

**England's "Best Birthright": The Law and Theology of Inheritance in  
Early Modern English Literature**

**by**

**Jonathan W. Smith**

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**Doctoral Committee:**

**Professor Michael C. Schoenfeldt, Chair  
Professor Linda K. Gregerson  
Professor Valerie J. Traub  
Associate Professor George P. Hoffman**

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## Table of Contents

Acknowledgments.....	ii
List of Figures.....	iv
Chapter 1: Introduction.....	1
Chapter 2: Edward Coke’s Common Law Theology.....	24
Chapter 3: Inheritance and Atonement in Donne’s Devotional Poetry.....	56
Chapter 4: The Violence of Sacred Inheritance in Herbert’s <i>The Temple</i> .....	107
Chapter 5: “A Possession Happier Far”: The Epistemology and Ethics of Inheritance in Milton’s Long Poems.....	172
Chapter 6: Afterword.....	246
Appendix.....	254
Works Consulted.....	258

## List of Figures

Figure 2.1 Coke Image 1.....	250
Figure 2.2 Coke Image 2.....	251
Figure 3.1 Puttenham Image 1.....	252
Figure 3.2 Puttenham Image 2.....	253

## Chapter 1

### Introduction

#### I.

This dissertation studies Early Modern English representations of inheritance. In particular it looks to the way theological and legal accounts of inheritance draw on and inflect one another. This coupling of theology and law proceeds from the conviction that the two disciplines were particularly intertwined in the Early Modern period. This close relationship is, of course, obvious at an institutional level. Religion and religious ideology played a key role in political life, not least through the legal enforcement of religious conformity after the Reformation. That religious and legal institutional structures were enmeshed can be particularly seen in the jurisdictional battles that marked English law during the period. During the sixteenth and early seventeenth centuries, the ecclesiastical courts battled to maintain their traditional jurisdiction against the increasingly dominant common-law courts.<sup>1</sup> On another front, the common-law courts themselves fought to preserve their authority against the claims of the equity courts, which were traditionally led by an ecclesiastic chancellor. Though the chancellors were not all churchmen by the seventeenth century, they nonetheless claimed to serve as God's judicial check against the errors of the common-law courts. John Williams, a churchman who became chancellor in 1621, asserts that the equity courts are the place where "the

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<sup>1</sup> For a history of this jurisdictional contest, see Helmholz.

king governes (like God himself) by his owne individuall goodness and Justice” (qtd. in Brooks 151).

Alongside this institutional intertwining, Early Modern law and theology also inflect one another at the level of ideology. Williams’s statement exemplifies this: by aligning the king’s authority with a theological conception of justice, Williams’s defense of equity underwrites Stuart political theology. Theological reasoning is, of course, brought forward in support of all types of legal political arrangements. From Hooker’s defense of the ecclesiastical establishment to Winstanley’s biblically-based critique of private property, theology provides the language through which legal arguments attempt to ground themselves.

Law is, in turn, intrinsic to much Christian theology. Though this was hardly unique to the Early Modern period, the legal face of theology played an especially central role in the culture of post-Reformation England. This particular centrality was due to the key Protestant opposition between law and grace. Protestantism defined itself by its refusal that salvation could come through obedience to God’s law. Though one could certainly be damned for failing to keep the law, one could never achieve salvation by keeping it. Indeed, this rejection of religious legalism within Protestantism could lead to negative characterizations of the law itself. Where English law was invoked by Edward Coke and others as the friend of its subjects, Luther characterizes the Mosaic law as a violent accuser. Contrasting the law and gospel, Luther writes:

On every count, it is evident that the *evangelion* does not form a book of law, but a proclamation of the good things which Christ has offered us for our own, if only we believe. On the other hand, Moses, in his books,

urges, drives, threatens, lashes out, and severely punishes; for he is a maker and administrator of laws. (*Preface to the New Testament* 17-18)

Significantly, the issue at stake here is not the deficiencies of the Mosaic law, but rather the nature of all legal systems. Moses writes as he does because he is a legislator.

Conversely, the gospel offers “good things” because it is not a book of laws. The passage thus registers the way that the legal face of theology resonates at the heart of Protestantism. Moreover, despite the Lutheran insistence on the obedience owed to the prince, the passage suggests that law is ultimately an undesirable reality. There is thus a dialectic at the heart of Protestant thinking, a recognition of its necessary authority that conflicts with an awareness that law does violence to its subjects.

That theological invocations of the law would have a prominent place in the cultural discourse of Early Modern England is a claim that hardly needs substantiating. The sheer volume of theological treatises and sermons published during the period suggests the ubiquity and diffusion of theology. Moreover, from the sermons preached at Whitehall and St. Paul’s Cross to the parish churches and in-house “prophesying” meetings held by Puritans, preaching occupied a prominent place in English discursive culture.

The rise in common law litigation during the period also suggests the central place of law in Early Modern cultural life.<sup>2</sup> Moreover, that political debates about sovereignty took place within the language of equity jurisdiction demonstrates that public discourse engaged with specific questions of jurisprudence. Indeed, legal historian C.W. Brooks argues that the law provided the discursive “ligaments” of English social life. He

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<sup>2</sup> For full account of the place of law within Early Modern English culture, see Brooks.

describes the presence of legal values in “scribblings intended for the edification of children” as well as public speeches. He further explains:

[L]aw was much more deeply ingrained into everyday life than has until recently been recognized by most historians. There were social relationships that took place outside the legal matrix, but the list of them is surprisingly short. Quite apart from the ubiquity of courts down to the village level, most men, and many women, from country squires to seamen and urban wage labourers regularly used legal instruments to record many of the most important transactions in their lives. (307-08)

This dissertation proceeds from my conviction that inheritance provides a particularly apt lens for examining the relationship of law and theology in the period. For lawyers and theologians alike, inheritance provided a language and conceptual apparatus for understanding the self and the community. Edward Coke, who is the subject of Chapter Two, suggests the importance of inheritance in his *Institutes of the Laws of England*. Where other “Institutes” and treatises start with general definitions of the subject matter, Coke begins his treatise with fee simple, the basic type of inheritable estate under the common law. Indeed the entire first volume of the *Institutes* deals with land tenures and gives special attention to the rules governing the inheritance of land. The pride of place given to inheritance law is not limited to Coke, however. Early Modern English law took matters of land and inheritance very seriously. This is unsurprising given both the economic and political power tied to heritable estates. But such pragmatic concerns were also tied to a larger sense that the common law, and especially the common law governing inheritance, was linked to the native liberties of the English

subject. In *The Origins of English Individualism*, Alan Macfarlane has argued, that, apart from the articulated ideology of English liberties, the very structure of English inheritance law played a formative role in the development of English self-understanding. Because English law conceived of ownership as rooted in the individual rather than the family, and because the English land owner was therefore free to disinherit his heirs through the alienation of property, Macfarlane argues that the English came to understand their economic and political identity individualistically. Inheritance law thus functions, in his argument, as a structural determinant of both individual and social subjectivity.

