyers from the viewpoint of the poor. J. R. Maddicott, in his compact survey of the ‘poems of social protest’, writes about one of the main characteristics of the genre:

It attacks those in authority, particularly royal officials – sheriffs, judges, bailiffs, tax collectors, commissioners of array, but sometimes churchmen, and,

more rarely, other groups such as doctors. Its theme is often the corruption, graft and venality of those in power, and the way in which their actions fail to correspond to the pretensions of their offices (1986: 133).

As has been discussed in Chapter 3, that the medieval legal system was, to a large extent, an important profit-making service for the Crown made it repulsive for the poor. Philip Rawling writes: ‘the justice system provided a valuable source of revenue through fines and the confiscation of property from felons [. . .] boosting the royal revenues through fines imposed on people who neglected these duties’ (2002: 13). Maddicott remarks that, in these complaint poems, ‘there is general sympathy for the poor and a dislike of the rich and influential who oppress them’ (1986: 133). Thus the hostility towards the legal officials, coupled with the sympathy towards the poor, produced many accusatory expressions against the judges, lawyers, sheriffs and others from the viewpoint of the poor. The poet of *Mum and the Sothsegger* exhorts the legal professionals such as the Chancellor, scribes, clerks, judges, serjeants- and apprentices-at-law to take pity on the poor who are dragged before the courts and trampled by the rich:

Now your chancellier that chief is to chaste the people
 With conscience of your cunseil that the coroune kepith,
 And alle the scribes and clercz that to the court longen,
 Bothe iustice and iuges y-ioyned and other,
 Sergeantz that seruen for souldre atte barre,
 And the prentys of court, prisist of all,
 Loke ye reeche [not] of the riche and rewe on the poure
 That for faute of your fees fallen in thaire pleyntes;
 Haue pitie on the penylees and thaire pleynte harkeneth,
 And hire thaym as hertly as though ye hure had,
 For the loue of hym that your life weldeth;
 And graunteth [thaym] for God-is sake and with a good chiere
 The writing of writtz and the waxe eke;
 And thay wil loue you for the lawe as liege men aughte,
 More thenne for mayntenance that any man vseth,
 Or for any frounting for faute of the coigne.
 (Bar 1993: 13-28, the parentheses by the editor)³

³ All quotations from *Mum and Soothsegger* are quoted from *The Piers Plowman*

Behind this exhortation for a more desirable state of the law, we can surmise that these legal professionals, from the chancellor to scribes, do not usually ‘rew on the poure’ but cater only to the rich because of the higher fees the latter could pay; it seems that, because of the lawyers’ lack of sympathy for the poor or of the mistrust of their moral rectitude in general, many common people may have had little faith in law courts but resorted to ‘mayntenance’ and ‘frounting for faute of the coigne’ (violence for lack of the coin). The passage epitomises an aspect of the fifteenth-century English society where the unreliability of the law bred maintenance and violence. The same poet contends that the poor strive utterly in vain in law courts:

And is in euery cuntre but a comune tale
 That yf the pouer playne, though he plede euer
 And hurleth with his higher hit happeth ofte-tyme
 That he wircheth al in waste and wynneth but a lite.
 Thus laboreth the loos among the comune people
 That the wacker in the writte wol haue the wors ende;
 Hit wol not gayne a goky a grete man forto plede,
 For lawe lieth mucche in lordship sith loyaute was exiled,
 And poure men pleyntes penylees a-bateth. (Barr 1993: 1576-84)

Now that the traditional feudal ‘loyaute’ has been banished and that the law is dominated by naked power and money, the poet insists, it is useless for the naive fool (‘goky’) to bring a suit against the great man.

The author of *The Simonie*, like the poet of *Mum and the Sothsegger*, cites judges, sheriffs, escheators, Chancellor and other lesser office-holders as those who are wallowing in wealth and should personally contribute to the Crown’s finance rather than exploiting the poor:

Ac were þe king wel auised and wolde worche bi skile,
 Litel nede sholde he haue swiche pore to pile.
 Purste him noht seke tresor so fer, he mihte finde ner
 At iustises, at shirreues, cheiturs and chaunceler,

And at les.

Swiche mihte finde him inouh and late pore men haue pes.

For whoso is in swich office, come he neuere so pore,

He fareþ in a while as þouh he hadde siluer ore.

Þeih bien londes and ledes; ne may hem non astonde.

What sholde pore men [ben] ipiled while swiche men beþ in londe

So fele?

Þeih pleien wid þe kinges siluer and brenden wod for wele.

(Embree et al. 1991: 319-30)

Gower, although a middling-class professional himself, is generally sympathetic to the poor as victims of the powerful. In *Vox Clamantis*, he complains that law works against the poor and to the advantage of the rich and powerful and that judges are, if not bribed, often overawed by the people in power:

Scimus et hoc omnes, qui iudicis extat amicus,

Perdere iudicio nil valet ipse suo.

Nouimus hoc eciam, tangat si causa potentem,

Cernere iusticiam dat timor inde fugam;

Horrendasque minas iudex non sustinet ipsas,

Sepius et precibus flectitur absque minis:

Litera magnatis dum pulsat iudicis aures,

Tollit vis calami debita iura sequi.

Set super omne modo sibi ve, qui pauper egendo

Quid petit in lege, dum nequit ipse dare!

Publica sunt ista nobis, quod lege moderna

Pauperis in causa ius negat acta sua. (1902: VI 271-82)⁴

Also in *Mirour de l'Omme*, he repeatedly states that judges do not stand against the powerful for the sake of justice and law, and easily sacrifice the poor so as not to offend the nobles:

Le Jugge auci sovent *pour* doubte

⁴ 'We also know that if a case affects a powerful man, fear puts to flight the discernment of justice. Frequently the judge cannot endure his frightening threats and is swayed by his entreaties without any threats [being necessary]. When a great man's letter strikes the judge's ears, the might of his pen abrogates the justice which ought to ensue. But woe above all to the poor wretch who now seeks anything at law when he cannot give anything! These things are common to us because under today's law justice refuses to act in a poor man's case.' (1962: 226)

Justice a faire trop redoubte
 Contre seignour qui se mesprent;
 Car qant uns de la povere route
 Se pleingt q'il ad sa teste route,
 Ou q'om ses biens luy tolt et prent,
 Et quiert son droit en juggement
 Vers le seignour, lors nullement
 Au povre cry le Jugge escoulte:
 Et c'est la cause au temps present
 Qe mal seignour la povere gent
 En tous paiis flaielle et boute. (1899: 24661-72)⁵

While Gower claims that judges oppress the poor as they are intimidated by the powerful, he thinks that lawyers' motivation to maltreat the poor is monetary. As we have already looked at the topic in the last chapter, lawyers were faithful followers of Lady Meed, or the mercantilism of law. Gower again and again claims that greed spurs lawyers to merchandise the law, consequently crushing the poor to please the rich and powerful. For instance, in the following passage, Gower alleges that those who should maintain the law and justice, trample the poor for profit:

[. . .] tant sont esbaldiz
 Du lucre, comme l'en puet oïr.
 Q'ançois la loy font pervertir,
 Dont font le povre droit perir:
 Car du poverte sont eschis,
 Mais ove le riche ont leur conspir,
 Et pour sa cause maintenir
 Justice et loy mettont au pris. (1899: 24197-204)⁶

The theme of lawyers' amorality and unabashed mercantilism again comes up here:

⁵ 'The judge also often fears to take just action against a noble who is committing offenses. If one of the poor rout complains that his head has been broken or that his goods have been taken and stolen from him, and he seeks his right in judgment against the noble, then the judge does not listen to the cry of the poor man at all. And that is why at the present time the evil nobles scourge and ruin the poor people all over the country.' (1992: 323)

⁶ 'But they have become so emboldened by lucre (as one can hear) that instead they pervert the law, whereby they crush the rights of the poor. They are ill disposed toward the poor, but they conspire with the rich; and, in order to win their case, they put a price on justice and law.' (1992: 316-17)

[. . .] ja nuls ert si desloyals,
 S'il porra largement donner,
 Q'il meintenant *pour* son denier
 Ne truiست celluy qui voet pleder
 A sustenir testous ses mals,
 Dont font les povres exiler [. . .]. (1899: 24233-38)⁷

Medieval authors also accuse the other legal and law-enforcement officials of their favouritism towards the rich and powerful at the expense of the poor. Again, Gower in *Mirour de l'Omme* tells us that the sheriff ignores the poor who pursue a legal action or submit a petition:

Le brief *que* le povre homme porte,
 Qant il l'argent ove ce n'apporte
 Pour le visconte desporter,
 Trop longuement puet a la porte
 Hucher, avant ce qu'il reporte
 Le droit qu'il en duist reporter [. . .]. (1899: 24865-70)⁸

If sheriffs were hated by the poor and humble, it is no wonder that their subordinates were similarly despised. Gower does not spare invectives against bailiffs as, he says, 'they are ministers of avarice, who go about plundering the poor' ('[. . .] sont ministre d'avarice, / Dont vont la povre gent pilant') (1899: 24965-66). They were regarded to have been the pawns of the local powers, directly impacting the daily life of the poor. The author of *The Simonie* accuses bailiffs and beadles working under sheriffs of tormenting the poor while the rich could skirt the costly and time-consuming jury duties:

And baillifs and bedeles vnder þe shirreue,
 Euerich foundeþ hu he may pore men most greue.
 Þe pore men beþ oueral somouned on assise,

⁷ '[. . .] no one is so bad but that he can (by paying generously) find for his money a lawyer willing to defend all his evils. So the poor are driven out.' (1992: 317)

⁸ 'The letter which the poor man brings can shout for a long time at the door before it produces the right it should produce, unless it brings silver with it to entertain the sheriff' (1992: 326).

And þe riche sholen sitte at hom, and þer wole siluer rise
To shon.

Godes curs moten hii haue, but þat be wel don. (Embree et al. 1991: A 337-42)

It was very expensive and cumbersome to attend court sessions and perform jury duties, especially when the session in question was held far apart from their residences, which rich people may have paid bribery to evade. Furthermore, ‘Some unscrupulous bailiffs summoned more men than needed or summoned them to inconvenient places on insufficient notice for the sake of the fines levied for non-attendance’.⁹ John Bromyard also attests that, for ordinary medieval commoners, it was too expensive to go to sessions held far away to clear their name even though they knew they were innocent:

Et cur ab iniquis appellati non veniunt ostensuri suam innocentiam adversariorumque maliciam convicturi. Dico quod dicere solent: nolumus vexari frustra in curia: fovent appellantes: melius esset domi sedere et talia deserere, iuri proprio cedere: ne longo et tanto itinere fatigarentur.’ (A. 14. 16) (2007: 262, note 37)¹⁰

Thomas Hoccleve in *The Regiment of Princes* also deplores that the law only catches the small people and lets the high and powerful go free although, being a royal clerk, he is circumspect and intentionally unspecific about his wording:

Smal tendrenesse is had now of oure lawes,
For if so be that oon of the grete wattis
A dede do which that ageyn the lawe is,
Nothyng at al he punysshid for that is.
Righ as lopwebbes, flyes samale and gnattis
Taken and suffre grete flyes go,
For al this world, lawe is now reuled so. (Blyth 1999: 2815-21)

Hoccleve continues that the nobility not only are allowed to go scot-free despite their roguish acts but that they also torment the poor:

⁹ Embree et al. in their note to the above quotation (1991: 138).

¹⁰ ‘As to why men accused by scoundrels don’t come [to court] to prove their innocence and to refute the malice of their adversaries I state what *they* usually say: “We’ve no wish to be harassed in court and all for nothing. They take care of the party bringing the case: better to sit at home, to let such matters go, to give in to *their* own law, and not to be worn out by such a long journey.” ’ (Walls 2007: 244)

And by the grete, poore folk been greeved;
 For he that noble is of blood and a lord
 In style, and naghthath, stired is and meeved
 Unto rapyne; this is often preeved;
 The poore it feelith. Thus of lawe lak
 Norissheth wrong and castith right abak. (1999: 2830-35)

The poet, perhaps recalling the Great Rebellion, fears that, if the lawlessness of his age continues, those who have nothing and to whom the law gives no protection will rise against the ruling class with knives drawn:

And doutelees, if that fordoon be lawe,
 A princes power may go pleye him thenne;
 For they that naghthath, with knyf ydrawe
 Wole on hem that of good be mighty renne,
 And hurte hem and hir houses fyre and brenne,
 And robbe and slee and do al swich folie,
 Whan ther no lawe is hem to justifie. (1999: 2780-86)

As has been discussed, the medieval law courts were largely self-financed, and thus the institutions and many of their functionaries needed to earn income from their consumers. Consequently, the handicap of the poor in courts was simply systemic. Moreover, many of the legal institutions doubled with administrative ones, and were owned or dominated by the Crown or magnates and the gentry. Simply they were not made to work for the poor as a tool to fight with the powerful. Lawsuits were power-game and one is advised to sue only those who were equal or below in social standing as J. G. Bellamy writes:

It was foolhardy and indeed a rare man of lesser standing who decided to bring a suit against a magnate who had unjustly deprived him of land. All writers of the period were agreed in allowing such a person only a slight chance of success in the courts. (1989: 57-58)

Though it seems to have happened infrequently, a powerful magnate or member of the gentry could, if he so desired, mobilise his affinity and overawe the men of court, namely, judges and especially jurors. J. G. Bellamy cites an action taken by Sir Richard

Empson, a minister of Henry VII against Sir Robert Plumpton, a well-established Yorkshire gentryman:

Sometime before January 1505, Sir Richard Empson, with no fewer than 200 knights, gentlemen, and yeoman in his entourage, attended York assize to ‘countenance’, as the term was, a suit against Sir Robert Plumpton. He did not leave until the assize passed against the latter. (1989: 96)

A letter sent on ninth May 1451 from Sir John Howys, a chaplain of Sir John Fastolf, to his master describes a trial which Howys recently attended in Norwich. The trial described is one in the continuing legal struggle between William de la Pole, Duke of Suffolk and Fastolf and his lawyer, John Paston I. The writer decries the partiality of the judge and the enormous physical intimidation exerted by Thomas Tuddenham and John Heydon, weighty members of the de la Pole affinity, on his side. The adversaries wanted to hold the trial where they were strongest, and came down en masse to intimidate the opponents like the trial of Christ in N-town Passion pageants:

[. . .] my maister Yeluerton, Genney, and other myght weel conceyue how the gouernaunce of the oyer determyner shuld *procede*, for it was the most *parcial* place of alle the shire, and thedre were cleped all the frendez, knyghtys and esquiers, and other gentilmen that wolde in no wise do other wise than they wolde. And the seid Tudenham, Heydon, and other oppressours of ther set come doun theder, as I vnderstand, *with* *iiij*^c hors and more; and consideryng how ther wellwillers were ther assembled at ther jnstaunce, it had to be right *jowpertos* and ferefull for any of the pleyntyfs to haue be present, for ther was nat one of the pleyntyfs ner compleynautez therere but youre right feithfull and trusty weel willer John Paston. (Beadle et al. 2005: No. 1008, III 129)

If not a brazen sabre-rattling as the above, John Paston I, in his petition to the Parliament in 1450, complains of Lord Molyns and his men’s threatening behaviour towards local men and consequent partiality of the hundred court subservient to the Molyns’s power:

And also thei compelle pore tenautes of the seid maner, now *with-in* ther daungere, a-geyn ther wille to take feyned pleyntes in the courtes of the hundred there ageyn the seid frendis, tenautes, *and seruautes* of your seid

besechere, whiche dare not apere to answer for fere of bodily harme, ne can gete no copijs of the seid pleyntes to remedi them be the lawe, because he that keypth the seid courtis is of covyn *with* the seid misdoeres *and* was on of the seid ryses which be coloure of the seid pleyntes greuously amercy the seid frendes, tenautes, *and seruautes* of *your* seid besechere to the[r] outrageous *and* importabile hurt. (Davis 1971: No. 36, I 52-53)

John also complains of utter powerlessness in law court in the face of the power of a magnate, and of the inability to find whom to sue for the damage incurred as his side could not seek help from any investigative organization such as the modern police:

[. . .] how that *your* seid besecher is not abille to sue the *commune* lawe in redressyng of this heynos wrong for the gret myght *and* alyounce of the seid lord [i.e. Molyns]; and also that *your* seid besechere canne haue non accyon be *your* lawe ageyn the seid riotous peple for the godis *and* catellis be hem so riottously *and* wrongfully take *and* bore a-wey, be-cause the seid peple be onknowe, aswelle here names as here *persones*, on-to hym . . . (Davis 1971, No. 36: I 53).

Since there were no impartial and institutionalised law-enforcement forces, the aggrieved party was often forced to bring the culprits to court themselves, but, even if they were brought to a court session, there would be little possibility of a fair trial in a legal environment like this.

As we have described at the beginning of this chapter, such often illegal intermeddling of legal processes by means of bribery, display of force, giving liveries, or putting various pressure can all be termed as acts of ‘maintenance’, with which many late medieval English authors were often very concerned. The author of *Richard the Redeless*, who wants to give advice on governing to kings and magnates, especially Henry IV, by critiquing the corrupt regime of Richard II, writes that the role of king or other rulers is to provide the rule of law and destroy maintenance:

[. . .] rewlars of rewmes around all the erthe
 Were not yfffoundid at the frist tyme
 To leue al at likyng and lust of the world,
 But to laboure on the lawe as lewde men on plowes,
 And to merke meyntenourz with maces ichonne,

And to strie strouters that sterede ayeine rithis,
 And all the myssedoers that they myghte fynde,
 To put hem in preson a peere though he were [. . .]. (Barr 1993: III 264-71)¹¹

However, contrary to the duty expected of them, the poet claims the mighty lords ruin the law by protecting criminals and fostering maintenance:

Thus is the lawe louyed thoru mighty lordis willys,
 That meynteyne myssdoers more than other peple.
 For maintenance many day well more is the reuthe!
 Hath y-had mo men at mete and at melis
 Than ony christen kyng that he knewe euere;
 For, as reson and rith rehersid to me ones,
 Tho ben men of this molde that most harme worchen. (1993: III 310-16)

A part of *Richard the Redeless* (Barr 1993: III 317-50) is a fascinating passage describing the roguish acts of maintenance and mockery of judicial process in the 1390s, caused by a band of Cheshire men who were maintained by King Richard and flaunted his livery. As a result, the local judicial system was taken over by thugs, or the poet's term, 'degonys' (bumpkins):

They leid on thi leigis, Richard lasshis ynow,
 And drede neuere a dele the dome of the lawe.
 Ther nas rial of the rewme that hem durste rebuke,
 Ne juge ne justice that jewis durst hem deme
 For oute that thei toke or trespassid to the peple.
 This was a wondir world ho-so well lokyd,
 That gromes ouere-grewe so many grette maistris;
 For this was the rewle in this rewme while they here regnyd.
 [. . .]
 For selde were the ser[gi]auntis sought for to plete,
 Or ony prentise of courte preied of his wittis,
 The while the degonys domes weren so endauntid. (1993: III 338-50)

Though not as specific as the author of *Richard the Redeless*, Hoccleve also deplors the lawlessness by assemblies of armed men who are not afraid of breaking the law:

¹¹ All quotations from *Richard Releless* are from Barr (1993).

Lawe is ny fleemed out of this contree,
 For fewe been that dreden it offende.
 Correccioun and al is longe on thee [Prince Henry]:
 Why suffrest thou so many an assemblee
 Of armed folk? Wel ny in every shire
 Partie is maad to venge hir cruel ire. (1999: 2788-93)

The poet blames this state of lawlessness not on the humble people but on the high and mighty and their maintenance:

And al swich maintenance, as men wel knowe,
 Susteened is nat by persones lowe,
 But cobbs grete this riot susteene. (1999: 2804-06)

In the gradual corrosion of feudal solidarity between lords and their retainers through the monetary and other contracts and the attendant deterioration of the chivalric culture in the age of bastard feudalism, the gentry were seeking new masters and sources of income. The poet of *Mum and the Sothsegger* complains that covetous knights infest Westminster to earn wages in moot halls by means of maintenance and thuggery rather than chivalric and martial feats:

How Couetise hath caste the knyght on the grene,
 And woneth at Westmynstre to wyne newe spores,
 And can not crepe thens while the crosse walketh.
 He mutiplieth monaye in the mote-halle
 More for his mayntenance and manasshing of wordes
 Thenne with draughte of his swerde or deedes of armes. (1993: 481-86)

The powerful lords set up a web of monetary, military, legal, and other connections amongst their affinities. This web of networks seems to have influenced every phase of people living under the lords' influence, encompassing both minor or major legal affairs. People approached lords with various gifts to seek support in lawsuits, sometimes in return for the gains which they might obtain when winning the suits. The lords then may have put pressure on the jurors, judges or sheriffs in his affinity. But sometimes simply being a retainer of a powerful lord with his badge and livery was enough for the judges and juries to think twice about antagonising him (Bellamy 1989: 96). This certainly

included affinities of ecclesiastical lords. Speaking of prelates, an anonymous Wycliffite writer accuses them of *maintaining* lords and jurors:

And here-fore þei ben worse þan iudas for many skillis, for þei sillen crist in a manere as iudas dide wiþ more dispit & more stynkyng coueitise, & 3it þei hiren lordis to meyntene hem in þis cursednesse, & 3eue pore mennus goodis to hem for þis ende, & hiren also iurouris & oþere gentil men of contre to forswere hem wytyngly on þe bok & not to putten hem vp for extorsioneris & þeues [. . .] (Matthews 1902: 63).

Of course, for Lollards secular lords were no better. A Wycliffite sermon asserts that noble and the gentry maintain lawyers, or

[. . .] holden hem at fees & othere grete costes, for ellis wiþ here wiles & falsnesse þei wolen dryue lordis & gentil men out of here housis, heritage & alle here goodis; & bi þis falsnesse a fewe pore wrecchis my3ten conqueren in-to here owene hondis in schort tyme almost al þe lordischiþe þat may be sold on ony resonable manere. & þou3 it be bou3t opynly a3enst þe lawe, 3it bi cauellacions þes lawieris holden it forþ, þat þe ri3tful heir may as wel bien a straunge lordischiþe as geten his owne. (Matthews 1902: 183-84)

Another Wycliffite sermon claims that they indulged in boasting, pride and gluttony, yet as such, they were valued by worldly men as the ‘best lord & most worschipful, principaly 3if he meyntene his men to bete pore men & do wrongis bi loue daies, holdyng & meyntenyng of causes þat ri3t & lawe may no haue his cours’ (Matthews 1902: 243). The out-of-court settlements, sometimes called ‘loveday’ as in this quotation, were frequently used as a faster, flexible and less expensive alternative to the formal, costly and leaden-footed litigations in common law courts (Powell 1983: 55; Rawcliffe 1984: 34). A variety of individuals and institutions including regular and secular clergy asked the local gentry, noblemen and even royal judges in their unofficial capacity to act as intermediaries in their disputes. Secular magnates and their councils often took on the task of arbitrating disputants as many of the councillors were lawyers, experienced in dispute settlements (Rawcliffe 1984: 37-38). But as in formal litigations, paralegal arbitrations were prone to corruption and intimidation, and ‘there were occasions when lovedays ostensibly appointed for the conclusion of arbitration

degenerated into armed brawls between the supporters of the disputing parties' (Powell 1983: 57). Or in cases where the parties in conflicts were decidedly unequal in power, 'the stronger party might bombard his adversary with a battery of lawsuits in the hope of forcing him to accept arbitration under unfavourable conditions' (ibid., 58). Such a bitter 'loveday' is mentioned by Mind, an allegorical personification of a faculty of the soul in the morality play, *Wisdom*.

'Maintenance' in the Morality Play, *Wisdom*, *Who Is Christ*

The most conspicuous expression of hostility towards maintenance, especially maintenance-in-law, in medieval English drama is seen in the fifteenth-century morality play, *Wisdom*. Like *The Castle of Perseverance* and *Mankind*, the play enacts the fall and repentance of man's soul. It begins with an initial instruction to man's soul by Wisdom who is Christ, followed by a temptation of the soul by the devil and vices and a resultant fall. Then her deprived state of sin is enacted, as are her conversion and repentance, ending in the receiving of God's mercy. One of the important sources of the play is Walter Hilton's writings on the 'mixed life', addressed to the devout lay people in the late Middle Ages. Although Hilton recommends that responsible lay people should carefully maintain the balance of contemplative and active lives, namely, the mixed life, and stay away from the impulse to abandon the secular life entirely, the play as a whole twists Hilton's assertion and points out, through the temptation of the devil and vices, the pitfalls of the mixed life. The devil approaches the human soul, Anima, by dressing up the mixed life as if it were a lifestyle utterly devoted to satisfying worldly and corporeal desires. By showing the fallibility of the mixed life, the play attempts to exhort the conservative values of a contemplative life. It seems that the playwright is also concerned with the newly emerged educated intellectuals who were given the choices of careers as technical bureaucrats within or outside the church including monastic institutions such as Bury St Edmunds where one of the two extant

manuscripts was kept, and where possibly the play was written and/or performed.¹² Practicing as a secular or ecclesiastical lawyer was one of the major career paths for the educated intellectual, which could lead to considerable wealth and a life of luxury, and even to politically significant status in the local and central governments since the important judges and lawyers were parts of the royal and aristocratic affinities maintained by powerful secular or ecclesiastical lords.

After Lucifer succeeds in making Might, the three constituent parts of Anima, succumb to his temptation, the state of human depravity is nearly entirely expressed in Maintenance and its accompanying Vices of judicial corruption as Understanding, one of the fallen Might, says:

At Westmyster, without varyance,
 Be nex terme xall me sore avawnce,
 For retornys, for enbraces, for recordaunce,
 Lyghtlyer to get goode kan no man on lyue. (Eccles 1969: 789-92)¹³

The playwright in this passage accuses the Westminster Crown courts of their uses of briberies ('enbraces') and false testimonies ('recordaunce'). Mind also tells us that, at the Parvis, which was the meeting place of legal professionals and their clients situated in front of St Paul, he and his followers respectively called 'Entret, juge-partynge, and to-supporte' (796), i.e. bribery, judge-sharing and corrupt backing, wait for their clients. But the playwright also mentions corruption at 'the quest of Holborn', which was, according to Mark Eccles's note to his edition, 'probably a jury presided over by the sheriff and justices of Middlesex, who met in High Holborn' (211-12). He then refers to a court at Marshalsea, a court 'held before the steward and the knight-marshal of the king's household' (ibid., 214), that was situated in Southwark in the fifteenth century, and dealt with the legal cases in which one or both of the suitors were royal servants,

¹² On the manuscripts of *Wisdom*, see Mark Eccles's introduction to his edition, especially xxvii-xxx. Gail McMurray Gibson, citing many circumstantial evidences, argues for the possibility of the play's contemporary performance at Bury St. Edmund although it still remains a possibility (1989: 39-66).

¹³ All quotations from *Wisdom* are from Eccles (1969).

and the High Court of Admiralty (853-56), which was also situated in Southwark and dealt with maritime cases. As the playwright seems to have had an impressive knowledge of a quite diverse range of legal courts in metropolitan London, he may well have been a legal professional or at least someone who frequented legal courts.

The play seems most concerned with legal maintenance under the system of bastard feudalism. In fact, one could think that the main topic of the whole play is the state of feudal relationships. The ties uniting Christ and the faithful could be seen to be the ideal of such a relationship which the author must be upholding. It is the love and reliance ('affiance') and obedience that bind the followers to the Lord. Wisdom (Christ) declares his love to mankind:

Off my loue to speke, yt ys myrable,
Beholde now, Sowll, wyth joyfull mynde,
How louely I am, how amyable,
To be halsyde and kyssyde of mankynde.
To all clene sowlys I am full hende
And euer present wer þat þey be;
I loue my lovers wythowtyn ende
That þer loue haue stedfast in me. (41-48)

What Wisdom asks from his followers is love and obedience: 'I aske not ellys of all I substance. / Thy clene hert, þi meke obeysance' (80-81). Anima, on her part, calls Wisdom her 'soueren fayer' (69) and professes her love in the feudal terminology: 'A, soueren joy, my hertys affiance, / The fervowre of my loue to yow I present' (83-84). However, this ideal of feudal affinity is ruined with the fall of Anima and her three constituent Mightys; now the fallen state of man's soul is manifested by the superficial 'frendeschyppe' contrived through 'meyntnace of her schendeschyppe' (maintenance of their shameful conduct) as Mind discusses his lord and allies:

Thys ys a cause of my worschyppe:
I serue myghty lordeschyppe
Ande am in grett tenderschyppe;
Therfor moche folke me dredys.
Men sew to my frendeschyppe

For meyntnance of her schendeschyppe.
 I support hem by lordeschyppe.
 For to get goode þis a grett spede ys. (629-36)

We may recall that this is exactly what the character of the Towneley Pilate represents as discussed in the previous chapter. A while previously, Anima had been professing ‘my hertys affyance’ to Wisdom; now human greed makes the world upside-down as law is replaced by maintenance, truth is trampled by wealth and Mind and Understanding buy up ‘most affyance’:

MYNDE. Law procedyth not for meyntnance.
 WNDYRSTONDYNGE. Trowthe recurythe not for habundance.
 WYLL. And lust ys in so grett vsance,
 We fors yt nought.
 MYNDE. In vs þe worlde hathe most affyance. (653-57)

In such a society, just as we have seen in the works of Gower, Langland and other satirists, the legal court simply functions like a commodity market where, according to Understanding, ‘Wo wyll haue law must haue monye’ (666). In Chapter 3, we have noted that magnates and the powerful gentry may have had their subordinates and men in their affinity empanelled as jurors (Bellamy 1989: 14). In this play also Understanding’s retainers whose allegiance he bought with money can turn into false jurors and witnesses, and they jointly make lucrative frauds:

And I vse jorowry,
 Enbrace questys of perjury,
 Choppe and chonge wyth symonye,
 And take large yeftys.
 Be þe cause neuer so try,
 I preue yt fals, I swere, I lye,
 Wyth a quest of myn affye.
 The redy wey þis now to thryfte ys. (637-44)

Since the jury here is bribed entirely by Understanding, their virtual master, the whole trial is rigged. Immediately following Understanding’s speech above, Will joins the chorus as if an entrepreneur investing a certain capital:

And wat trow 3e be me?
 More þan I take spende I threys thre.
 Sumtyme I yeff, sumtyme þey me,
 Ande am euer fresche and gay. (645-48)

The jurors being retainers of the powerful gentry or aristocrat, they flaunt their master's livery ('a sute') as a stage direction specifies: 'Here entrethe six jorours in a sute, gownyde, wyth hodys about her nekys, hattys of meynenance þervpon, vyseryde dyuersly' (724 SD). Besides, as the jurors are 'vyserde dyuersly', i.e. wearing a Janus-like mask,¹⁴ their allegiance can easily change, perhaps by the rewards they are given as it is with the Towneley Pilate. In such a ruthlessly capitalist court of law, the poor have no chance of a fair trial as Will proclaims: 'Ther pouert ys þe malewrye, / Thow ryght be, he xall neuer renewe' (667-68).