The prominence of inheritance law in Early Modern England can also be viewed through prominent legal contests over inheritance. The Statute of Uses (1536) and the Statute of Wills (1540) reflect the high political and economic stakes attached to inheritance law. Because common law practice did not allow freeholders to distribute real estate by will, and because the king was entitled to a tax when land passed from decedent to heir, freeholders availed themselves of trusts, which held the land “to the use of” the freeholder and his heirs. This both allowed the freeholder to redistribute the property among his children and also allowed the heirs to avoid paying the inheritance tax since, as a corporation, the trust never died. In reaction to this practice, Parliament passed the Statute of Uses, which closed down this legal avenue, thus restricting the freeholder’s right to devise their lands and insuring the king received his taxes. In response to political and legal pressure, parliament passed the Statute of Wills, which allowed land to be distributed by will for the first time (Baker 250-57).

The competing inheritances of the landlords and peasants were also prominent in the debates over the enclosure of common lands, the customary inheritance of the poor.

Moreover, the jurisdictional conflict between ecclesiastical and common law courts occurred over the right to judge inheritance cases. R.H. Helmholz describes, for example, how the ecclesiastical courts were largely successful in preserving their testamentary jurisdiction against encroachment by the chancery and common law courts (79-89). Recent studies by Nancy E. Wright, A.R. Buck and William O. Scott which examine the role of property and inheritance law in Shakespeare's plays further suggest the cultural presence of inheritance law.

Inheritance also played an increasingly central role within Calvinist-inflected theology. The Calvinist emphasis on predestination places inheritance metaphors at the heart of Calvinist soteriology. While Calvin maintains the image of a guilty criminal being forgiven through the substitutionary death of Christ, the drama of the atonement tends to get subsumed within the larger frame of election. Sinners are saved by the death of Christ, but only if God has chosen them to be part of his family. If chosen, the sinner is adopted into the true Israel and thus becomes one of Abraham's true heirs. In his study of English Calvinist communities, Coolidge has emphasized this priority of the covenant over the cross:

[T]he very fact that Christ's mediating role can be so satisfactorily accounted for in terms of the Covenant tends to reduce it to a formality. Neither the human person of Jesus nor the incarnate Logos nor the mystery of participation in the death and resurrection of Christ is a theme of lively interest in the Federal Theology. [. . .] The Covenant itself is the real mediator between God's secret election and its objects. (129)

Coolidge emphasizes that this emphasis diverges from Calvin's own emphasis on Christ as the unique image of God. But it nonetheless makes the point that the general Calvinist emphasis on election raised the theological profile of inheritance-related language.

Protestant theology also emphasized inheritance through its Augustinian emphasis on original sin. Luther and Calvin both affirm Augustine's assertion that human beings after the Fall are unable to will to be righteous. Humans inherit both a corrupt nature and the guilt that proceeds from this nature.<sup>3</sup> This absolute inability to achieve righteousness provides the groundwork for the Protestant doctrine of salvation through sheer grace. Inherited sin thus provides not only the explanation for human wickedness, but also the condition of possibility for the Protestant understanding of salvation. Moreover, original sin also motivates devotion: Calvin writes that it is the humbling recognition of original sin that "[inflames the sinner] with new desires to seek after God" (*Institutes* 3.1.1).<sup>4</sup>

## II.

In his book *Law and Literature: Possibilities and Perspectives*, Ian Ward identifies two main strains of law and literature scholarship. On the one hand, many scholars have attended to the presence of legal language and themes in literary texts, an approach Ward describes as studying "law in literature." Ward exemplifies this approach with the work of Richard Weisberg, who argues that the reading of literary texts can

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<sup>3</sup> Adam's descendants do not, for Calvin, bear Adam's own guilt. Rather they inherit a corrupted nature which itself merits God's wrath, even before that nature has produced discrete wicked deeds: "Hence, even infants bringing their condemnation with them from their mother's womb, suffer not for another's, but for their own defect. For although they have not produced the fruits of their own righteousness, they have the seed implanted in them. No, their whole nature is, as it were, a seed-bed of sin, and therefore cannot but be odious and abominable to God (3.1.8).

<sup>4</sup> I have quoted Calvin here because of his great influence on English Protestantism. For a discussion of Augustine's influence on Luther's conception of sin and salvation, see McGrath 67-94).

enhance an understanding of the law as ethical practice. Weisberg argues that his approach, which he terms “Poethics,” can “revitalize the ethical component of law” through “its attention to legal communication and to the plight of those who are ‘other’” (qtd. in Ward, *Law and Literature* 9).<sup>5</sup>

On the other hand, Ward identifies what he calls a “law as literature” approach to law and literature studies. This approach proceeds from the observation that law is a linguistic act, and indeed a narrative act. Following from this, law as literature scholarship applies the theoretical tool-kit of literary studies to the study of the law itself. Ward explains: “[L]aw *as* literature suggests that both teachers and students must be made aware of all the various ‘isms’ of literary theory, structuralism, post-structuralism, deconstructionism and so on, which can then be used so that as lawyers we can better understand what a text means, both functionally and interpretively” (*Law and Literature* 15). In *Shakespeare and the Legal Imagination*, Ward further shows how the insight that law is a fundamentally literary act has been adopted by legal thinkers with radically different political views. Liberal thinkers like Richard Rorty and Ronald Dworkin share with the more radical thinkers of the Critical Legal Studies movement a conviction that the law should be conceived of as a linguistic discourse by which the community is shaped and through which the community comes to shape itself (4-11).<sup>6</sup> Indeed, Ward

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<sup>5</sup> Originally taken from Weisberg 46. For Weisberg’s full discussion of “Poethics,” see Weisberg 3-47. Weisberg also acknowledges the other side of the coin, that law *is* literature. He argues that “any well-crafted story—whatever its subject matter—uncovers for the lawyer that inevitable primacy of the poetic method to law” (34). Ward acknowledges this, but argues that Weisberg differs from thinkers like James Boyd White, Stanley Fish, and *Robert* Weisberg in his insistence that reading literature is more important than applying literary theory to the law (*Law and Literature* 21).