If trials at formal court sessions are so rigged, one can easily imagine the possibility of corruption in paralegal arbitrations out of court. Mind would mobilise his retainers for lovedays under his control. Looking at his liveried retinues of allegorical vices, he declares: 'Lo, here ys a yomandrye wyth loweday to dres!' (698) As we have already discussed regarding *Mum and the Soothsegger*, quashing a possible law suit by resorting to violence is another way to deal with a legal problem in this age of maintenance.¹⁵ In fact, maintenance is inseparable from violence as its essential component is a display and threat of physical force. Will is having a mistress, his 'cosyn Jenet N.', with whom he enjoys an affair when he likes. But when Jenet's man becomes angry and 'myght make hym thys to lawe, / I [Wyl] wolde onys haue hym in þe wyrry' (839-40). Mind also would help his friend by a threat of violence against their opponent:

For thys I kan a remedye:
 I xall rebuk hym thus so dyspytuusly
 þat of hys lyff he xall wery
 And qwak for very fere.
 Ande yff he wyll not leve þerby,

¹⁴ Understanding also says, 'Jorowrs in on hoode beer to facys' (718).

¹⁵ Cf. Barr (1993: 27-28).

On hys bodye he xall abye
 Tyll he leue þat jelousy.
 Nay, suche chorlys I kan lere. (841-48)

But Understanding gives his companion a shrewder idea: he recommends countering a law-suit with another law-suit in a different county court while keeping the adversary blinded about by who and why he is being sued:

Nay, I kan better hym qwytte:
 Arest hym fyrst to pes for fyght,
 Than in another schere hym endyght,
 He ne xall wete by wom ne howe. (849-52)

It seems to have been a common legal tactic to sue an adversary in multiple courts.¹⁶ The three fallen Mightes also seem to be represented as law-enforcement officers such as the sheriff and his men who exploit their positions to extort trumped-up fines ('amendys'), and arrest and release any innocent person simply to gain fines and bribes:

WYLL. Yis, sumtyme I take amendys
 Off hem þat nought offendys,
 I engrose vpe here purs.
 MYNDE. And I arest þer no drede ys,
 Preve forfett þer no mede ys,
 And take to me þat nede ys;
 I reke not thow þey curs.

WNDYRSTONDYNGE. Thow þey curs, never þe wers I fare.
 Thys day I endyght them I herde of neuer are;
 To-morow I wyll aqwyt them, yff nede were.
 Thys lede I my lyff. (802-12)

What the *Wisdom* playwright is trying to demonstrate here is that the human weaknesses and vices which the fall of man spawns is also the root causes of the societal ills, and that they are particularly manifested in the law courts.

In this chapter, we have been trying to elucidate the literary and historical

¹⁶ As was mentioned in the introduction, in 1424 William Paston pursued and sued the local gentry through seven courts including a local manorial court and the central royal courts in Westminster (S. Walker 2006: 107).

background of the allegorical character, Maintenance, in the morality play, *Wisdom*. As the poets of *Mum and the Soothsegger* and *The Simonie*, Gower, Hoccleve and other contemporary authors express, many medieval intellectuals felt that the judicial and law-enforcement system and professionals working in it paid very little regard to the poor and humble, and some of these men preyed upon the poor to line their pockets. As modern historical studies show, late medieval magnates and the powerful gentry manipulated the legal and paralegal institutions to their advantage, by means of what is generally termed as ‘maintenance’ and its modi operandi of bribery, livery, threat, and violence. It is significant that the author of *Wisdom*, a sacramental morality play like *Everyman* and *Mankind*, with its scenes of fall and repentance, chooses to dramatise the contemporary society infested with ‘maintenance’ as epitomising the depth of human depravity.

In the last two chapters, we have examined various literary representations of judicial corruption and their backgrounds. We have seen several pervasive motifs in these representations: the amorality and avaricious practices of judges, lawyers and other minor legal professionals, the marketisation of legal courts, the oppression of the poor and humble, political manoeuvring behind the scene, and legal maintenance. Amongst these elements, political manoeuvring outside the court and legal maintenance may be most characteristic of the judicial corruption portrayed in the late medieval literature. The complaints against judicial corruption continue to be a feature of the Tudor interludes and the sixteenth-century literature generally, but there seem to be some shifts of focus in the sixteenth century, which will be discussed in the next chapter.

Chapter 5

Judicial Corruption in Tudor Interludes

The representation of excessively rich, greedy and corrupt judges, lawyers and other legal personnel, as we have been examining, had already been established by the time of William Langland, John Gower and the Towneley playwright, and continued in early modern England, drama being no exception. In the background of this satirical literature, however, there was widespread awareness and use of legal courts and professionals by all strata of English society. A wide range of people from all sectors of society came into contact with the law in their daily lives in a variety of ways. The frequent complaints against the law courts in literature, in a sense, represent people's exposure to the law and their high expectations of, or at least their dependence upon it. In the sixteenth century, the spread of education at home and in schools led to wider literacy in all classes of society, which in turn helped people's awareness of the law and improved their access to it. To cite but one example of expanding literacy during the years 1520 to 1589, London apprentices were required to sign an oath of obedience to the regulations of the company and the rules of its governors. According to Steve Rappaport, who investigated the Ironmongers' *Apprentices' Book of Oaths*:

Over a period of seven decades a total of 823 oaths were enrolled by Ironmongers and the rate of literacy among their apprentices was very high indeed. From the 1520s through the 1540s, 72 per cent of 294 apprentices were able to write the entire 58-word oath, 19 per cent signed their names and probably wrote the oath as well, and only 25 (9 per cent) of the apprentices subscribed their oaths with marks. (1989: 298)

The ratio further increased in the reign of Elizabeth I, so that in the first two decades of her reign, 'as many as 98 per cent of 529 apprentices could write the entire oath and

only 10 were unable even to sign their names' (Rappaport 1989: 298-99). Speaking of the jurors in Hertfordshire in late Elizabethan and early Stuart periods, P. G. Lawson writes, 'It seems probable that many, possibly most, of Hertfordshire's grand and trial jurors were literate. [. . .] most of the presentment jurors who were required to sign presentments between 1589 and 1618 were able to do so with a signature rather than mark' (1988: 142).

In the middle decades of the sixteenth century, England witnessed a spectacular increase in litigation in the common law courts.¹ The newly powerful people of 'middling sort', 'yeomen, husbandmen, artisans, merchants, retailers', brought a vast number of litigations to the common law courts (Prest 1981: 71). The use of the law courts reached all segments of early modern English society. The high expectations which people had of these courts, however, may not have been satisfactorily met in reality. Literature hostile to judges and lawyers continued to be written by authors of polemical works and Protestant preachers, some of whom will be mentioned in this chapter. In this period of early modern England when the use of law was precipitately expanding, the interlude drama was breaking with the convention of Catholic sacramental drama and, while retaining the essentially allegorical mode of expressing ideas, took up a wide range of broadly social issues confronting the sixteenth-century audiences. The contemporary social issues which incidentally appear in the late medieval Catholic drama as we have seen in the previous chapters now occupy the centre stage in many Tudor interludes. Since the bulk of the interludes were performed in schools and universities, halls of the gentry, and royal and aristocratic courts, they are more focused in choosing their topics than Corpus Christi plays or sacramental morality plays such as *The Castle of Perseverance* and *Everyman*, which were played outdoors in street as were the York and Chester Corpus Christi plays, or on temporary scaffolds as the Digby *Mary Magdalene* and some of the sacramental morality plays, to audiences of fairly mixed social ranks. Most of the audiences of interludes, on the other hand, came

¹ 'Whereas in 1560 there was about 5,000 cases at advanced stage in the central common law courts of King's Bench and Common Pleas, by the beginning of the reign of James I the figure was over 23,000' (Archer 1999: 45).

from relatively wealthy strata of the society who frequented halls, courts and educational institutions. Some of their topics included, for instance, power of money and capitalism, matter of birth versus nurture, education of children and youths, self-improvement and success through secular education, oppression of the poor, crime and delinquency, tyranny and good rule, problems caused by personal vices such as debauchery and drunkenness, and judicial corruption.² These and some other topics are often intermingled with each other and may be taken up simultaneously in the same play. Most of the plays are also ideologically underpinned by Protestantism and humanism. This chapter shall investigate the representation of one of the above topics, judicial corruption, in the early modern interludes in the light of related non-dramatic literature and historical backgrounds. In so doing, I hope to show how the rapidly changing dramatic mode of the early modern interlude is adapting itself to exigencies of the new era.

Malfunctions of Legal Procedure: Delays and Excessive Costs

Judicial corruption and malfunction are one of the more prominent motifs in Tudor interludes. As we have suggested, increasing awareness and use of the law amongst all strata of society must necessarily have exposed problems of the legal system to consumers of the law in late medieval and early modern England. With the ever-widening influence of the crown courts in London, and their provincial agents in the forms of eyres, commissions of gaol deliveries and oyer and terminer, assizes, quarter sessions and so on, complaints about the law and legal machinery and officials were having wider circulation with shared motifs, which will be elaborated on in this chapter. The Crown, being aware of the importance of judicial integrity, and apprehensive of judicial corruption and dysfunction, put measures to safeguard its workings: 'the public was informed that if any man was abused by a justice he could seek remedy from a neighbouring justice, then from a justice of assize, and, in the last

² Grantley (2004) lists significant topics treated in each interlude.

instance, from the king or his chancellor' (Mackie 1952: 197). In contrast to the recurring denunciation of corrupt judges in literature, 'the integrity of the judges as a body was continually stressed – the bench liked to portray itself as a body beyond reproach' (O'Day 2000: 145).

Perhaps, the spotless righteousness expected of judges and lawyers was too rigorous for them to maintain in their trade in the real world. First of all, the legal institutions and their ministers were modelled on the Church and clergy. The practitioners of the law are 'supposed to hold a moral high ground similar to [that of a] priest' (O'Day 2000: 114). As we touched in Chapters 2 and 3, many medieval judges and lawyers working secular courts and administrative offices of the Crown were beneficed churchmen in absentia, and, although many of those ecclesiastical offices were simply rewards of their pursuits as legal professionals, suitors may have assumed that their behaviours were as saintly and unblemished as their spiritual titles required. C. W. Brooks writes about the high expectation which early modern people harboured towards the law:

But at the level of highest theory and in the minds of laymen, law was more than a mere arbiter; it was a reflection of God's will about the way the world should be, a set of precepts which protected property and enabled men to tell right from wrong (1986: 133).

Now, the once all-powerful authority of the Church was crumbling because of the Reformation, the secular law courts came near the top of the list of old establishments to be hated. Secondly, in the age of the Reformation, there was a heightened sense of sin in English society, especially amongst the Protestants, which was connected to their attacks on the old establishments:

[. . .] protestants' attacks on sin were both a means of indicting the old order and validating the new, for God was clearly on the side of those who were most vehement against sin, and opposed to those who appeared to condone it (Archer 1991: 251).

The criticisms of lawyers in polemical literature may in part have originated from such an impulse.

The larger number of often trivial lawsuits brought by plaintiffs unaccustomed to the complex legal machinery may well have increased complaints against the law. The litigious nature of the English had been noted since the Middle Ages. Historians remark that, after around the mid-sixteenth century, the number of litigations in England rose dramatically. Contemporary critics of the legal system also deplored the people's litigiousness; as William Harrison writes: 'men are grown to be far more contentious than they have been in time past, and readier to revenge their quarrels of small importance' (1968: 91). The Puritan propagandist, Philip Stubbs, in his *The Anatomy of Abuses in England* (1583), put his case more vehemently, calling the suitors 'fools [. . .] that, whilst they might haue iustice at home in their owne country, and all matters of controuersie decided amonst neighbors and friends at home, will yet go to lawe two or three hundred miles distant from them, and spend all that they haue to inrich a sort of greedie lawiers' (1882: 10). Stubbs indicates that English suitors' litigiousness was so self-destructive that 'either both, or at least the one [of the parties], become a begger all daies of his life after' (1882: 10).

In late medieval England, some sectors of the society below the nobility apparently perceived the law as the instrument of oppression (Walker 2006: 101). At the beginning of the sixteenth century, however, the law itself was not so often blamed as its uses by legal professionals were as Philip Stubbs indicates in *The Anatomy of Abuses*. This polemical pamphlet is written in the form of a dialogue between two non-English people in a foreign land. One of them is Philoponus, a cosmopolitan and worldly-wise traveller, who just returned from a long sojourn in England, and the other is Spudeus, who considers himself 'a Countrey man, rude and vnlearned' and is eager to learn from Philoponus's experiences. Philoponus explains to his friend about the corrupt state of English legal professionals:

Spud. What is the cause why these lawes are not executed, as they ought to be?

Philo. Truly I cannot tell, except it be thorow the negligence and corruption of the inferiour Magistrates: or els perhaps (which thing happeneth now & then) for mony they are bought out, disfranchized, and dispensed withal, for

as the saying is, Pecunia omnia potest. Money can do all things. And yet notwithstanding, shall it be done inuisibly in a cloud (vnder benedicite I speak it) the Prince being borne in hand that the same are duly executed. This fault is the corruption of those that are put in trust to see them executed (as I haue told you) and notwithstanding do not.

Spud. Theis is a great abuse doubtlesse, and worthy of great punishment.

Philo. It is so truly, for if they be good lawes, tending to the glorie of God, the publike weale of the Cuntrey, and correction of vice, it is great pity that mony should buy the[m] out. For what is that els, but to sell vertue for lucre: Godlines for drosse, yea, mens souls for corruptible money? (2002: 254)

In a fragment of an anonymous interlude, *Albion Knight* (1537-66),³ Justice, a Virtue, complains that a just legislation can only ‘sleep’ if it is disadvantageous to temporal or spiritual lords. Although being a fragment, the play’s main concern seems to be the division within the society, as Injury, the Vice, in league with Division and other roguish spies, try to instigate hostility between the Crown and the subjects, and between the spiritual and temporal lords.⁴ Thus, good laws could be made but are likely to be useless for common people in the face of the more powerful classes in the society. Justice says to Albion, who signifies England,

And if that Marchauntes be moouid with all
Or anie multitude of the comen hall
This is not for vs say they than
This bill is naught but for to wype a pan [. . .] (80-83).⁵

Injury further adds,

But when all is done and your statute made
Then foorth ye go in a wise trade
To brynge it all to good conclusion
And put it neuer in executyon

³ This and the ensuing descriptions of the dates and authorships of interludes are taken from Grantley (2004).

⁴ According to Grantley, the play refers to ‘the dissension between the “new” or rising men who had become prominent in Henry VIII’s administration and the established aristocracy. It also voices concern over the relationship between crown and parliament.’ (2004: 14)

⁵ All quotations from *Albion Knight* are taken from *The Malone Society Collections* 1:3, edited by W. W. Greg (1907).

Then speake they further instead of a mocke
 They haue made a statute lyke a woodkocke
 That hath but one eye and the other blynde
 And it wyll turne with euery wynd [. . .] (100-08).

One of the more conspicuous grievances about the legal system is the lengthiness of lawsuits, resulting in enormous costs and futility felt by people in terms of the entire legal procedure. Stubbs typically deplores that ‘you shall haue a matter hang in sute after it is commenced a quarter of a yeere, halfe a yeare, yea, a twelue month, two or three yeeres together, yea, seauen or eight yeeres now and then, if either friends or money can be made’ (1882: 9). This motif is also featured in *A Satire of the Three Estates* (1540-54),⁶ a highly political and elaborate Scottish play by Sir David Lindsay, performed before the royal court, in which the author conveys his message of the need to reform the Scottish government, and especially the Catholic Church in Scotland. It is an example of a large-scale morality play with the figure of Rex Humanitas as a central human soul, surrounded by such allegorical characters as Wantonness, Placebo, Verity and Chastity amongst many others, as well as the representations of the estates in the Scottish society, namely, Abbot, Prioress, Spirituality, Temporality, Johne the Common-Weill, Pauper, Taylor and others. Lindsay condemns the futility of the secular and ecclesiastical legal systems as a more salient part of social iniquities in Scotland. Pauper, who generally voices the frustration felt by the poor, enters a suit against a neighbour over his mare, which the neighbour drowned. After all the struggles with abstruse procedures in court, he runs out of funds to continue the suit, so they postpone the proceedings for two years. Finally, when they give a sentence, he is ‘wonder faine’, but of course he never gets his mare back (3072-91).⁷

Contemporary voices often accuse lawyers of profiting from such delay. Henry Brinklow, a Protestant polemic and a London mercer who favoured evangelical reform,

⁶ Hereafter, I shall use a shortened title of *The Three Estates*. I include this play in my discussion because, although the play clearly reflects circumstances specific to Scottish politics of the period, it also shares much with the interludes from the south of the border regarding legal corruption.

⁷ The reference is to Lyall’s edition (1989). All succeeding quotations from *The Three Estates* are also taken from this edition.

is one of them: ‘Oh, the innumerabyl wyles, craftys, sotyltes, and delays that be in the lawe, which the lawyers wil neuer spye, because of their priuate luces sake; wherby the comon welth is robbed’ (‘Complaynt of Roderyck Mors’ 1972: 21).⁸ A Puritan preacher and social reformer incumbent in London parishes during the reign of Elizabeth I, Robert Crowley tells lawyers to speed up trials, implying that many lawyers make delays and by so doing earn more fees:

If thou be a mans attorney,
In any court where so it be,
Let him not waite and spende money,
If his dispatch do lie in the.
Apply his matter earnestly,
And set him going home againe,
And take no more then thy dutie;
For God shall recompence thi paine.

(‘The Voice of the Last Trumpet’ 1972: 933-40)⁹

Hugh Latimer, a Protestant reformer and bishop of Worcester, in his sermon before Edward VI in 1549, denounced lawyers for ‘deferring and prolonging of matters and actions from term to term, and in the tracting of time in the same’ (*Seven Sermons* 1844: 110). Thomas Starkey, a humanist scholar and political theorist, and at one time a chaplain of Henry VIII, also sees that many suits are delayed for two, three, or four years and more which, he thinks, could be finished, not in years, but in a matter of days. In his *The Dialogue between Pole and Lupset* (c. 1532), he considers that this is partly because ‘these hungry advocates and cormorants of the court study much to delay causes for their lucre and profit’ (1948: 113). In *All for Money* (1559-77), the author, Thomas Lupton, who was a Protestant and nationalistic polemicist known for his dislike of the money economy, describes morally corrosive power of money in a series of brief episodes, some of which involves the law. A character in one of those episodes, Nichol Never Out of Law, is a self-centred greedy fellow, who tries to deprive his neighbour of a piece of land in court. Since he fears he has no legitimate claim on the land, he bribes

⁸ Originally published in c. 1542.

⁹ Originally published in 1549.

the judge to stay the decision until the next term, and the judge, called All for Money, agrees (4.308-10). As in the case of Nichol, litigants might have willingly benefited from any tactics available, including delaying procedures, as long as they worked for them, but society generally blamed lawyers rather than litigants for the abuses and failings of the law (Prest 1981: 73). In church courts, also 'uncooperative parties and their proctors could slow down the hearing of causes even when summary proceedings had been ordered' (Houlbrooke 1979: 42).

Aside from legitimate or dubious tactics of litigants and lawyers to purposely lengthen procedures, there were other possible reasons for long lawsuits. The actual pleading and sentencing in late medieval and early modern courts seem to have been frighteningly brief, a kind of a summary justice, judged by modern standards. R. B. Pugh writes that 'in Edward I's time trials could possibly average as little as nine minutes a man', and, if judges became a little more circumspect in the early modern period, 'in 1678 thirty-six persons were adjudged at the Old Bailey in two days' (1983: 109). In fact, medieval and early modern juries were not expected to spend a great deal of time trying to find out what the truths of the case were: they were assumed to be familiar with the case before attending the trial (Baker 2002: 75), and to have already formulated some opinions (Lawson 1988: 141), since they were supposed to have been chosen from the community where the disputed case occurred.

The reasons for the delays must therefore lie somewhere else. One of the more feasible suggestions is the infrequency of sessions. With various breaks and holidays, in the reign of Elizabeth I, the number of the days when the royal courts in Westminster sat amounted only to ninety-nine (Baker 2002: 65). In the provinces it could have been worse as they had to wait for one of the itinerant and infrequent courts such as gaol deliveries or assizes to come around. Provincial people could of course resort to London crown courts, with all the days and months spent in the capital, travelling and expenses it entailed, or they could file suits in locally-based courts such as quarter sessions and manor courts or, depending on the nature of the case, in church courts. In fact, the wide array of secular and ecclesiastical, central and provincial courts must have confused

suitors, and cost them much time and money. Pauper in *The Three Estates*, residing close to Edinburgh, wishes to go all the way to a court in St Andrews to file a suit although, as Diligence wonders, ‘to seik law, in Edinburgh was the neirest way’ (1972).

But Pauper replies:

Sir, I socht law thair this monie deir day,
Bot I cult get nane at Sessioun nor Seinye:
Thaierfoir the mekill dum Devill droun all the meinye. (1973-75)

That is, he has already spent many days at a secular court (‘Sessions’) and consistory court (‘Seinye’) in Edinburgh to no avail, and now intends to go to another city. Philip Stubbs expresses a similar sense of futility and frustration:

But if the lawes within euery particular countie or shire were dylie administered without parcialite, and truly executed with all expedition, as they ought, and not so lingered as they be, then needed not the poor people to run 100, 200, yea 300, or 400 miles (as commonly they doe) to seek iustice, when they might haue it neerer home: through the want whereof, besides that their sutes are like to hang in ballance peradventure seuen yeeres, they, hauing spent al, in the end fall to extreme beggerie; which inconuenience might easilie be removed, if all matters and causes whatsoever were heard at home in their owne shire or countie with expedition. (1882: 9)¹⁰

Henry Brinklow also deplures ‘what shame is it to remoue it [a suit] from that court to another, as though the kyng were more strongar or more iuster in one court than in another’, and he thinks that this is a strategy ‘to prolong delay, and to wery hym that is in the right’ (1987: 26).

Another possible reason for lengthy suits is, as discussed in the previous chapter, that sheriffs and other law enforcement officials could decide not to act on writs sent from

¹⁰ William Harrison in his *The Description of the England* (1577), voices a similar complaint:

[. . .] albeit the princes heretofore reigning in this land have erected sundry courts, especially of the chancery at York and Ludlow, for the ease of poor men dwelling in those parts, yet will the poorest (of all men commonly most contentions) rather, to his utter undoing, to travel up to London, thinking there soonest prevail against his adversary, though his case be never so doubtful. (1968: 175)

courts. Stubbs mentions that they may ‘returne a Tarde venit, or a Non est inuentus’ for fees, bribes, or personal friendship (1882: 16). All the pleading and deliberation in courts would have come to nothing if the officials, especially sheriffs, did not act on judicial writs. It was not, however, always necessarily a consequence of straightforward corruption: according to J. H. Baker, since the sheriff could not claim expenses and could be liable for damages if mistakes occurred, he was understandably reluctant to execute judicial writs (2002: 65).

As we have seen in Chapter 3, in the late Middle Ages and early modern period, with the gradual demise of the feudal system and the concomitant escalation of a capitalist economy, the law became a kind of consumable commodity. Litigation was one activity which anyone with some money could participate in, regardless of his or her class or social standing:

Recourse to the law can itself be seen as a form of conspicuous expenditure. Consumer demand may have driven the rapid growth in the types of writs available to initiate a legal action, which rose from around fifty in the early thirteenth century, to 900 a century later, and 2,500 by the early sixteenth century. (Kowaleski 2006: 257)

In a way, early modern suitors were able to ‘shop around’, as it were, to find a right court at affordable cost for their cases. In that respect, the English legal system boasted noteworthy accessibility. In other words, money mattered very much in law, and thus there were inevitable grievances about the excessive legal costs. Fundamentally, using the royal courts was not a right of subjects, but a privilege for which suitors were asked to pay by purchasing writs (Baker 2002: 54). Suitors had to be prepared to pay fees for courts and lawyers, as well as their own travel and all other expenses to attend sessions. As the earlier quotations from Lindsay and Stubbs indicate, the cost and time spent on travel to courts in the capitals and other regional centres in England and Scotland seem to have been a tremendous burden on litigants. Moreover, since they could not practically remain near the places of the courts until the suit came to conclusion, they needed to employ attorneys to represent them, who, the litigants sometimes suspected,

might be taking advantage of their ignorance, doing hardly anything for them:

[. . .] some of them [lawyers] will not come from their chambers to the Guildhall in London under £10, or twenty nobles at the least. And one, being demanded why he made so much of his travel, answered that it was but folly for him to go so far when he was assured to get more money by sitting still at home. (Harrison 1968: 174)

As this complaint indicates, many grievances about the costliness of the law blame the greed of lawyers and other legal professionals including judges, legal scribes, and law-enforcement officials.¹¹ The general gist of these complaints is that lawyers and judges exploit the arcane and impenetrable procedures and stratagems of the law courts for their own enrichment. Satirical depictions of medieval and early modern lawyers and judges are legion, but legal historians generally discount such depictions, attributing the images of lawyers in literature more to the tradition of classical and medieval venality satires than to the reality.¹²

Early modern English society had a different set of standards for what constitutes judicial corruption from those prevalent today. In the early modern period, a major aspect of the reality was that many legal professionals needed patronage in various forms for a successful career. This included knowing aristocrats and other dignitaries as well as professional colleagues. In fact, dynastic connections could well be the key to their success, having the right parents, and/or being married and related to other judges and lawyers (O'Day 2000: 146-47), which could have led to accusations of partiality. Moreover, modern historians attest that judges and lawyers were not as well-paid as they appear in literary descriptions. As the government lacked established sources of revenue to maintain a large number of legally trained officials including judges, they were constantly underpaid (Wilson 2007: 224). In Chapter 3, we have mentioned that medieval judges were not given sufficient salaries so that they had to earn extra income

¹¹ For detailed treatments of this topic in the early modern period, see Ives (1959-60: 130-61) and Prest (1991: 67-95).

¹² On modern historians' views on the satire of the early modern lawyers, see Prest (1991: 72-73).

from other resources. In the sixteenth century, judges were still forced to supplement their salaries with gifts and fees for providing advice to private citizens, if not directly to the litigants in the cases before them (Prest 1991: 77). Henry Brinklow was troubled by the fact that judges and lawyers depended financially on litigants' fees and gifts, and asserts that they should be given a stipend instead:

As to geue a stipend to all and euery man of law that sytteth as a iudge, or pleatyth at the barre in any of his high cowrtys thorow the reame, that euery one may lyue (according to his office) lyke a lawyer, and not lyke a lord, as thei doo with such goodys as thei haue gotten by robbying the pore. I meane not but that the suters shal pay for writing all things; but for councel or for his pleating to pay nothing. (1824: 23)

E.V. Ives classifies the payments to the lawyers during litigation into three categories, namely:

[. . .] costs incurred on behalf of the client for court fees, documents and searches; any fee due to the lawyer himself for this, or for conducting formal stages in process; payment for argument or representation before the bench. Nevertheless, it is not always possible to make precise distinctions between categories, and especially between what a lawyer had to pay clerks and officials and what he charged for this own time and effort. (1983: 302)

Therefore, not all the payments litigants made to lawyers were going to enrich the lawyers themselves. The lawyers, especially the wealthy ones, must have earned various ancillary incomes in addition to regular fees. Ives notes that some litigants spent considerable sums in varied payments 'in kind', which may have caused them to appear very rich outwardly to the eyes of outsiders. One common element throughout the medieval and early modern periods is lavish food and entertainment:

In Michaelmas 1471 the Pastons spent 2 pounds on fees for counsel and 2s. 4d. on wine and pears, a "service charge" nearly six per cent. But that was modest. In 1481 the city of Canterbury spent 37s. 5 1/2d. in a fortnight on entertaining the counsel, court officers and others with influence, and on gifts. (1983: 305)

Another payment to retain a lawyer is the robe of livery. For instance, 'Sir John Fastolf

provided attorneys with a garment worth 8s. but counsel with one worth 10s' (1983: 305). There were more substantial and lasting remunerations:

John Sulyard appears to have been paid by the transfer to him of a wardship. William Nottigham, A. G. and then C. B. Ex., had the life tenancy of a house in Gloucester owned by the earl of Shrewsbury; Richard Brook, also chief baron, occupied his London home by gift of the earl of Northumberland, rent free. (1983: 306)

The ill-repute which legal professionals acquired in late medieval and early modern literature including drama can partly be attributed to the envy towards their unique and rising status as an independent professional group with a solid skill and qualification in an increasingly fluid society, employed not only in law courts but by the central government. John Guy attributes Henry VII's successful kingship in large part to 'the service of hard-working and experienced councillors' (1988: 10), many of whom were skilled clergy such as Cardinal John Morton and Bishop Richard Fox and lawyers and administrators such as Sir Reynold Bray, Sir Richard Empson and Edmund Dudley. According to Guy, 'Henry VII had 227 councillors between 1485 and 1509: 43 nobles, 61 ecclesiastics, 45 courtiers, 49 officials, and 27 lawyers' (1988: 10-11). Henry increasingly gave more power to 'inner councils within the Council [. . .] in the hands of fewer men, mainly lawyers' (Brigden 2000: 35-36). Owing to such a preference of the monarch for having skilled clergy and lawyers in the government, and rapidly increasing litigation in all branches of the central common law courts, the law may have appeared to be the most promising career path along which ambitious families would send their sons.¹³ For those with some legal training who were not aiming at prestigious posts such as a judge or a barrister, there were numerous minor clerkly employments in various courts in the capital and provinces.¹⁴ Their scribal and legal knowledge was an asset for appointments in households of aristocrats and the gentry (Maddern 2006: 130).

¹³ Along with the two universities, the Inns of Courts became 'fashionable finishing schools for the sons of the nobility and the gentry' (Brooks 1981: 54); see also Grantley 2000: 24).

¹⁴ On the legal profession in provinces, see Brooks (1981: 45-53).

Equipped with professional skills and newly acquired wealth, lawyers appear unsuitably lordly to Stubbs:

Vpon the other side, the Lawyers they ruffle it out in their silks, Veluets and chaines of gold: They build gorgious houses, & stately // Turrets. They keepe a Port like mighty Potentates, they haue their bandes and retinues of men attendant vpon them dayly, they purchase Castles and Towers, lands and Lordships, and what not? (2002: 170)

On the other hand, the lives of most lawyers were rather modest, and many petty lawyers only hoped to hold on to the social status they had inherited within their families (Maddern 2006: 132). The law, according to Christopher Brooks, was ‘a high-risk career’ and ‘many barristers failed to establish large practices’ (1994: 114). The hostility towards them must have stemmed from the jealousy felt by the people of middling social status, who felt envious of the meteoric rise of some of the more prominent members of the legal profession. For them, many lawyers must have seemed to be arrogant upstarts who ‘were not much more than servants, and often of very modest birth without inherent lordship or inherited wealth’ (Rubin 2006: 400). In brief, they were the lightning rod for the anxieties people felt about the rapidly changing society.

The Judges and Lawyers in Interludes: Corruption and Rectitude

The independently working common lawyers who often appear in the plays for commercial theatres had not emerged as a distinct group of stage characters in Tudor interludes. Instead, some characters who wield legal power are judges, such as Apius in *Apius and Virginia* (1559-67) written by ‘R. B.’, Sisamnes in Thomas Preston’s *Cambises* (1558-69), and Promos in George Whetstone’s *Promos and Cassandra* (1578). They are classical or foreign characters, acting like tyrannical rulers in the king’s absence, and thus somewhat removed from the contemporary judges in the early modern law courts. We also find some professional judges who are not rulers, such as

the eponymous character of the allegorical play, *All for Money*, the allegorical character of ‘Judge’ in the anonymous interlude *The Contention between Liberality and Prodigality* (1567-68),¹⁵ Severity, the judge in Ulpian Fulwell’s *Like Will to Like* (1562-68), Daniel, the judge in anonymous *Nice Wanton* (1547-53) and Severus the Markgrave, the judge in George Gascoigne’s *The Glass of Government*, possibly a closet play printed in 1575. In addition, there is one honest judge, Iudex, and two lecherous elders, Sensualitas and Voluptas, who are also called judges in Thomas Garter’s *The Most Virtuous and Godly Susanna* (1563-69). Although the common lawyer who has been trained in one of the Inns of Law and practises his trade in the central common law courts in Westminster is not easily found in the interludes examined for this study, there are two relatively minor legal professionals in *Promos and Cassandra*, Phallax and Ulrico. Phallax is a churlish rogue in the tradition of Vice, and Ulrico an honest counsel to the king. In addition, Haphazard in *Apius and Virginia* and Ambidexter in *Cambises* are also Vices, playing a role similar to Phallax, although they are not specified as lawyers or legal clerks. As Haphazard gives some legal opinions, the contemporary audience may have taken him for a lawyer at one time or another.