<sup>6</sup> Allan Hutchinson’s description is apt: he argues that “legal stories mediate our engagement in the world and with others: they provide the possibilities” and “the parameters for our own self-definition and understanding” (qtd. in Ward 6).

himself advocates a similar perspective in the opening passage of *Shakespeare and the Legal Imagination*:

The interdisciplinary study of law and literature is now well established. Law is a function of text and of language, and is better understood as such. [ . . . ] If law is indeed a literary expression, then its subjects subjugate themselves as readers and audiences. Subjugation becomes an engagement with texts; we subjugate ourselves to those texts which we accept, whether or not our acceptance is encouraged by our reason, our superstition, or merely by fear of punishment. In other words, the legitimacy of law, the extent to which we accept it as valid, whether it be rational, providential or simply effective, rests in the final analysis, in our collective and individual political imagination. (1)

This passage argues that law, like literature, shapes the subjectivity of its readers. Readers, as individuals or communities, decide which texts to read. However, the choice to read a text is the choice to subjugate oneself to that text. This requires relinquishing control; the texts act as agents, shaping the individual and the community even as the individual and community reshape the text through acts of interpretation. Moreover, even the choice of which texts to read is culturally shaped by a variety of intellectual and structural factors. That one of these factors is, no doubt, prior reading places each act of readerly subjugation within a history of interpretation. Legal interpretation, like literary interpretation, always occurs within tradition.

While the language of the passage above and, in particular, Ward's choice of the term "subjugation" suggest unilateral domination of subjects by texts, Ward in fact

envisions a dialectical back-and-forth between readers and texts. He argues that, like literature, “a legal order or constitution is a product of the imagination” (2). He moreover asserts that recognizing law’s origins in the social imaginary “militates against any notion that a constitution is somehow set in stone, that it enjoys some deeper metaphysical legitimacy” (2).

Ward’s description of this dialectic between readers and texts is similar to the theory of subject formation proposed by Louis Montrose in his essay “The Elizabethan Subject and the Spenserian Text.” Montrose argues that texts “construct” the world and “accommodate” readers to “positions within” the world (306). This construction is a bilateral process. Texts shape their readers, but they also provide their readers with the raw material for self-expression and action. Montrose chooses the term “subjectification” to name this process of subject-formation, which “shapes individuals as loci of consciousness and initiators of action” while also “[constraining] them within networks of power beyond their comprehension or control” (306). Though subjects cannot absolutely “control” the discourse that forms them, they can act upon it. For Montrose, subjects express their own agency by reshaping the discourse that shapes them: the subject “[imposes] upon the fictions whose enforced acceptance signifies his subjection, the marks of his own subjectivity” (331).

If Montrose’s model of subjectification describes Ward’s approach to law and literature, it also describes Christian theology. Like law, theology is a literary discourse that shapes and is shaped by its community of readers. Moreover, just as the law often relies upon acts of narration, theology is rooted in both the specific stories and larger

meta-narrative of the Hebrew and Christian scriptures. The biblical psalter opens with description of readerly subjectification:

Blessed is the man that walketh not in the counsel of the ungodly,  
nor standeth in the way of sinners, nor sitteth in the seat of the  
scornful.

But his delight is in the law of the Lord; and in his law doth he meditate  
day and night.

And he shall be like a tree planted by the rivers of water that bringeth forth  
his fruit in his season; his leaf also shall not wither; and  
whatsoever he doeth shall prosper. (Psalm 1.1-3)<sup>7</sup>

Like Ward's readers choosing the texts to which they subject themselves, the speaker of the psalm rejects the 'counsel of the ungodly' and subjects himself to God's law.

Moreover, he subjects himself to it constantly; meditation on the law becomes an interpretative habitus that forms the speaker into, metaphorically, a large, fruit-bearing tree. Ramie Targoff has demonstrated how psalm reading itself constituted the nexus of individual and corporate devotion in Early Modern England, in particular through the medium of the Prayer Book (*Common Prayer...*). Repeated acts of subjection to poetic theology thus played a central role in constructing both the self and the community.

This all argues for a general structural affinity between literature, law, and theology. In "Practicing Law and Literature in Early Modern Studies," Bradin Cormack describes this structural relationship between law and literature. Literary texts which attend to the law, he argues, "[speak] to a fundamental and historically inflected

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<sup>7</sup> All biblical citations are to the King James Version.

structural relationship. And history is of the essence here: not just the historical details of the law as it was represented in the novel, play, or poem, but most importantly, the history of the law's own discursive relations" (80). More recently, Cormack has explored this structural affinity of law and literature at the limit points marked by legal and literary jurisdiction. Jurisdiction, for Cormack, is the process by which a discourse creates its own authority as the *posterior* effect of the articulation of its limits. Jurisdiction merely "delimits" the sphere of effective power. But, having delimited this sphere, jurisdiction creates an idea of authority as power exercised within these limits (3). Literature, too, creates its own authority as an after effect of practice. Analyzing Wyatt's assertion of a private poetic sphere in competition with the king's legal jurisdiction, Cormack argues that poetics "[projects] a competence that, in turn, must look to them for authorization. Wyatt's muses name a realm of authority that is the posterior effect of an activity's coming to constitute a sphere" (20).

Cormack's description of the "historically inflected structural relationship" between law and literature provides a methodological starting point for this study. More particularly, it reflects my own aim in reading theological and legal accounts of inheritance side-by-side. In the chapters that follow, I explore how the lens of inheritance can illuminate the structural affinity between law and theology. In the broadest sense, attending to inheritance allows us to see how law and theology confront the social disruptions created by the passage of time. If, to borrow another phrase from Cormack, "law is constituted [. . .] as a processing of an unruliness it cannot quite put in order" (21), then inheritance law might be understood as that aspect of law that attempts to order the economic and social "unruliness" caused by death. It expresses, in other words, the

community's attempt to stabilize economic and social relations across generations. In a similar way, theologies of inheritance locate the present generation of believers within a transhistorical community. Especially within Jewish and Christian ideas of covenant, they assert that the individual and corporate relationship to God is mediated by the past. In particular, the present status of believers before God is intrinsically related to the status of fathers and mothers (conceived literally or figuratively) who pass on their blessing to later generations. Representing one Early Modern perspective on this, John Cotton asserts:

[E]very righteous Householder and Parent, [should] take more care to leave a good covenant to their children and servants than anything else. If they have but this portion left to them, they shall do well, whether they grow and prosper in the things of this world or no. God hath made a *Covenant* with the Parents and Householders, and it shall descend upon them so far as God doth order it. (qtd. in Coolidge 84)

If inheritance provides a language for the bestowal of divine blessing from one generation to another, it does so in the face of an unruliness that is also a matter of inheritance. Covenantal blessing occurs, not against the general unruliness of competing human interests, but rather against the disorder caused by the Fall. Inheritance thus provides a lens through which theology imagines both sin and salvation.