Despite the interests in the common lawyers shown by the authors of polemical literature, their absence in drama of the period is puzzling. The fact is that the contemporary audiences of the interludes were not yet sufficiently interested in, or troubled by, the common lawyer as a distinct type of professional. In view of the rather frequent appearances of judges, however, along with a few lawyers and quite a few appearances of minor legal and law enforcement officials such as sheriffs, constables, bailiffs, court scribes and gaolers amongst others, overall interest in the legal and law enforcement personnel is quite strong in interludes.

Contemporary authors of polemic literature frequently decry corrupt judges and lawyers. To cite just one example, Thomas Starkey protests the greed and partiality of judges:

¹⁵ Hereafter, this play will be referred as *Liberality and Prodigality*.

Judges and ministers of the law, you see how little regard, also, they have of good and true administration of justice. Lucre and affection ruleth all therein, for, as it is commonly and truly also said, 'Matters be ended as they be friended.' If they judges be his friend whose cause is entreated, the matter lightly cannot go amiss, but ever it shall be finished according to his desire. (1948: 86)

It is difficult to ascertain how corrupt or clean the legal profession was in early modern England. As I have discussed, there were various gifts and retainers given to lawyers, which were quite ordinary and considered to be within the bounds of professional morality at that time, but which could never be allowed in our age. Historians of legal professions generally discount existence of frequent and structurally rooted judicial corruption, and if there were evidences of apparent corruption, it is difficult to place them beyond or within the very fine line distinguishing ordinary gifts and bribes. For instance, regarding the Fastolf papers, E.V. Ives writes:

There were several occasions when Sir John [Fastolf] paid out money to 'expedite' his pleas, once to a clerk in the exchequer but most often to the king's attorney. Litigants regularly solicited ministers and men in the king's confidence for their support. (1983: 310)

Ives thinks that only a very small number of payments recorded in Fastolf papers points to bribery even though Sir John Fastolf was 'a chronic, almost a professional litigant and his executors and agents were deeply versed in litigation' (ibid., 311). Thus, Ives surmises, 'If those who knew all the tricks of the trade did not go in for wholesale corruption, the ordinary litigant was even less likely to do so' (ibid., 311). Regarding the church courts, Brian L. Woodcock, who investigated medieval ecclesiastical courts in the diocese of Canterbury, writes, 'While the evidence of corruption, on even a small scale, is lacking, opportunities were certainly not lacking' (1952: 111). He adds that 'The opportunities for corrupt practice on the part of apparitors were notorious' (ibid., 111). As for other professionals of the church courts,

The judges and registrars had several opportunities for accepting payments 'out

of court' and manipulating the official records. Fees need not be paid in court. Absolutions from sentences of excommunication and suspension could be granted in private. Gifts were certainly received to augment the official fees. (ibid., 112)

However, on the whole, from the surviving records, Woodcock has the impression that 'these higher officials of the courts regarded their occupations as a duty and not as an opportunity for plunder' (ibid., 112).

As we have discussed in Chapters 2 and 3, many medieval judges in secular courts were beneficed ecclesiastics, and the most important part of their work was to judge how trustworthy defendants, plaintiffs and witnesses were; it was not very important to examine minutely the forensic evidence or consistency of testimonies as it is for modern judges. The judge himself is expected to have a priestly moral rectitude as well as the expertise on law and legal procedure, so that he can evaluate the personality of those testifying in his court. Perhaps the harsh accusations of corruption of judges such as Starkey's, in a sense, expresses the betrayal of the trust which the society wished to place on him.

Amongst the interludes, the Peddler in *The Pedlar's Prophecy*, a play written about 1561-3 by an anonymous author, possibly Robert Wilson, accuses *all* judges of seeking rewards and gift and of perverting justice:

All Iudges quoth he, loue rewards and follow gifts,
They peruert iustice, and equall iudgement:
To saue malefactors, they make fowle shifts,
And some receiue mony to condemne the innocent. (1499-1502)¹⁶

Thomas Lupton's *All for Money*, in fact, features a judge literally called 'All for Money', who fabricates favourable judgements according to the bribes he gets. Unlike the allegorised All for Money, Sisamnes in Thomas Preston's *Cambises*, is a corrupt judge with more personal characteristics. He is a judge whose professional expertise the king and others seem to value. As Cambises considers him as his proxy while he goes away

¹⁶ All quotations from *The Pedlar's Prophecy* are taken from Greg (1914).

to war, he says of Sisamnes, 'A judge he is of prudent skil, even he shal beare the sway / In absence mine, when from the land I doo departe my way' (57-58).¹⁷ A counsellor to the king agrees with the king's judgement, praising Sisamnes's legal qualification, but harbouring some reservations about his conscience:

Pleaseth your Grace, I judge of him to be a man right fit,
 For he is learned in the law, having the gift of wit.
 In your Graces presinct I doo not view for it a meeter man.
 His learning is of good effect, bring prooffe thereof I can.
 I doo not knowe what is his life, his conscience hid from me.
 I dout not but the feare of God before his eyes to be. (61-66)

After the king departs, Sisamnes virtually becomes ruler. In this play, the judge seems to have been given an executive power in the king's absence. Because of his newly acquired power and wealth, he loses his head, and becomes a greedy and corrupt tyrant:

Now may I were the brodered garde, and lye in down bed soft.
 Now may I purchase house and land and have all at my will.
 Now may build a princely place my minde for to fulfil.
 Now may I abrogate the law as I shall think it good.
 If anyone me now offend, I may demaund his blood.
 Acoording to the proverb olde, my mouth I wil up-make.
 Now it dooth lye all in my hand to leave or els to take,
 To deale with justice to my bound and so to live in hope. (114-21)

Thereafter he begins to mete out judgements according to the bribes suitors offer, just as Pilate in the Towneley cycle and the eponymous principal figure of *All for Money* do. Preston may be suggesting that the judge went astray when he was given the executive power unsuitable for his original status and expertise. *Cambises* shares with some other interludes the motif that the poor are particularly trampled upon by legal authorities. This motif is inherited from medieval satirical literature as discussed in Chapter 4 and also appears in Lindsay's *Three Estates*. Small Habilitie, a poor suitor, comes to see Sisamnes and complains that he cannot afford to give a bribe (328-29). He also speaks for the Commons:

¹⁷ All quotations from *Cambises* are taken from Creeth (1966).

The Commons of you doo complain from them you devocate
 With anguish great and grevos words their harts doo penetrate.
 The right you sel unto the wrong, your private gain to win.
 You violate the simple man and count it for no sin. (330-33)

In sum, Sisamnes is still similar to allegorised characters of Greed, yet has developed some individuality.

The two evil judges, Voluptas and Sensualitas, in *The Most Virtuous and Godly Susanna*, on the other hand, are literally allegorical embodiments of Lust. Yet, as is Sisamnes, they seem also materially corrupt since Ioachim, the husband of the heroine, Susanna, has some doubt about the judges' morality:

Are not the judges yet come here, alas what is their care,
 They waygh at all no pore mans case, but plye their daintye fare,
 I hearde of late, I trust not true, they care not who doe curse,
 Or who doe blesse they force it not, so they may fyll their purse,
 Oh Lord thou knowest how thou doest hate, y^e wicked bribing wight,
 And I know Lord not one at all, can hyde him from thy sight,
 And if they be such wicked men, as Fame hath spread for true,
 Doe teache them Lord to mend their fault, & frame themselues anew. (836-43)¹⁸

However, their pecuniary greed is not developed further in the play, nor do they particularly demonstrate their judicial power, which is here reserved for the righteous judge, Iudex. Instead, the two evil judges act like common criminal voyeurs, and then threaten the heroine into lying with them, or, they tell her, they would spread a malicious rumour that she is fornicating with a young man. Since she refuses to succumb to the threat, they lead her away to another judge, Iudex, to charge her of the fabricated crime. The case itself is presided not by these two judges, but by Iudex, and these corrupt judges give false testimonies about Susanna's conduct. Iudex, although a righteous judge, seems to entertain no doubt about the testimonies, which perhaps shows he trusts his colleagues without question.

¹⁸ All quotations from *The Most Virtuous and Godly Susanna* are taken from Evans and Greg (1937).

Apius and Promos are not concerned with enriching their coffers but obsessed with immoral lust for a woman. These judges abuse their court and legal authority to summon the women and slake their lust. In this respect, they are somewhat distinct from the stereotype of materially greedy figures of judges and lawyers. Whereas Sisamnes is specially promoted to rule the country while the king is away, Apius and Promos, being virtual rulers from the outset of the plays, need not crave for, and wallow in, wealth and luxury as Sisamnes does. Their characterisation, therefore, appears to be more as a ruler who also sits as a judge in his court like those of the tyrants in cycle drama, rather than vice versa. Yet, as is Sisamnes's fall, their moral undoing is triggered as they confuse the power of a judge, a technical administrator, with that of a prince. In the case of Apius, his deputy Haphazard, who may have some legal knowledge as a subordinate of a judge, counsels him to initiate a kind of legal procedure in which they will have a certain false witness claim that Virginia is not a true daughter of Virginius but has been kidnapped by him, so that Apius may detain her in confinement as it pleases him, a proposal to which Apius, with some hesitation, agrees.

Promos is the most elaborately drawn character amongst the judges in interludes. At his first appearance, he demonstrates his legal authority to city dignitaries by having Phallax read out 'the Kinges Letters Patents, which must be fayre written in parchment, with some great *counterfeat* seale' (SD, p. 446, my emphasis).¹⁹ Alarmed by the rampant crimes, Promos tries to maintain peace and buttress his authority by delivering very severe judgements:

Tis strange to thinke what swarms of unthrifts live
 Within this towne, by rapine spoyle and theft:
 That were it not that Justice ofte them greeve,
 The just mans goods by Ruffers should be reft.
 At this our Syse, are thirty judgde to dye,
 Whose falles I see their fellowes smally feare:
 So that the way is by severity
 Such wicked weedes even by the rootes to teare:
 Wherefore *Shriefe*, execute with speedy pace,

¹⁹ All quotations from *Promos and Cassandra* are taken from Bullough (1958).

The damned wightes, to cutte off[f] hope of Grace. (II 2. p. 452)

Thus it is all the more ironic that he twists the law to fulfil his immoral desire for Cassandra, to whom he initially pretends that nothing can be done to save her brother, Andrugio, soon to be executed for his fornication with an unmarried woman. He claims that he is obliged to be harsh on Andrugio despite his wish to be lenient because:

The strictnes of the lawe condemnes an ignoraunt abuse;
Then wylfull faultes are hardlie helpt or cloked with excuse:
And what maye be more wylfull, then a Maide to violate. (III 2. p. 459)

The last line is dramatically effective as he thereupon reveals his lust for her. Although he does not sell favourable judgements in return for money or gifts, he compels Cassandra practically to buy her brother's pardon with her body:

Bethink your self, at price inough I purchase sweet your love,
Andrugios life suffis'd alone your straungenes to remove:
The which I graunt, with any wealth that else you wyll require.
Who buyeth love at such a rate payes well for his desire. (III 1. p. 460)

Cassandra finally gives herself to Promos in order to save her brother, but Promos, reneging on his promise, decides to execute Andrugio because, he thinks, 'Such grace woulde mee with unindifferencie t[o]uch. / To pardon him that dyd commit a Rape' (IV 2. p. 468). In fact, not only Promos but also Apius and Sisamnes exhibit excessive severity in judgement as they wish to cover up the private exploitation of the law by acting harshly on the surface.²⁰

The descriptions of the falls of the three powerful judges as rulers, namely, Apius, Promos, and Sisamnes, seem to be in line with the tradition of the mirrors of princes

²⁰ Frequent appearances of capital punishment in the interludes generally, however, may be a reflection of the reality. As J. A. Sharpe tells us, since the second half of Henry VIII's reign, capital punishment increased dramatically. The records of 'the Home Circuit of assizes (comprising the counties of Essex, Hertfordshire, Kent, Surrey and Sussex) over the period 1560-1625' shows 'of those accused of felony, 27.4 per cent were sentenced to death in the decade 1560-9, and 28.2 per cent in 1570-9. Similarly the Middlesex Sessions witnessed very high levels of capital convictions over the mid sixteenth century, 41 per cent of those accused of felony in the 1550s, 52 per cent in the 1570s'. (1990: 29)

whose authors proposed how a monarch should and should not act as a ruler. It was certainly very dangerous to criticise a ruler, not to mention a monarch, on stage. However tyrannical a king or queen may be, most contemporary theorists would not approve of subjects rebelling against him or her.²¹ ‘According to sixteenth-century orthodoxy, kings were God’s chosen representatives on earth, and this divine authority was passed down the line from father to son or, in the case of Mary and Elizabeth Tudor of England, to daughter’ (Clark 2007: 108). Thus, according to the doctrine supported by European monarchs and the English crown, even if a legitimate monarch rules badly, ‘active resistance was prohibited’ (ibid., 109). Perhaps, in these interludes of tyrannical judges written in the mid-16th century, this characterisation of judge as ruler is a rather convenient framework to voice criticisms of the government. The playwrights of interludes might still be very hesitant about criticising a monarch, yet they are willing to point out the abuse of the trust by those who are given deputized power by a monarch. As legal courts shouldered many of the administrative tasks of the government, the judge is the most powerful and visible human symbol of its workings. While a monarch is a monarch whether tyrannical or not, a judge-ruler loses his mandate when he betrays the trust given him by a monarch and people.

Along with such greedy and venal judges, interludes do paint some honest and straightforward professional judges, under whom the English law courts function as they should. Judge in *Liberality and Prodigality*, in contrast to the inhumanly severe judges above, listens attentively to the words of remorse and a plea for mercy by Prodigality, who committed murder and robbery and was sentenced to death. Judge concludes the play with these words:

Prodigalitie, I not mislike your wailefull disposition,
And therefore, for you to the Prince, there shall be made Petition,
That though your punishment be not fully remitted,
Yet in some part, it may be qualified. (1309-12)²²

²¹ On the concept of the tyrant by Elizabethan theorists and how it was staged by dramatists, see Armstrong (1946: 161-181) and Clark (2007: 106-26).

²² The quotation from *Liberality and Prodigality* is taken from Greg (1913).

Severity, the judge in *Like Will to Like* is a personification of the righteous judge: on his initial appearance, he enunciates his nature:

That upright iudgement without parcialitie
 Be ministered duely to ill-dooers and offenders!
 I am one whose name is Severitie,
 Appointed a Iudge to suppressse evil-dooers,
 Not for hatred, nor yet for malice,
 But to advaunce vertue and suppressse vice. (1042-47)²³

A learned judge, citing Isidore of Seville and Cicero, he says that a judge should not be ‘envious or els partiall’ (1056), but should plant ‘trueth and equitie’ (1051). These words of his are, however, an implicit acknowledgement of the fact that there were envious, partial, and therefore ‘unrightfull’ judges (1057) in contemporary law courts. As this play seems intended to give didactic messages to youths and their parents, Severity sends petty thieves to the gallows without mercy. The name ‘Severity’ itself probably indicates that the playwright Ulpian Fulwell’s idea of how rigorously judges should implement the criminal law. Also his severity must be coupled with his own spotless rectitude in contrast with the severity of sentencing by the morally corrupt judges like Apius, Sisamnes and Promos. Severus the Markgrave in George Gascoigne’s *The Glass of Government* is also uncompromisingly severe in punishing miscreants. In this play about education of youths, there is no intimation of corrupt judges in the society. On the contrary, Gnomaticus, a private teacher of four young sons of a wealthy burgher, instructs his students that to honour and obey magistrates is one of the major duties of a respectable citizen:

Next unto the king we are to consider the Magistrates which are appoynted for administration of justice, and pollityke government: these Magistrates must also bee honoured, obeyed, & loved: honored because they are y^e substituts of y^e king unto whom all honour (on earth) apperteyneth, obeyed because theyr office is appointed by the Kings authoritie, and loved because they are the grave and expert personages, which devise lawes and constitutions for

²³ All quotations from *Like Will to Like* are taken from Happé (1972).

continuaunce of peace and tranquillitie. (II 1. pp. 28-29)²⁴

Daniel, the judge in *Nice Wanton* has an unblemished character, but he is exposed to venal temptation. Iniquity, the Vice of the play, dressed as a bailiff called Baily Errand, approaches and tempts the judge to accept a bribe of ‘a right fair horse, / Well worth ten pounds’ (357-58) in exchange for setting Ishmael, a prisoner, free.²⁵ He rejects the proposition, however, saying:

Bribes (saith Salomon) blind the wise man’s sight,
 [So] that he cannot see to give judgment right.
 Should I be a briber? Nay! He shall have the law,
 As I owe to God and the king obedience and awe. (361-64)

As in the case of *Like Will to Like*, the play recognises the existence of corrupt judges in the wider society. *The Most Virtuous and Godly Susanna* deploys the existence of both good and bad judges in the society by letting the righteous judge, Iudex, sentence the corrupt ones, Sensualitas and Voluptas, to death. Moreover, in this play, Danyell, sent from God, acts as an all-knowing higher judge who embodies God’s will and oversees Iudex. Without his intervention, the honest Iudex would have been unable to detect the false testimonies of the other judges, and would have had Susanna executed. Thus, the play highlights the fallibility of human judges by placing Danyell alongside them. Danyell talks about the human vulnerability and the role of judges:

God made of man an Innocent, thereby to show his power,
 Man made himselfe a wicked wight, as you see at this hower.
 God also did make Maiestrates, the pore to helpe and stay,
 Yet some doe uyle examples show, which now doe beare a sway (1121-24)

Thus, by deploying the three judges as well as the divine judge, the play indicates how a judge should, and should not, act, and that he should always heed the Judge of all judges, and His Law as Hugh Latimer reminded his contemporary men of law:

²⁴ The quotation from *The Glass of Government* is taken from Cunliffe (1910).

²⁵ All quotations from *Nice Wanton* are taken from Wickham (1976).

[. . .] the men of law shall not be troubled at that day in defending of other men's causes; but rather they themselves shall be called to make an account for their doings, and there they shall be judged; so that they shall not be able to speak anything against it, for their own heart and consciences shall and will condemn them. (*Sermons Preached in Lincolnshire* 1845: 56)

While these three judges as a group analytically illustrate the human conflict of the judgeship, the more fully drawn judges amongst the interludes, Apius, Sisamnes, and Promos, embody the conflict: their excessive material or carnal desire erodes their duty as a dispassionate and impartial professionals, and transforms them into fallen human beings with the cold-blooded power of legal machinery which functions to destroy people's lives.

As has been remarked, there are very few lawyers in interludes. In fact, amongst the plays examined for this chapter, only one character, Phallax, in *Promos and Cassandra*, once calls himself 'a Lawier' (III 6. p. 466), another man calls him 'a paltrie petyfogger', an inferior lawyer (I 3. p. 449), and Ulrico tells the king that 'Phallax is a common Barriter' (III 3. p. 496). He is a servant and counsellor to the judge Promos, giving his master evil advice, and by this means corrupting him. In that function he is a traditional Vice who tempts the soul of a protagonist.²⁶ He is also a descendant of the type of wily servant found in both native and classical traditions. Ambidexter in *Cambises* and Haphazard in *Apus and Virginia*, who are given allegorical names, also carry out similar functions in the respective play, and thus are called Vices in stage directions. As Haphazard also works for his master, Apus, the judge, and shows signs of some familiarity with the law, he may be at one time playing a lawyer. On his first appearance, Haphazard enumerates various occupations he could follow, from a gentleman to a hangman, including 'a lawier' (182). The name Ambidexter may also immediately remind the contemporary audience of lawyers since, as Wilfrid Prest indicates, 'the particular misdeeds of which English barristers were most commonly accused included ambidexterity, or taking fees on both sides' (1981: 74). Just like other Vices, these three tempt their masters, stirring up misery and strife. Their role as Vices seems to

²⁶ His name comes from Latin *pellax*, meaning 'deceitful'.

correspond somewhat with what was perceived to be one of the characteristic evils of lawyers in polemical literature in this period: those who incite discords for their profit. Henry Brinklow accuses lawyers as ‘maynteyners of discord for their priuate lukers sake, which pr[i]uate lucre of the lawyers is a bayght to sett men together by the earys in the lawe’ (1824: 24). Thomas Starkey writes that ‘the common quietness’

[. . .] now is much troubled by contentious minds and froward wits – not only of the parties themselves, but also, much more, by the avaricious minds and covetous of the proctors and attorneys, which commonly regard more their own lucre than the justice of their client’s cause (1948: 172).²⁷

Phallax is a fairly individualised character. Although he calls himself a lawyer, he is not modelled on the common lawyer trained by the Inns of Court and pleads in the royal courts in London, but only a court officer of Judge Promos, who professes he is ‘neither learned, true, nor honest any way’, but obtained his present position through ‘flattery and fervent plesing’ (II 4. p. 454). He lines his own pockets by rapaciously exploiting the legal office:

What skyls for that, by wit or wyle I have an office got,
 By force wherof every lycence, warrant, pattent, pasport,
 Lease, fyne, fee, *et cetera*, pas[s] and repas[s] through *Phallax* hands.
 Disordred persons brybe me wel to escape from *Justice* bands.
 And welthy churles for to promote I now have set a worke
 Such hungry lads as soone will smell where statute breakers lurk,
 And if they come within our Grype we meane to strip[p]e them so,
 As (if they scape from open shame) their bagges with us shall goe.
 And trust me this, we officers of this mylde mould are wrought:
 Agree with us, and sure your shame by us shal not be sought. (II 4. p. 454)

As some of these lines show, he employs two informers (called ‘Promoters’ in a stage direction in II 4. p. 453), Rapax and Gripax, who, at Phallax’s order, are dispatched to dig up other people’s misdeeds enabling Phallax ‘the offenders to fleece’ (II 4. p. 453),

²⁷ Also Ralph Houlbrooke points out that, in cases of church courts, lawyers and scribes ‘had an interest in encouraging parties to resort to litigation’ since they earned their fees more from litigation than correctional proceedings (1979: 51-52).

a kind of blackmail harking back to the activities of Chaucer's Summoner.²⁸

These dubious activities of the Vices as legal officers working with judges and their informers may have been applicable to the corruption of the early modern judiciary. According to Wilfrid Prest, William Lambarde, a famous contemporary Justice of the Peace in Kent and the author of several tracts on judicial reform in Elizabethan England, was concerned with such 'informers' working beside judges. Lambarde thinks 'the judge must not "respecte the person of any," but pay attention only to the merits of the case', but there tends to be 'a whispering informer' who tries to lead him to partiality (1994: 468).²⁹ These 'informers' privately approach the judge outside the legal court and try to influence him within the legal boundary: 'according to the aunciently allowed manner of intreating a Judge, they require no more at his handes, but *Quae salva fide facere possit*, that whiche he may doe with the safetie of his Duetie' (ibid., 468). But in such legally safe approaches by the informers, Lambarde thinks, are 'the poyson of *Aspes*, and the verie *Quintessence* of abuse and Corruption' (ibid., 468). Moreover, these 'informers', he writes, may well be the judge's legal colleagues or servants (ibid., 470), just like Phallax, who is a court official and Promos's subordinate. He warns of their insidious influence on the judge:

Particularly devious or dishonest servants will even extract payments from anxious suitors for a solicitation which they then fail to deliver, 'least they discover a suspicion that they bee hyred for money.' By their means 'the poore Judge, like to Actaeon, becometh *praeda suis canibus*, devoured of his owne dogges: whoe care not what dishonourable stayne they cast upon him [. . .] so as they may reape the Harvest of their most greedie and ravenous lucre'. (ibid.,

²⁸ The Summoner in the General Prologue lets a man have a concubine in exchange of for a quart of wine, and,

[. . .] if he foond owher a good felowe,
He wolde techen him to have noon awe
In swich caas of the ercedekenes curs,
But if a mannes soule were in his purs;
For in his purs he sholde ypunysed be. (1987: 653-57)

Furthermore, the summoner in *The Friar's Tale*, had his 'espaille', or a network of spies, 'That taughte hym wel wher that hym myghte availle' (1323-24). The quotations from *The Canterbury Tales* are from Benson (1987).

²⁹ The quotations of Lambarde which Prest cites are from Harvard Law School, LMS 5116 in the Harvard Law School Library.

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If Phallax is an example of a Vice as a counsellor insinuating his poison into the mind of a judge, Ulrico in the same play represents an honest and capable legal counsellor. As the king is about to return to the city to investigate injustices perpetrated by his officers in his absence, Ulrico is preparing to help the king judge impartially and truthfully, and sounds proud of his task and his own righteousness in doing so:

Yet for to judge by trueth, and not by a[i]me,
 My selfe in cheefe his highnesse doth auctorisie,
 On prooffe for to returne who meryts blame,
 And as I fynde, so he himselfe will punish:
 So that to use my charge indyfferently,
 My Clyents wronges I wyll with wytnesse try. (II 5. p. 492)

Generally, the corrupt judges such as Apius, Sisamnes, and Promos follow the characterisation of the cruel tyrants in earlier drama, typically, Herod and Pilate in the cycle plays, in the sense that they are not only judges but also rulers during the king's absence. Their tyrannical behaviour may also recall that of the earlier, corrupt magnates of the cycle drama, although primarily they are not rulers but professional judges. Yet their moral downfall begins exactly because they confuse their role as an impartial administrator of law with that of a prince, and presume to wield kingly power. In addition, like allegorical characters in morality plays they are still, to some extent, embodiments of Greed or Lust. The character of the judge All for Money is an obvious example of Greed. Besides, Apius and Promos could be called Lust, and Sisamnes, Greed. As pointed out earlier, there are very few lawyer figures in interludes. In fact, we can name only Phallax and Ulrico as lawyers in *Promos*, a relatively late interlude dating from 1578. Thus we can say that the characters of judges and lawyers have not sufficiently developed in the interludes as distinct groups of professionals. But in Phallax, along with Haphazard and Ambidexter, we may find Vice characters turning into the kind of wily and greedy lawyers who often populate later city comedies.

Legal Courts Reflecting Social Problems: The Oppression of the Poor

We have seen that several Tudor interludes represented some of the problems inherent in the legal courts of early modern England. Problems such as the costliness and tardiness of legal suits, and the greed and venality of judges and lawyers, are necessarily related to the fact that English society was in rapid transition from a feudal to a capitalist economy which was accelerating in the sixteenth century, and a majority of the population was forced to confront various issues arising from the emergence of a monetary economy. The format of late medieval allegorical drama which had been primarily employed for religious instruction was now transformed into a vehicle for articulating secular social ideas and anxieties. The most conspicuous of such messages in interludes is the oppression of the poor in, and by, legal courts. As we have discussed in Chapter 4, this topic was taken up by late medieval authors such as John Bromyard, John Gower and the poet of *Mum and Sothsegger* but found little expression in religious drama. However, it came to be prominently featured in the sixteenth-century interludes.

As has been noted, the common law courts constituted an important service provided by the Crown to its subjects, but this service could only be purchased with various legal fees and ancillary costs such as, for instance, travel and accommodation for plaintiffs themselves and for witnesses who gave testimonies for them. Consequently, many humble commoners may have felt that the central courts were hardly accessible to them, whereas the rich could employ their stronger financial resources more easily to exploit the legal system to achieve their ends. They could, for instance, pay for better-qualified attorneys or bribe judges and witnesses to gain more favourable judgments than the poor were able to, and often therefore to oppress them. As Henry Brinklow states:

In as moch as men be naturally geuyn to troble one another, and comonly the wydow and fatherles and such as lack riches and fryndes be put euer to the worst, by reason that the rich filleth the purse of the lawyers which the poore is not able to doo, and therfor his cause is not heard; for comonly the lawyer can not vnderstond the matter tyl he fele his mony. (1824: 23)

Hugh Latimer in one of the sermons delivered before Edward VI in 1549 speaks of a case of a gentlewoman whom he met. A great man keeps a certain land of hers from her against her wish. She went to court to be heard about the case. In a whole year,

[. . .] she could not get but one day for the hearing of her matter; and the same day when the matter should be heard, the great man brought on this side a great sight of lawyers for his counsel, the gentlewoman had but one man of law; and the great man shakes him so, that he cannot tell what to do; so that when the matter came to the point, the judge was a mean to the gentlewoman, that she would let the great man have a quietness in her land. (*Seven Sermons* 1844: 127)

Latimer elsewhere charges that the power of money controls legal courts:

The saying is now, that money is heard every where; if he be rich, he shall soon have an end of his matter. Others are fain to go home with weeping tears, for any help they can obtain at any judge's behalf, and put it not to the hearing of these velvet coats, these unskips. (*Seven Sermons* 1844: 126-27)

Brinklow also criticises the fact that only the poor are punished for the same crime for which the rich and powerful are allowed to evade punishment:

If a pore man kepe a whore besides his wife, & a pore mans wyfe play the harlot, they are punisshed as well worthy. But let an Alderman, a ientleman, or a riche man kepe whore or whores, what punishment is there? Alasse, this matter is to bad! I saye some of your Aldermen kepe whores to the greate shame of all the rest. (1824: 91)

Modern historians may, however, qualify such contemporary views. C. W. Brooks writes that, although early modern lawyers were not particularly champions of the poor, 'the fact remains that the proliferation of practitioners made it easier for poor men to go to court' (1986: 134). The increased accessibility of courts for the less privileged may have exposed a larger number of the common people to the monetary inequality inherent in the legal system.