Discourse about inheritance, then, both describes and constructs the way material and spiritual blessings are passed on from one generation to the next. However, neither law nor theology are ultimately able to order the unruliness attending intergenerational

relations. In this study, I pay close attention, therefore, to these sites of unruliness as places that expose the limits of legal and theological representations of inheritance. These sites of unruliness, moreover, have certain similarities in both law and theology which thus reveal the structural similarity between the disciplines. Here I wish to enumerate three characteristic problems that arise.

First, as disciplines that rely upon narrative and textual traditions, law and theology both require acts of interpretation. The meaning of inheritance can thus never be fully stabilized. Nor can the status of any putative heir be fully stable. As we have seen, legal and theological subjects look to the legacy of the past in order to understand their own material or spiritual estate, but they necessarily find that legacy opaque.

Occasionally this opacity is due to knowledge that has been lost to the past. In a contest over title to land, for example, the problem may be a matter of excavating claims that reach back for centuries.<sup>8</sup> But the opacity of inheritance equally derives from the fact that texts intended to delimit the meaning of inheritance are, in fact, difficult to interpret.

Edward Coke demonstrates the opacity of inheritance law when he takes over five pages of tiny print to circumscribe the meaning of “land” in Littleton’s definition of fee simple. Richard Hooker similarly highlights the difficulty of interpreting the text of inheritance within theology. In Book Five of *The Laws of the Ecclesiastical Polity*, he explores the inability of Christian traditions to agree on the meaning of Christ’s words of sacramental gift: “This is my body.”

This opacity of the inheritance text creates conflict and can even turn to violence. But it also leads to the construction of a community of interpreters. In inheritance

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<sup>8</sup> See the discussion of the Grand Assize below on 212.

disputes over land, the law relies on the witness of the community to determine who last held peaceful possession of an estate or whose title is rooted in the oldest possession. Coke, moreover, imagines the common lawyers as part of a transhistorical community of legal interpreters who, through repeated reading of the legal tradition, can develop the “artificial reason” necessary for understanding the law’s meaning. Hooker, too, constructs the meaning of the Eucharist through the rubric of tradition. He defends the Anglican doctrine of the Real Presence because it affirms only what all the main interpretative traditions hold in common: “[It] hath in it nothing but what the rest do all approve and acknowledge to be most true, nothing but that which the words of Christ are on all sides confessed to enforce, nothing but that which the Church of God hath always thought necessary” (5.67.12).

The examples of Coke and Hooker show how law and theology both construct a doubled inheritance. They construct the meaning of those things (land, the Sacrament) which are handed down from generation to generation. They also themselves constitute an inheritance for the community. The textual traditions surrounding inheritance thus become a vehicle for self-understanding. Or, to put it another way, the tradition itself becomes the blessing that is passed down. Coke reflects this when he calls the common law the “best birth-right the Subject hath” (*The Second Part of the Institutes* 56).

Second, in addition to conveying unstable meaning, inheritance disrupts social relations due to its selectivity. Inheritance law dictates who inherits from the previous generation and who does not. Indeed, under the customary common law rules of inheritance, family estates passed undivided to oldest sons. While this principle of primogeniture was designed to keep family estates intact, it also prevented parents from

distributing land to younger sons and daughters. Eileen Spring has argued that the development of the entail originally gave fathers the ability to establish a “junior branch of the family” by bestowing land on younger sons and daughters at their marriage. But even this, she argues, introduced the idea of “greater discrimination against females than that embodied in the common law.” As any reader of Jane Austen knows, “Because the entail could specify the sex of those to take under it, females could be cut out so long as the entail lasted” (28).<sup>9</sup>

The Calvinist doctrine of predestination, too, is severely selective. If some individuals are predestined to be heirs of God, others are reprobate, chosen from before the foundations of the earth for eternal damnation. Moreover, theology that posits a historically visible community of the elect can be violently selective in the here and now. Chosen Israel wins the Promised Land by conquering the Canaanites, and England’s “godly commonwealth” comes into being through the violence of civil war and regicide.

Third, though inheritance is a vehicle for intergenerational blessing, it is also a tool by which the past controls the future.<sup>10</sup> Legally, inheritance is the means by which the dead control the material condition of the living. (Fittingly, legal historian Lawrence Friedman has entitled his recent social history of American inheritance law *Dead Hands*.) In English law, this control of the deceased over the living is particularly visible through the entail. In the entail, the law gave priority to the will of the one who created the entail

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<sup>9</sup> That this was more discriminatory than the customary rules of primogeniture perhaps needs a brief explanation. While the common law did give lands to the oldest son, if there were no sons (a phenomenon which Spring conjectures was not uncommon) the lands would be divided equally among the daughters. An entail that specified that only male heirs were to inherit, by contrast, prevented daughters from inheriting even when there were no sons. For Spring’s argument that the development of inheritance law in Early Modern England was detrimental to the “heiress at law,” see Chapter 1 of *Law, Land, and Family*.

<sup>10</sup> For this point, I am indebted to Joseph Jenkins’ discussion of inheritance as a site of intergenerational struggle in his Introductory essay to *Law and Literature*, 20.2.

over the will of those who inherited. Spring, commenting on Milsom's assertion that the entail was a "juridical monster," writes, "The landowner who entailed his estate on his eldest son no doubt provided for his younger children beforehand, but he inevitably rendered future generations unable in their turn to provide for their children, either younger children or heiresses-at-law" (29). The entail not only prevented the living from making the kind of family settlement that Spring describes. It also constrained the economic freedom of the living by preventing the landholder from selling the land.

The theological doctrine of original sin similarly imagines inheritance as that which constrains the will of the heir. Just as heirs of an entail are unable to exercise their own will, heirs of Adam cannot freely exercise their corrupted will and reason. Similarly, the Calvinist doctrine of election places the fate of the individual entirely in the hands of the individual's heavenly father. Under the sign of the law or the sign of theology, inheritance can be, to borrow Luther's phrase, a bondage of the will.

In addition to these structural similarities specific to the problem of inheritance, law and theology share a more general structural affinity. Namely, both are discursive traditions that operate in the shadow of unrepresentable ideals. They both, to borrow from Noam Reisner's recent study of Milton, are attempts to put the "ineffable" in language. Law does not merely attempt to order the competing interests of persons in a pragmatic fashion. It also aspires to an ideal of justice. Similarly, (and in the Early Modern period, certainly not unrelatedly), Christian theology attempts to describe ideal, eternal being. That it often does so in terms of infinite qualities (omnipotence, omniscience, omnipresence, etc.) merely highlights the impossibility of the task. These two impossible discourses are not, of course, unrelated in Early Modern England. While there were, of

course, thinkers like Hobbes who offered a distinctly positivist account of the law, most conceived of law in relationship to justice, which was itself conceived in relationship to the will of God (as mediated by natural law, scripture, and/or individual inspiration). Law, that is, looked to God to ground its authority.