That the courts gave judgments in favour of the rich is also a repeated motif in the interludes. In Sir David Lindsay's *The Three Estates*, Johne the Common-weill

fulminates against the corrupt justice of assize ('Justice Airis') and the consistory courts:

Marie, on ma and ma againe,
 For the pure peopill cryis with cairis
 The infetching of the Justice Airis,
 Exercit mair for covetice
 Then for the punishing of vyce.
 Ane peggrell theif that steillis ane kow
 Is hangit, bot he that steillis ane bow
 With als meikeill geir as he may turs,
 That theif is hangit be the purs.
 Sic pykand peggrall theifis ar hangit,
 Bot he that all the world hes wrangit,
 Ane cruell tyrane, ane strang transgressour,
 Ane common publick plaine oppressour,
 By buds may he obteine favours
 Of tresurers and compositours;
 Thocht he serve greit punitioun,
 Gets easie compositioun,
 And throch lawis consistoriall,
 Prolix, corrupt and [pertiall],
 The common peopill ar put sa under,
 Thocht thay be puir, it is na wonder. (2653-73)

Sir David Lindsay advocated for the reform of the Scottish Church and politics, and had Johne the Common-weill speak on behalf of the third estate oppressed, not just by one secular or church court or another, but by the stagnant and corrupt Catholic Church and the inability to reform the Church on the part of the Scottish government generally. The play's criticism of judicial corruption is only a part of Lindsay's condemnation of the Scottish establishment.³⁰ *All for Money* is essentially an allegorical morality play and does not specify what kind of court its judge presides over. But since he deals with rather mundane cases of theft, illicit sex and adultery, is called a magistrate and works with a jury, he is likely to be a Justice of Peace of quarter sessions. As its title indicates, this interlude describes several episodes where the moneyless are cruelly spurned by the

³⁰ See G. Walker (1989: 5-17; 1998: 117-62).

legal system represented by the judge, All for Money, who lets the rich get away with any crime. The character, Moneyless, typically laments:

God have mercy on us! Without a man have money
 He shall be cast away for a trifle, we see:
 But the thieves and robbers that with money be stored
 Escape well enough, but the poor thieves be hanged. (4.203-06)

In *Impatient Poverty*, Poverty charges that the court, in this case, clearly a church court as Poverty discusses penance, is being more lenient to the rich than the poor. When Peace claims, ‘There can no such judgment / That money shall stop the law’ (p. 346), Poverty rejoins:

Nay, there stop, and lay a straw!
 Where see you any man a substance
 Put to open penance,
 But punished by the purse?
 A poor man, that hath nought to pay,
 He shall be punished: this ye see every day;
 But he be obstinant, and will not obey,
 Anon they will him curse. (p. 346)

These complaints, recurring in plays about church courts may in part have derived from the actual practice of the ecclesiastical institutions:

Penance was a humiliating experience, especially for anyone of standing. Judges [of church courts] were sometimes prepared to commute it into a money payment, and in this way quite substantial sums were raised for pious uses such as the relief of the poor and prisoners, the support of scholars at the universities, and the equipment of parish churches. (Houlbrooke 1979: 47)

It is open to question how sympathetic the poor defendants felt towards the charitable uses of money payments from the rich for commuting penances.

Such grievances on behalf of the poor are numerous in both interludes and writings of contemporary polemicists. We have seen in the previous chapters that, in the Middle Ages, the criticisms of the judiciary were a major part of the complaint literature against the ruling classes. In the sixteenth century, the critical scope widened to include

commoners not only as the victims of the corrupt or inhumane legal system but also as its abusers. Thus some dramatists paint common men and women as expecting too much and too selfishly from the law. For instance, Impatient Poverty wants his duly incurred debt to be excused by resorting to the law. Peace tries to dissuade him from unreasonable use of a legal recourse:

[IMPATIENT POVERTY]

I had liever lay all my good to pledge
To get a writ of privilege;
So may I go by his [lender's] nose at large,
Spite of his teeth, whosoever say Nay.

PEACE

This is but a wilful mind: if thou wilt not play
Thy very duty, which cannot be denied,
Getting of thy writ and expense in the law
Will cost more than thy duty – this well I know.
Thy debt therewith cannot be paid;
It is only a deferring of the payment. (pp. 316-17)

Some commoners such as those flocking to the venal judge, *All for Money*, are willing to embrace corrupt courts as long as it helps their cause and they can pay for it. *All for Money* deals with the sinful behaviour of immoral commoners and how they try to avoid getting punished by giving bribes to the magistrate. One of them is William with the Two Wives, ‘dressed like a countryman’ (SD, p.230). He escapes punishment for bigamy by paying forty angels. In return the magistrate promises him to procure false witnesses who will discredit William’s first wife. This magistrate, *All for Money*, also helps an old woman called Mother Croote forcibly acquire as her husband a young man who is attracted to another woman. Again, *All for Money*, in exchange for ‘four old rials’ (419), gets her a couple of false witnesses, who will testify that Mother Croote and the young man have already been betrothed. These cases can be construed as variations of the abuse of law for gratifying sexual desire which we have seen in the cases of *Apus and Promos*, but in this instance, commoners abetted by the corrupt judge, rather than the judge himself, are the abusers.

The Other Participants of the Legal System and Corruption

Since most medieval plays are based on biblical narratives or allegorical stories of the universal theme of man's death and salvation, they include very few contemporary legal personnel as *dramatis personae*. But Tudor interludes depict some concrete legal personal of their own time in addition to judges and lawyers, some of whom are tainted with corruption.

Juries very briefly appear in *Nice Wanton* and *All for Money*. In the former, they simply give a guilty verdict in the trial of Ishmael, a prodigal son. In the latter, the character of Sin brings to the magistrate, All for Money, the case of a young woman who had an illicit affair, became pregnant, and killed her unwanted baby. She gives Sin one hundred pounds to bribe the magistrate in order to obtain a favourable judgement. To this, All for Money assures Sin that he will undertake to arrange that she will come to no harm, and that 'They that should give evidence shall be all tongue-tied, / And the twelve men shall find her guiltless' (4.163-64). He does not say exactly how the 'guiltless' verdict will be reached. It may mean he would pressure the jury to deliver that verdict, or he will manipulate the witnesses in such a way that the jury will naturally return the desired verdict. Or he could use his influence to select a jury who are likely to give a verdict convenient for him. Or ultimately he could bribe some of the jurors. The direct or indirect corruption of juries as discussed in Chapter 3 continued into the sixteenth century as it can be surmised from non-dramatic literature of the time. William Harrison suggests corruption surrounding jury selection:

Certes it is a common practice (if undersheriff be not the better man) for the craftier or stronger side to procure and pack such a quest as he himself shall like of, whereby he is sure of the issue before the charge be given. (1968: 91)

William Lambarde seems to acknowledge the existence of bribed jurors:

It is justly to be suspected, that if the *Jurie* take *Money*, to give their *Verdict*; they, with *Iudas*, betray the *truth*: And if it be most true, that *Gifts* and *Bribes* will pervert the *Judgement*, even of the wisest; then how can it be otherwise,

but that the common *man* shall be drawn aside, and corrupted thereby. (1957: 111)

There are also cursory but rather frequent appearances of law-enforcement officials in interludes, such as sheriffs, bailiffs, constables, summoners, gaolers, and executioners. Their roles in the plays are, in most cases, solely functional, such as a constable pursuing a thief, or a gaoler leading the accused to a gaol or gallows. But occasionally they are also tainted by judicial corruption. In *Nice Wanton*, as I have touched upon while discussing judges, Iniquity appears as a bailiff called ‘Baily Errand’, and tempts the judge to share a bribe with him. In *Impatient Poverty*, Envy tells ‘Conscience, the high judge of the law’, that Conscience has been replaced by ‘Covetise in [his] room, / Subtility the scribe, his own cousin, / and Falsehood the Sumner, for the Court’s promotion’ (p. 328). Later, Abundance, a wealthy man accused of adultery, proposes to the Summoner that he can pay twenty pounds to be excused (p. 344). To this, the Summoner tells Abundance to come to see his master, presumably a judge in an ecclesiastical court. There, the Summoner tells Abundance, he should thrust the money to his master’s hands so that he can go free (p. 344). Summoners, also called apparitors, in a rather lowly status and meagerly remunerated by their office, were already of ill-repute in the medieval literature, and continued to be tainted with corruption after the Reformation:

Of all court personnel the apparitors were the most open to temptation and the most difficult to supervise. Some evidence of their misbehaviour, in the shape of allegations of bribery and suspensions from duty, can be found in the records of the courts themselves. In 1578 the chancellor of Norwich diocese referred to wholesale corruption on the part of apparitors as a notorious fact. (Houlbrooke 1979: 52)³¹

In church courts, in addition to witnesses suggested by parties involved, judges gathered information from the clergy or apparitors, ‘who were presented with good opportunities for making inquiries in the parishes they visited in the course of executing court

³¹ See also Ingram (1987: 66).

mandates' (Houlbrooke 1979: 44).³² The eager detective work of such apparitors, i.e. summoners, may have given bad press amongst parishioners. According to Houlbrooke, an author of one Norwich memorandum written not long after 1600 complains that 'these men found time to "range about the countrie for gayne", troubling people for trivial offences' (1979: 28).

In *Promos and Cassandra*, an executioner (here called hangman) appears. He is very pleased to have Promos as a judge, because he is excessively severe and sends many prisoners to the gallows. As a result, the executioner can obtain many more clothes from the executed. Though he is not a corrupt or evil character, his cold-blooded joviality and energy sharply contrast with the odious work he pursues and the pathetic lamentations of the criminals to be hanged:

Let me see, I must be dapper in this facultie.
 Heare are new ropes; how are my knot? I' faith syr, slippery.
 At fast or loose, with my *Giptian* I meane to have a cast:
 Tenne to one I read his fortune by the Marymas fast. (II 6. p. 456)

Curiously, the motif of hanged people's clothes as hangmen's perks also appears in *Like Will to Like*, where Hankin Hangman and Newguise, a Vice, cast lots to divide the clothes between themselves (1155-64). This may well have been based on a contemporary practice, but also related to the biblical description of the action of the Roman soldiers who cast a lot to divide Jesus's clothes (John 19. 23-24), which is also minutely dramatised in Play 24, *Play of the Dice*, in the Towneley cycle. In fact, the cold-blooded indifference or even cheerfulness of these hangmen harks back to the characterisation of soldiers and Jews who crucify Jesus in the mystery plays, suggesting there may have been a popular or literary stereotype of such characters.

The minor functionaries so far discussed are rarely individualised. But a gaoler in *Promos and Cassandra*, a moral and fairly complex character, is a notable exception. Knowing that Promos, his master, is reneging on his promise to save Andrugio's life in

³² Churchwardens and apparitors mainly did the policing work for church courts. See Ingram (1987: 231).

return for Cassandra's giving herself to Promos, he decides to save Andrugio secretly. But Andrugio despairs because he imagines that Cassandra and Polina must have killed themselves on hearing of his planned execution, whereupon the gaoler reproves him:

Leave of[f] these complaints of smal availe, thank God that you are free,
For God it was within my mind that did your safety move,
And that same God, no doubt wyl worke for your and their behove.

(IV 5. p. 471)

Grateful for the kindness, Andrugio offers the gaoler some money, which the humble gaoler repeatedly declines, saying, '[. . .] kepe your mony, your need you do not know' (IV 5. p. 471). The gaoler's uprightness appears in sharp contrast with the corruption of the better-placed legal professionals in the play such as Judge Promos and Phallax the lawyer. This good-natured minor character, who exhibits a surprising human decency, is very much in line with a few nameless, righteous characters in the medieval mystery plays whom we have discussed in Chapter 3 such as the York beadle and the Towneley Consultus in Pilate's court and the Roman centurion in all four cycles who stood up to their powerful masters to praise Jesus.

In this chapter, we have found and examined mainly five Tudor interludes, namely, *All for Money*, *Apius and Virginia*, *Cambises*, *Promos and Cassandra*, and *A Satire of the Three Estates*, which represent judicial corruption in addition to several other plays which occasionally touch legal topics. From the corpus of approximately one hundred Tudor interludes, however, the number may not seem very large. Compared with the often very focused and polemical accusations of corrupt judges and lawyers by such authors of non-dramatic literature as Stubbs, Brinklow, Harrison, and Starkey amongst others, the interlude drama's representations of similar corruption are perhaps not as stinging. Along with the religious and political debates and the education of children and youths, however, I think the law is probably one of the few conspicuous topics to which the dramatists of the period paid much attention. Alongside the medieval cycle and more strictly theological morality plays, most of whose characters are either biblical or allegorical, and whose settings are not contemporary, Tudor interludes started to

depict the secular world of their time, including legal issues and professionals, for the first time in English drama. The frequent occurrence of legal matters testifies to the importance of the law in people's lives in the period, especially in terms of how judges as rulers behave, and how the common people were oppressed in, and by, the legal system. We do not see many lawyers in drama yet, but corrupt legal professionals are represented by Judges Sisamnes, Apius, and Promos. These characters seem to be loosely based on the type of tyrannical judges in medieval drama such as Pilate, Caiaphas or Herod, which also reveal contemporary concerns with dishonest rulers and perverted uses of the law. However, they are more clearly depicted as judges, and their moral downfall seems to be caused when they presume to act as rulers well beyond their professional mandate. Their depiction is in part in the tradition of the mirror of princes, providing the examples of tyrants. Yet, I surmise that playwrights were able to criticise the working of a government and ruler by staging a bad judge-ruler figure rather than a monarch. These corrupt judges also retain the traits of allegorical characters of Greed and Lust in morality plays or didactic literature. The judges' greed reflects the adverse influence of the capitalist economy combined with the power of law, and the judge's character in *All for Money* is based on this problem. When judicial corruption is alleged in the plays, the concurrent message is not only that the poor and weak are alienated from the benefits of the law courts, but also that the law is often misused to oppress them. When plays are not specifically concerned with judicial corruption, however, but with other legal issues such as crime and maintenance of public morals, we sometimes encounter the normal workings of the law and its honest professionals, as in *Nice Wanton* and *Like Will to Like*. In Phallax, a petty lawyer, we see a descendant of Vices in morality plays and a prototype of wily and greedy lawyers of city comedy. All in all, these interludes continue to use the character types of the medieval drama while loading them with new social realities.

Conclusion

This thesis attempts to demonstrate that the theatrical representations of the biblical and classical trials in the medieval and early Tudor drama contain many reflections of the judiciary of the times in which they were written. Although ‘theatre and law’ is an established scholarly topic in the criticisms of Shakespeare and English Renaissance drama,¹ and also major medieval authors such as Chaucer and Langland have been closely studied in relation to the law of their time,² medieval drama and Tudor interludes do not seem to have been as much investigated in this regard as they possibly could have been by past scholars despite the great potential they offer for scholarly investigation. Thus it is hoped that this thesis has furthered our understanding of legal themes in these plays. As argued in the introduction and easily witnessed in popular legal drama in modern films, trials are inherently theatrical in many ways: law courts and theatres share much ground in terms of types of participants, audiences, behaviour of participants, ceremoniousness and the natures of venues. The law court, in a sense, creates a real-life drama where, for instance, they examine a crime by means of *representing* the past events through narratives presented by such actors of the court as prosecutors, defence lawyers, witnesses and defendants. In the common law courts especially, these *actors* try to persuade, and draw a favourable judgement from, their audience, i.e. the jury. Furthermore, this study stresses that medieval law courts, in their multifarious institutional variations, were particularly analogous to the theatres of the times: both medieval theatres and many types of law courts did not possess permanent

¹ For instance, see Gieskes (2006), Kezar (2007), Kornstein (1994) and Mukherji (2009), among many others.

² See Hornsby (1988), Green (2002) and Alford’s and Seniff’s bibliography (1984).

venues and regularly toured in the country. Both courts and theatres were physically quite open as they were often held in open-air spaces or large multi-purpose structures such as churches, guildhalls, halls of the gentry and noblemen. In the trial scenes of the mystery cycles, there are various signs which seem to reflect medieval courts, namely, their material details, procedures, and personnel; in this regard, we have examined the locations of the performances, the bench and bar referred to in the plays, the medieval proclamations, the characterisations of princely and tyrannical judge-rulers and their subordinates who advise their masters. Many of these details seem to have been taken for granted by past studies on medieval drama, but, within the framework of the gospel narratives, they often give precious glimpses into how medieval courts and their personnel functioned. Such details taken from the medieval and early modern courtrooms must have drawn the plays closer to the contemporary audience and augmented the plays' persuasion. These early plays, although depicting the biblical, allegorical and classical materials, also make themselves relevant to the contemporary audience by engaging with various social issues to a surprising degree. This study has particularly stressed how the plays reflect the corruption and malfunction of the law courts and the heresy prosecutions in the fifteenth century.