Law and theology are thus both aporetic discourses at their core. If this is the case, then aporia itself is part of the subjectivity created by legal and theological texts alike. While one might object here that all texts are aporetic at their semiotic core, I want to suggest that the aporia experienced under the signs of law and theology has a particularly acute edge, an edge that is sharpened by the deep importance of the ideals both discourses attempt to represent. Derrida captures something of what he calls the “urgent” experience of the legal aporia in his well-known essay “Force of Law: The ‘Mystical Foundation of Authority’”:

Justice is the experience of the impossible. A will, a desire, a demand for justice whose structure wouldn't be an experience of aporia would have not chance to be what it is, namely a call for justice. [. . .] Law is the element of calculation, and it is just that there be law, but justice is incalculable, it requires us to calculate with the incalculable; and aporetic experiences are the experiences, as improbable as they are necessary, of justice, that is to say of moment in which the decision between just and unjust is never insured by a rule.” (16)

The subjective “will,” “desire,” and “demand” for justice exist outside the realm of the law in this passage. While this will cannot be satisfied within the law, it nonetheless

forms the discursive context within which the aporia occurs. The subject experiences the aporia of justice through confrontation with the representational and pragmatic limitations of the “rule.” One can, I think, easily imagine how this dynamic might apply to theology as well. Indeed, it follows closely the logic of the apophatic, mystical branch of Christian theology. To experience God, the mystics argue, is to experience an aporia. In particular, it is to experience the aporia that occurs at the limits of theology’s ability to represent God.

By discussing the relationship of the law to what putatively lies behind and beyond it, and, more particularly, by referencing Derrida’s description of the legal aporia, I am pushing back against Cormack’s brilliant description of the way legal authority is an intrinsic effect of its own production. After critiquing Derrida’s argument in “*Force of Law*,” Cormack offers his account of jurisdiction as a way around the tendency to discuss legal authority in the language of sovereignty and political theology:

The problem to my mind is that an exclusive focus on sovereignty tends to collapse into a question of origins a conversation that might take place, instead, about the possible relations between the juridical *given* – the necessary conditions for juridical activity—and the juridical *ground*, or supporting frame and symbols for that activity. To put this differently, I contend that jurisdiction helps counter the almost irresistible tendency to make sovereignty have meaning only as political theology, by making it legible, instead, as the real effect of a more mundane process of administrative distribution and management. (*A Power to Do Justice* 9)

My concern in pushing back against this passage is not to contest Cormack's assertion that legal authority is a rhetorical/imaginative after effect of "mundane process." Rather, it is to argue that any study of Early Modern legal and theological subjectivities must keep a non-mundane, theological horizon of authority in view precisely because so many Early Modern texts understand *legal* authority as the "real effect" of *divine* authority. In this light, Derrida's description of the legal aporia is useful precisely because it suggests the affective urgency that results when the pursuit of idealized concepts runs into the representational limits of language.

### III.

Derrida's urgent, affective aporia provides a useful entry point for thinking about the relationship of literature to inheritance law and theology. If the structural limitations of law and theology catalyze a certain affective response, imaginative literature provides a useful location for studying this affective response. To put it slightly differently, if, following Ward, we conceive of legal and theological texts as "subjugating" their readers, we can conceive of the literary as a mode of discourse that attempts to represent the experience of this subjection in both its intellectual and affective dimensions. Subha Mukherji has usefully articulated this benefit of literary study in the introduction to *Law and Representation in Early Modern Drama*: "[L]egal plots in drama bring together the affective and the discursive, concerns that can easily suffer an unfortunate separation in critical studies. Ideas such as probability and uncertainty, emerging in the legal and philosophical tradition of the period, are given a human face in the plays" (8).

Literature not only accentuates the affective experience of legal and theological subjectification, however. It also, to use Cormack's language, "[burrows]" into discursive "forms and categories" in order "to reflect outward an intensified version of the work" that such categories do (*A Power to Do Justice* 22). In relationship to the legal and theological aporia I have been suggesting, literature accomplishes this intensity through its ability to force contradictions together through narrative structure or metonymic juxtaposition. Throughout this study, I attend to such contradictions, not only as places where the text exposes ideological fissure, but also as places that signal the aporetic structure of legal and theological inheritance. Contradictions reflect, that is, the urgent struggle to represent the ineffable. Moreover, they not only represent this semiotic struggle, but they also replicate it in their readers who are forced to confront and assimilate the same contradictions. Literature particularly intensifies the experience of inheritance law and theology through its heightened attention to temporality. The ability of literature to construct and manipulate the temporal experience of its own reading makes it well-suited for exploring the temporal aspect of inheritance. Accordingly, in this study I attend to the way the literary form of texts shapes the affective and intellectual work they do.

In the chapters that follow, then, I study the intellectual work of texts. I ask, that is, how they wrestle with the various epistemological and ethical conundrums posed by inheritance law and theology. I also, however, attend to the *experience* of inheritance law and theology that these texts both represent and replicate.

#### IV.

The chapters that follow study one lawyer and three poets. First, I examine the writing of the lawyer and parliamentarian Edward Coke. In particular, I attend to two parts of his *Institutes of the Laws of England* which deal with property and inheritance law. I argue that common law authority in the *Institutes* is structurally equivalent to the logic of mystical theology. I also argue that the text invites a method of reading that parallels devotional reading practices. The *Institutes* thus infuse English inheritance law with theological import and imperative.

Second, I study the devotional poetry of John Donne in the temporal context of the Fall. Using Augustine's description of fallen time from Book 11 of *The Confessions* as a tool for reading the poems, I explore how Donne's poems deal with the threat of impending judgment. In particular, I argue that Donne draws on the language of inheritance law to supplement the harsh criminal-law language that typified Protestant atonement theory. Donne's poems perform, I suggest, the rhetorical work of convincing God to view him through the lens of inheritance law rather than criminal law. They plead, that is, that God treat Donne as a son.

Third, I examine the work of inheritance law in George Herbert's devotional cycle, *The Temple*. Like Donne, Herbert draws on the language of property and inheritance law to describe the work of atonement. In the chapter, I study the ways Herbert's poems draw out the violent contradictions of inheritance law and its deployment within theology. I argue that, while inheritance law may not make for clean theology, it contributes much to the ambivalent energy of Herbert's poetry.