A reading of the Passion plays in the mystery cycle often reveals an engagement in these plays with issues that still have a relevance and interest for present-day readers and audiences:

Our laws are not generally known; they are kept secret by the small group of nobles who rule us. We are convinced that these ancient laws are scrupulously administered; nevertheless it is an extremely painful thing to be ruled by laws that one does not know. I am not thinking of possible discrepancies that may arise in the interpretation of the laws, or of the disadvantages involved when only a few and not the whole people are allowed to have a say in their interpretation. These disadvantages are perhaps of no great importance. [. . .] Moreover the nobles have obviously no cause to be influenced in their interpretation by personal interests inimical to us, *for the laws were made to the advantage of the nobles from the very beginning, they themselves stand above the laws, and that seems to be why the laws were entrusted exclusively into their hands.* (Franz Kafka, 'The Problem of Our Laws', 482, my emphasis)

Kafka, in many of his works, powerfully expresses the sense of alienation which a nameless suspect or defendant feels in modern legal environments. This feeling of alienation in the law court seems universal and is to be found in both medieval and early modern drama. The secular and ecclesiastical tyrants in the trials of Jesus in the mystery plays often seem to ‘stand above the law’ as Kafka writes. As discussed in Chapters 1 and 2, they are the rulers within the boundaries of their administrative and jurisdictional mandates and behave more like tyrannical princes whose judgements are more political and personal than fair and rational as they should be. Their courtrooms evince some of the characteristics of the premodern legal courts as they tend to be depicted as personal spaces of the judge-rulers in which their private lives intrude: their family members interfere in legal processes, and the judges sleep and drink wine in the halls where trials are held, albeit we also need to take the exigencies of dramatic representation on a small stage into account. One of the most notable characteristics of the premodern courts – at least in the theatrical realisation of them – is their lack of fixed architectural definition relating to their function, and their versatility as physical spaces: as personal courts of princely judges such as Pilate, Herod and Caiaphas, like most medieval courts, their courts are not the purpose-built legal structures of our own courts; judicial sessions are suddenly opened before the judges when their subordinates bring in the defendant. Yet these trials seem to be temporally and physically demarcated by various medieval characteristics of legal proceedings: formal gestures and procedures, proclamations of the repeated ‘Oyas’, and uses of symbolic judicial objects such as furniture like judges’ benches and the bars at which defendants stood and legal costumes such as striped robes.

This thesis also puts Jesus as a defendant in the contexts of the medieval criminal or heresy trials, especially from the viewpoint of contemporary audiences. While the secular and ecclesiastical judges and their subordinates struggle with each other to promote their power and vociferously debate the charges brought against the defendant, Jesus mostly remains a silent bystander in a noisy courtroom. Deserted by most of the

disciples and betrayed by one of them, Jesus is defended by hardly anyone, except the Roman centurion, appearing in all the four major cycles but especially in York and Towneley, York beadle and Towneley Consultus, who dare assume the role of an advocate on behalf of this totally isolated defendant. The realistic and stirring portrayal of the extreme pain and solitude in the Passion of Christ could be discussed in terms of ‘affective piety’ prevalent in the arts and literature in the late Middle Ages. But it is also the absolute helplessness of the human Jesus as a defendant that must have struck the deep chord with the late medieval audience. As contemporary sources generally show, defendants in criminal trials were not allowed to have defence counsel in medieval and early modern England, a fact probably unheeded by commentators of the Passion plays. Jesus in the mystery plays is taken to the courts of Herod, Pilate and the high priests where the legal procedures are fluid, shapeless and highly idiosyncratic, much depending on the vagaries of the judges and their counsellors. The audiences of the plays, as the members of the public in the galleries of the law court, may not be sure whether or not they are really legitimate trials. Moreover there seems to be no advocate for Jesus. Such a situation is reminiscent of what a nameless defendant feels about a law court in another short story by Kafka:

I was not at all certain whether I had any advocates, I could not find out anything definite about it, every face was unfriendly, most people who came toward me and whom I kept meeting in the corridors looked like fat old women; they had huge blue-and-white striped aprons covering their entire bodies, kept stroking their stomachs and swaying awkwardly to and fro. *I could not even find out whether we were in a law court. Some facts spoke for it, others against.* (‘Advocates’, 498, my emphasis)

The medieval audience may have seen the lack of the advocate for Jesus as a reflection of their own criminal trials or, at least, it would have been easy for them to empathise with the helplessness of Jesus as a defendant in such a trial.

This study has paid much attention to legal corruption in the mystery and morality plays, and Tudor interludes since medieval and early modern English society clearly reveals its anxieties in the drama through this topic. As the Towneley Pilate

impressively embodies it, the tyranny in judiciary begets corruption. The literature in late medieval England abounds in accusations of the legal corruption in the works of William Langland, John Gower, William Hoccleve, John Bromyard and others as discussed in Chapters 3 and 4. It is also seen in the enactments of bribery of the soldiers as witnesses of Christ's resurrection in the mystery plays. These many literary works of complaint against legal corruption as well as the resurrection plays of the mystery cycles make us aware that the corruption also involved various lower legal and administrative officials related to the law and relatively wealthy citizens and villagers who participated in legal processes as jurors and witnesses. Although they are not called as jurors or witnesses, the soldiers, Jews and various other attendants of the judges seem to behave, in part, as legal advisors like the beadle in the York cycle or the temporal judges in the N-town cycle; many others, especially the soldiers and Jews, seem to function as witnesses and jurors in medieval courts. This study has tried to delve into the complex relationships between the masters and their advisors and servants in courtrooms.

The corrupt relationship of legal personnel in law courts was often called *maintenance*. In Chapter 4, we have examined how the powerful men and their subordinates and followers who were *maintained* by them controlled and oppressed the poor and humble by means of law, and how this custom of legal *maintenance* was decried in literature. This term is used as the name of one of the Vices in the play, *Wisdom, Who is Christ*. Maintenance, a Vice in this play, deploying his subordinate Vices, controls people through bribery and threat of violence. He is the nadir of the fallen state of man in this sacramental morality play, and it is the measure of how hated the legal corruption is that Maintenance represents the most depraved state of mankind.

In Chapter 2, the ecclesiastical tyrants, Caiaphas and Annas, and their courts in the mystery plays were examined. As the persecutors of Christ who vehemently insisted on executing him from the outset, flattering characterisations of them can hardly be expected. However, they are naturally designed to be compared by contemporary audiences with medieval ecclesiastical lords as they are repeatedly called 'bishops',

suggesting that, behind their portraits, there was the contemporary tradition of anti-clerical literature, denouncing the rich, worldly and even warlike bishops in the fourteenth and fifteenth centuries. These historical Caesarian bishops include Henry Beaufort, bishop of Lincoln, Henry Dispenser, bishop of Norwich and many others, including Archbishop Thomas Arundel, an important ally of Henry Bolingbroke and an eminent prosecutor of heretics. Caiaphas and Annas are called bishops and hunt down religious rebels whom they fear may destroy their law and religion. They also fear that Jesus is stirring up people to rise against not only the religious authorities but also the Roman emperor. With these details in mind, we cannot avoid the comparison of the trials of Jesus with the contemporary prosecution of Lollards in the contexts of the Blackfriars' council, the issuing of *De heretico comburendo* and the Constitutions of Archbishop Arundel. Nicholas Watson in his highly influential study of the vernacular religious writings in late medieval England, 'Censorship and Cultural Change in Late Medieval England: Vernacular Theology, the Oxford Translation Debate, and Arundel's Constitution of 1409' (1995), discusses the mostly constraining influence exerted by Arundel's Constitutions over them :

[. . .] from a few years after 1410 until the sixteenth century there is a sharp decline both in the quantity of large theological works written in the vernacular and in their scope and originality. Most of what is written in this period consists of translations from Latin, Anglo-French, or Continental vernacular texts or else of compilations from earlier English materials that deal cautiously with a narrow range of topics. [. . .] For writers of English theological works whose names we know – apart from Pecoock, hagiographic poets such as Capgrave, Bokenham, and Lydgate (who are somewhat marginal to my discussion here), and of course, Margery Kempe – we have to wait until the early sixteenth century. (1995: 832-33)

To the students of the biblical drama prevalent in the period of Lollard persecution, it is important to be aware that Arundel and his colleagues tried to control, if not eliminate, not only biblical translations but all the unauthorised vernacular writings:

Events of the later fifteenth century make it clear that the Constitution was not merely a pious or, as Lollards saw it, an impious hope: its terms were used to

persecute many Lollards and indeed were interpreted so widely that possession of any English work, even of the *Canterbury Tales*, might be used as evidence of heresy. Use or defence of vernacular Scriptures had evidently become the most obvious social mark of the Wycliffite heresy, and was seen as the key to all the other errors of its adherents (Hudson 1986: 94).

If such a broad spectrum of vernacular writings could have been considered suspect of heresy and under the surveillance of the authorities in the fifteenth century, it is truly surprising that the Corpus Christi cycles thrived in the major cities in the Midlands and North in the fifteenth century and, despite the official censorship against vernacular biblical literature, survived until the Protestant Reformation set in. Nicholas Watson does not consider the mystery plays in the above-quoted article, but later writes that they are ‘one major body of material that apparently remained unaffected by the Constitutions, perhaps because it was performed (not read), predated 1409, and was a civic, as well as ecclesiastical, product’ (1999: 344).³ It seems noteworthy, however, that the play scripts firmly associated with the cities where they were actually performed, Chester and York, do not seem to be consciously critical but are rather moderate in their social perspective. The sole Towneley manuscript with its ringing social remonstrance against the tyranny of the ruling classes and its apparent sympathy with the humble people may not have been performed as it stands since there was no clear record of performance which used this manuscript; the long-held belief that it was staged in Wakefield in West Yorkshire has been questioned for some time (Meredith 2008: 152-64). However, four pageants have craft attributions added later (*ibid.*, 157), suggesting that it may have been actually performed at some point. The N-town compilation is the most daring of the four cycles: if not directly referring to the Lollards

³ All extant manuscripts of the four major cycles seem to be copied much later than 1409. The oldest of these scripts, the York Register, was probably compiled between 1463 and 77, more specifically around 1476-77 (Beadle 2009: xii-xviii). However, the first reference to the performance of the York plays is dated to 1377 (Beadle 2008: 1999), and that of the Chester plays to 1422 (Mills 2008: 133) although these cycles may well have originated much earlier than the extant records. It seems, however, precarious to say categorically that Corpus Christi plays ‘predated 1409’. For a criticism on Watson’s exclusion of the biblical drama from his discussion on the ‘vernacular theology’, see Crassons (2006: 95-102).

or Wycliffe, it calls Christ and biblical Christians as heretics and seem to model, to some extent, the persecution of Christians on the contemporary heresy prosecutions. But scholars have not found any specific town where this cycle was staged or even written (Fletcher 2008: 184-87). Thus, the status of the mystery cycles, especially from the viewpoint of the censorship by the religious authorities in the fifteenth century, still remains to be explored.

In Chapter 5, the topic of the representations of legal corruption in drama initiated in Chapters 3 and 4 continued to be explored. With the profound cultural changes brought about by the Reformation, the purposes, audiences and venues of Tudor interludes underwent drastic mutations. While many of the medieval plays were completely open to the public and performed as parts of seasonal and religious festivities in the open air, many early modern interludes were not particularly attached to specific feasts and usually performed for rather limited groups of audiences in restricted venues such as courts of the gentry and nobility and halls of civic organisations, educational institutions and religious houses. They were performed sometimes with specific purposes, for instance, educating children and youths of wealthy citizens, instilling Protestant propaganda and upholding the values of humanist learning. However, the older dramaturgical conventions inherited from the mystery and morality plays survived such changes: tyrants and allegorical Vices reminiscent of medieval drama continued to populate many of the Tudor interludes. The criticisms of the abuses and malfunctions of law courts, which are frequently written in late medieval literature and also occasionally taken up in medieval drama as subsidiary topics, appear more prominently in some of the Tudor interludes.

The judge figures in interludes such as Apius in *Apius and Virginia*, Sisamnes in *Cambises* and Promos in *Promos and Cassandra* are, as are Herod and Pilate in the mystery plays, still portrayed as tyrannical rulers and are not yet the professional and unbiased judges whom our own courts are supposed to have in this century. However, unshackled from the restrictions imposed by the biblical narrative, they are given slightly more individuality than the tyrants in the gospels. For instance, Sisamnes is

initially valued for his wisdom and excellent legal expertise by the king and one of his colleagues, but changes his behaviour for the worse and becomes corrupt when he is given the power to rule during the king's absence. In medieval satirical literature, judges and lawyers are usually accused of their greed and corruption whereas Apius and Promos abuses their legal power in order not to gain money but to fulfil their lascivious desire, which is a new character development but they can be also considered heirs to allegorical characters of lust. Since texts of quite a few interludes in the sixteenth century have survived to this day, there are also a variety of other minor judges in these plays such as Severity in Ulpian Fulwell's *Like Will to Like*, a righteous yet terribly severe judge, the similarly strict judge, Severus the Markgrave, in *The Glass of Government* by George Gascoine, or the eponymous character of a judge in Thomas Lupton's *All for Money*, amongst others. As the names of these characters show, the allegorical personification continued to be used to represent legal professionals in interludes. But the playwrights exploit this traditional mould of the characters in order to convey more contemporary topics and ideas such as stricter ethics of Protestants and anxiety about crimes.

There are only a few lawyers in the interludes and those whom we find in the plays, Phallax in *Promos and Cassandra*, Ambidexter in *Cambises* and Haphazard in *Apilus and Virginia*, are not independent sergeants- or apprentices-in-law but lowly, yet legally astute servants of judges. As in the case of the judges, the characterisation of the lawyers seems to have inherited the tradition of medieval drama: they can still be considered the same as the figures of wily Vices in morality plays but combining the a kind of 'fall of man' drama with the contemporary social issue of legal corruption and marketisation of law.

This thesis has examined the representations of the judiciary and its personnel in medieval drama, especially the trials of Christ in the mystery plays, in the morality play, *Wisdom, Who Is Christ*, and various Tudor interludes with reference to contemporary non-dramatic and historical writings. As the thesis has emphasised a number of times, legal themes permeate the medieval and early modern drama since people of all strata of

the society had access to legal institutions and many of them had high expectation of them as the courts were not only strictly legal but also broadly constituted structures through which the rulers, i.e. the Crown, aristocrats and the gentry, ruled their territories and subjects. Moreover, the judicial themes are fundamental to the understanding of the drama of this period because Christians of the time, whether Catholics or Protestants, were preconditioned to see both the history and their own life as a series of 'trials', which may have seemed to them to synchronise with the ordeals and judgements in the dramatised biblical stories. The medieval audiences of the plays saw the eschatological history in the mystery plays as their own, since it subsumes their own life and their future as the cycles conclude in the Doomsday play. The sins and punishments in the mystery and morality plays were personally related to how they should and should not live and die. In that sense, the trials of Christ before the secular and ecclesiastical judges in the eyes of the contemporary audiences may well have overlapped with the trials which they had faced themselves, or participated in as jurors or witnesses in their local secular and church courts, partly because many trials, of both secular and ecclesiastical courts, were held in churches with various murals, stained glass windows and carvings of the Passion and Doomsday. Many secular legal buildings used as law courts may also have been equipped with similar dramatic images of the biblical trials.⁴ Just as the religious arts illuminated the meaning of trials in these legal sites, many scenes of medieval and early modern plays offered images of biblical or classical trials and of other legal motifs to the audiences which were, as this thesis has been examining, closely related to their own law courts and their anxieties about the law.

⁴ Anthony Musson describes the interior of the medieval guildhall of the corporation of London which, as did the Westminster Hall, housed multiple law courts. He writes that 'the focal point [of the guildhall] was the statue of Christ in Majesty housed in the central niche' and it was 'a form of visual shorthand for the whole panoply of the Last Judgment' (2006: 5).

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Abbreviations

- EETS O.S.: Early English Society, Original Series
 EETS E.S.: Early English Society, Extra Series
 EETS S.S.: Early English Society, Supplementary Series

Figure

The Court of the King's Bench. Inner Temple Library Misc. Ms. 188, reproduced with the permission of the Masters of the Bench of the Inner Temple.
 <<https://www.innertemplelibrary.org.uk/collections/manuscript-collection/four-illuminated-manuscripts/>> [accessed 10 January 2017]

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