Finally, I turn to Milton's three long poems: *Paradise Lost*, *Paradise Regained*, and *Samson Agonistes*. I argue that inheritance law generally, and possession law in particular, play a central role in Milton's vision of sacred history. I explore the way that Milton, like Herbert, attends to the violent contradictions that inheritance law exposes within theology in *Paradise Lost*. I also explore how *Paradise Regained* and *Samson Agonistes* together constitute a troubled working-through of the ethical implications caused by these contradictions.

## Chapter 2

### Edward Coke's Common Law Theology

At the end of his commentary on Chapter Twenty-Nine of *Magna Carta*, Edward Coke offers four possible translations for the Latin noun *rectum*. *Rectum* is no throw-away term in the history of English law. It stands as the final word in the chapter that is responsible for the lasting jurisprudential significance of *Magna Carta*. Due process, *habeas corpus*, and the guarantee of trial-by-jury all come from this short chapter, which states:

No freeman is to be taken or imprisoned or disseised of his free tenement or of his liberties or free customs, or outlawed or exiled or in any way ruined, nor will we go against such a man or send against him save by lawful judgement of his peers or by the law of the land. To no-one will we sell or deny of delay right or justice.

According to Coke, *rectum* can be taken to signify the law itself, the instrument by which justice is obtained. It can also be taken as a “right” measure by which crooked things are discovered, a representation of the fact that the common law is an Englishman’s greatest “birth right,” and a guarantee of the free Writ of Right (the original English action by which a freeholder could claim right to land). This makes (perhaps unwittingly) the central confession of the *Institutes*, namely that common law practice is always interpretive practice. While Coke may believe that English common law is superior to all

other legal systems, he also recognizes that the law does not explain itself. Legal knowledge requires a hermeneutic act. For the English reader, it also requires an act of translation out of Latin or Law French (*The Second Part...* 56-57).

While this focus on interpretation is typical Coke, the biblical overtones of this passage are unusual. Coke does occasionally cite biblical precedents to justify common law customs, notably claiming that the uniformity of the pint is based upon Deuteronomy: “that there should be one measure and one weight through England, is grounded upon the Law of God” (*The Second Part...* 41). While these occasional references to scripture remind the modern reader that the discursive domains of divine law and common law were not mutually exclusive in Jacobean England, their paucity also reveals that the logic of Coke’s common law primarily works within an extra-biblical framework.

In the commentary on Chapter Twenty Nine of Magna Carta, however, Coke does not explicitly appeal to biblical precedent, but rather adopts a quasi-biblical hermeneutic. His claim that *rectum* could signify an English “birthright”, echoes, not only the biblical account of Jacob and Esau in Genesis 25, but also Paul’s typological redeployment of that story in Romans 9.<sup>11</sup> Coke declares “It is called Right, because it is the best birth-right the Subject hath, for therby his goods, lands, wife, children, his body, life, honor, and estimation are protected from injury, and wrong” (*The Second Part...* 56). Unlike the other possible meanings of *rectum*, this interpretation is clearly figurative. It highlights the glorious inheritance that English subjects receive from their ancestors in the form of

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<sup>11</sup> In Romans 9, Paul ignores the role of Esau’s choice in selling his birthright and focuses on God’s sovereign decision to favor Jacob over Esau. Paul summarizes his argument: “So then it is not of him that willeth, nor of him that runneth, but of God that sheweth mercy” (Romans 9:16). The passage was, of course, a key text for Calvinist predestinarian thought.

legal protections against royal tyranny. Drawing on Pauline typology, it also figures the English as an elect nation. The common law, then, is not only a superior legal system, but also a sign of divine favor. Modifying Paul's citation of Malachi, Coke might write on behalf of God, "England I have loved, but Normandy I hated."

Coke extends the Biblicism of this section in the final sentence of his chapter. Noting that his fourth reading for *rectum*, that it signifies the Writ of Right, can be found in several "old readers" of the common law, Coke emphasizes the need for students of the law to read scrupulously: "As the gold finer will not out of the dust, threds, or shreds or gold, let passé the least crum, in respect of the excellency of the metal: so ought not the learned reader to let passé any syllable of this Law, in respect of the excellency of the matter" (57). The call to a life of reading the legal tradition is one of Coke's favorite themes, and here he gives it biblical overtones. Coke's simile about a gold finer combing gold dust for precious "crumbs" has a distinctly parabolic tone, echoing Jesus' stories about a woman searching every corner of her house for a lost coin and a man who happens to dig up a valuable treasure in a field that isn't his. More explicitly, Coke's simile parallels Jesus' saying about well-educated lawyers: "Therefore every scribe which is instructed unto the kingdom of heaven is like unto a man that is an householder, which bringeth forth out of his treasure things new and old" (Matthew 13.52). Perhaps most strikingly, Coke redeploys Jesus' affirmation of the Jewish law within his own common-law hermeneutic. As Jesus declares that neither "one jot or one tittle" will "pass away" from the law (Matthew 5.18), Coke instructs that a student of the law cannot pass over a single syllable. Like Jesus, he affirms the law in its smallest material particular. Coke's appropriation of the scriptures is syncretistic; he is not arguing that the principles

of Christian theology lay behind each principle of the common law. Rather, he is appropriating theology as a mode of writing that can infuse the common law with theological import and imperative.

Not only does Coke's appropriation of a theological mode underscore the glory of the common law and give a prophetic/pastoral vocation to its interpreters, it also allows us to understand the rupture from history that Coke's interpretative project requires. Like Jesus, who claims not only to uphold the law, but also to climactically fulfill it, Coke must claim eschatological status for his generation of lawyers. Only if the law is fulfilled and completed for Coke and his readers, only if the historical flux of custom and decision is finished, can the Jacobean lawyer find the certain meaning that Coke promises he can. This break from history is striking because it sharply conflicts with Coke's repeated affirmation of the accumulated wisdom of the tradition and the lifetime of repeated reading he prescribes to his students. Yet it is a break that the act of authoritative judgment requires. Describing the stable meaning that the Institutes are designed to create, Coke declares: "And our Expositions or Commentaries upon *Magna Charta*, and other Statutes, are the resolutions of Judges in Courts of Justice in judicial courses of proceeding [. . .] and therefore being collected together, shall (as we conceive) produce certainty, the Mother and Nurse of repose and quietnesse." (*Institutes Part II A6<sup>v</sup>*). On the one hand, this passage embraces history and, in particular, legal historiography. By collecting and studying the history of common law judgment, one can bypass the spurious interpretations of individual commentators and arrive at a certain interpretation of the common law. However, this fiction of history producing certainty depends upon a further fiction. Coke and his readers can only experience "repose and quietnesse" if they

themselves are living *after* the series of decisions and statutes that comprise the common law tradition. They can only know if they live after history. Their judgments can only be certain (rather than merely provisional), if they stand as the fulfillment of the law. Coke's historiography here resembles the eschatological historiography described by Benjamin: "The past carries with it a temporal index by which it is referred to redemption. There is a secret agreement between past generations and the present one. Our coming was expected on earth. Like every generation that preceded us, we have been endowed with a *weak* Messianic power, a power to which the past has a claim" ("Theses..." 254).

## I.

In the jurisprudential debates of the early seventeenth century, critics of English common law mounted a two-pronged attack. On one flank, champions of the equity courts attacked the rigidity of the common law. Because the common law is bound to tradition, they argued, it does not possess the adaptability required by a just legal system. In this, critics of the common law drew on the classic justification for equity offered by Aristotle in the *Nicomachean Ethics*. According to Aristotle, equity is necessary because general laws will always fail to provide just remedies for the unanticipated circumstances that arise in social life. Time and diversity inject built-in error into the very structure of law: because the lawmaker cannot foresee the totality of events to come, cases will inevitably arise in which a strict application of the laws would be unjust. Equity, the standard by which a judge may adapt the rigor of the law to achieve a more just outcome, provides the necessary remedy (Aristotle 5.10). Late-Elizabethan jurist William Lambarde expresses this sentiment in this *Archeion*: "[. . .] in his *Court of Equitte* [the Chancellor]

doth (when the case requireth) so *cancel* and *shut up* the *rigour* of the general *Law*, that it shall not break forth to the hurt of some one singular case and person (31-32, qtd. in Fortier 70). Lambarde's explanation of equity reveals the political explosiveness of the equity debate in Early Modern England. Equity was not a matter of methodology within the common law system by which a common law judge could exercise discretion. Rather, it was a question of jurisdiction. Litigants who felt they could not achieve a desired verdict at the common law could seek relief at the Chancellor's court of equity. In this respect, equity courts struck a blow at the integrity of the common law system, suggesting that if you wanted justice or mercy, you best look elsewhere.

Yet on the other flank, critics could also accuse the common law of not being stable enough. Those who wanted to replace the common law with a continental-style system based on Justinian's code pointed out the virtues of having a system that was explicitly written and logically ordered. They contrasted such an orderly system with the common law, which was a partially written tradition of decisions, customs and statutes that had evolved over time (Helgerson 73-78). For its critics, then, the common law was both too rigid and too amorphous – at once too tied to writing and not written enough.

Both of these criticisms of the common law relate to the law's historicity. The critic who emphasizes the need for equity claims that law is insufficient because it is locked in the past. The legislation and judges who have created the laws are dead and, consequently, unable to adapt or rewrite their laws in light of subsequent circumstances (Aristotle 5.10). Advocates of Justinian law, too, attack the law for being too tied to historical processes. While the Justinian code reflects an atemporal, rational order, the

common law develops in reaction to a series of events. It is the product of historical accident.

In the pages that follow, I will explore how Coke handles the problem of history in his *Institutes*. Far from being embarrassed about the law's ties to historical accident, Coke highlights the historical tradition of the common law, claiming that it is the law's very historicity that legitimizes it. Coke not only employs history as a legitimizing theme, arguing that the law's history is what stabilizes it. He also makes a formal argument. The *Institutes* embody the temporality of the law in their form and thereby demand a type of reading that enacts the dilatory narrative of the law itself. This temporal orientation of the *Institutes*, its formal strategy of historical collection, allows Coke to elide the gap between the positive common law and the ideal of justice that he claims the common law can achieve. But the temporality of the *Institutes* also reveals the structural limits of law, the constraints that prevent it from achieving the justice it aims at.

The form of the *Institutes*, then, represents a powerful strategy for overcoming the gap that history opens between law and justice. However, it also reveals the contradictions that such a strategy necessarily entails. Ultimately, Coke's construction of common law authority depends upon the construction of fictions. These fictions, moreover, depend upon theological logic and structure.

### III.

The reader of the *Institutes* is thrust into the law *in medias res*. Coke does not begin, as Richard Hooker does in his *Laws of the Ecclesiastical Polity*, with an ordered argument about the nature of law. Nor does he, with Hobbes, offer a myth about the

origins of the legal state. Rather than encountering beginnings or first principles, Coke's reader confronts an already existing sea of legal texts. The *Institutes* begins with a commentary on Littleton's explanation of Fee Simple, the basic type of inheritable, alienable estate in England. Under the large print title, "The First Part of the Institutes of the Lawes of England," the reader finds the modest chapter heading: "Chapter 1. Fee Simple. Sect. 1." Below the chapter heading are three columns of text. The left column contains Littleton's Law-French exposition of the rules of Fee Simple. The middle column contains an English translation of Littleton's text. And the right column contains, in much smaller print, Coke's commentary on Littleton. In addition to these columns, the margins of the text contain cross-references to related statutes, decisions, and legal commentators such as Bracton and Plowden. (See Figures 2.1 and 2.2)

In shaping the *Institutes* this way, Coke gives a spatial, rather than a chronological or causal, logic to the history of the common law. One does not begin with the beginning or with general ideas. Rather, one begins with a French text that moves sideways into English translation and related decisions. Importantly, Littleton is not an ur-text for Coke. Coke traces many of the rules in Littleton back to older customs and decision. The move sideways can lead one to either earlier or later dates on the calendar. In other words, lateral movement in the page does not correlate to chronological direction. Rules, statutes, and customs are linked by semantics, political history, judicial decision, and philology in an endless chain of signification. This chain of signifiers does not follow chronological or causal logic. Often, the logical connection between different pieces of the text is the lateral movement of metonymy. One cannot trace the law back to its origin.

This lateral, originless structure of the *Institutes* mirrors one of Coke's favorite arguments for the common law's superiority, namely that the common law has existed in England from time immemorial. For Coke, the fact that there is no record of the common law being changed, that Normans, Saxons and even the Romans found it superior to the laws that they brought to England, demonstrates its superiority to other legal systems. Coke declares in the preface to the Second Part of his Reports that "[if] the ancient Lawes of this noble Land had not excelled all others, it could not be but some of the severall Conquerors, and Governours therof; That is to say, the Romanes, Saxons, Danes, or Normans, and Specially the Romanes, who (as they justly may) doe boast of their Civil Lawes, would [. . .] have altered or changed the same" (v<sup>r</sup>). By placing the origins of the common law in Britain's prehistory, Coke creates a fiction of an originless law that has sailed, unaltered, above the fray of conquest and dynastic struggle. In other words, the common law is a timeless system that has remained fundamentally untainted by historical change. Though this myth of the common law as immemorial custom has become well known through Pocock's seminal study of Coke in *The Ancient Constitution and the Feudal Law*, J.W. Tubbs has argued convincingly that Coke's view was the minority view. Many Medieval and Early Modern legal thinkers did not identify custom as the heart of the common law. Indeed, many recognized the Norman Conquest as the font from which the common law sprang. Coke is arguing against the intellectual grain, then, by claiming the immemorial origin of the law. If one takes change to be essential to history, Coke's argument is that the common law is custom without history.

Coke's desire to present the common law as unaltered by political history reflects his anxiety to stabilize the meaning of the common law. Not only does the common law

descend through British history unaltered; it also speaks with one voice. In response to critics who accuse the common law of being self-conflicting, he argues that diversity of opinion among legal scholars derives, not from the law itself, but rather from faulty scholarship. Through his own glosses and the collection of other legal voices, Coke writes “to the end that al Judges and Justices in all the severall parts of the Realme might as it were with one mouth in all men’s cases pronounce one and the same sentence” (*La tierce par des reportes Cii<sup>r</sup>*). This unified voice is not the voice of legal positivism, however. Coke’s argument for the unity of the law rather reflects R.S. White’s claim that all legal systems in Early Modern England claimed to be based upon some form of natural law (44). Coke argues that “the admirable unitie and consent” of the law “proceed from God the fountaine, and founder of all good lawes’ (*La tierce par des reportes Cii<sup>r</sup>*). The common law is thus founded upon divine law. In light of this, the legal profession can be read as a community of priests and legal history can be understood as participating in the arc of providential history.<sup>12</sup> Coke here strikes a blow for the common law against the equity courts by claiming for the common law the very same quality, reason, by which equity courts were supposed to remedy the rigidity of the common law (cf. White 45). More striking than this professional blow, though, is the imaginative conceit by which Coke attempts to link the positive common law with the unity of idealized higher law. He condenses the thousands of pages of writing collected over hundreds of years into the clarity and logocentric presence of a single spoken sentence.

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<sup>12</sup> Raffield, commenting on Fortescue’s assertion that the officer’s of the court are “not improperly called [. . .] Sacerdotes,” writes that “[t]he suggestion that the primary purpose of the judiciary was to fulfill a sacerdotal role represents a pervasive opinion in the early modern English legal profession that jurisprudence was a form of theology, the meaning of which could be expounded only by common lawyers” (9).

In light of this desire to present a unified, unaltered voice for the common law, Coke's choice of form for the *Institutes* makes good sense. The text presents the reader with the entire tradition at once. Rather than proceeding linearly from some privileged moment in the narrative, the spatial logic of the text forces the reader to see the tradition as a whole. This formal refusal to highlight one piece of the tradition over another requires a peculiar type of reading. Because the *Institutes* does not begin with origins or definitions, the reader cannot read selective passages to get the big picture. Rather, she must wade into the tradition as a whole, stumbling upon definitions of key terms like "common law" and "custom" only when Littleton's text provides the occasion for a gloss. Coke only defines terms and clarifies legal methodology in conjunction with the preexisting text of the law. For example, Coke does provide a structural explanation of the common law in Part 1 of the *Institutes*, declaring that that the English law consists of a "triangular" structure made up of custom, parliamentary statute, and common law. But he only makes this general declaration some two hundred pages into the *Institutes* when Littleton addresses the property considerations raised by local customs in the boroughs. Once Littleton has afforded Coke the opportunity to discuss custom, Coke proceeds to define its constituent parts, differentiate custom from the common law (custom is regional whereas the common law is the custom of the whole realm,) and demonstrate how custom, statute, and common law should be weighed together in particular cases. Yet this crucial explanation of legal structure and methodology occurs without fanfare in the margins of Chapter 10, Section 165. There is no textual or semantic clue given to signal its importance or set it apart from the rest of the commentary. It is merely one gloss among many (110<sup>v</sup>).

Reinforcing the obscurity of this seemingly important gloss is the fact that the 1628 first edition of the *Institutes* had no index. The reader who wanted to understand the relationship of common law, custom, and statute could only find it by stumbling upon it accidentally when looking up “Tenure in Burgage,” reading the book cover to cover, or skimming through hundreds of pages of tiny marginalia. Indeed, Coke intends this obscurity. In the preface to the Fourth Part of the Reports he expresses his distrust of abridgments and tables that short-cut the process of reading an entire work: “For the advised and orderly reading over of the Bookes at large [. . .] I absolutely determine to be the right way to ending and perfect knowledge [. . .] certaine it is that the tumultuarie reading of Abridgements doth cause a confused judgement” (qtd. in Cormack and Mazio 13). Similarly, in the conclusion to the First Part of the *Institutes*, he recognizes the enormity of the text, but declines to create an index because he does not want to deprive “every studious reader” of the benefit of creating their own tables (395<sup>r</sup>).

The slow, digestive reading that the text requires is central to Coke’s pedagogical project. Only through slow reading of the tradition can one become a learned judge or lawyer. He instructs his readers:

Mine advice to the Student is, that before he reade any part of our Commentaries upon an Section, that first he reade againe and againe [Littleton] himselfe in that Section, and doe his best endeavours, first of himselfe, and then by conference with others (which is the life of Study) to understand it, and then to reade our commentary thereupon, and no more at any one time, than he is able with delight to beare away and after to meditate thereon, which is the life of reading. [. . .] And albeit the Reader

shall not at any one day (do what he can) reach to the meaning of our Author, or of our Commentaries, yet let him no way discourage himself, but proceed; for on some other day, in some other place, that doubt will be cleared. (*The First Part of the Institutes* ¶6<sup>v</sup>).<sup>13</sup>

Coke here describes a narrative of reading, a dilatory unfolding of legal knowledge that the student acquires by repeated reading and discussion. The *Institutes* is not a text to be quickly digested. It must be revisited over and over. Its study must become a *habitus*. Reading the law, then, is not, a linear process by which one masters the law in a limited period of time. The law requires repeated reading, and it requires the lateral wading through the tradition demanded by the form of the *Institutes*. To commit to the law is to commit to a life of reading. Through the habitus of reading, the student enters the unfolding life of the law.

Here we return to Coke's claim that the law, taken as a whole, speaks with "one mouth." The shared physicality of the image, the suggestion that all lawyers from all times share a single body gestures towards the idea of a lawyerly corporation. Coke's image of a shared voice is thus not only a fiction of consensus; it is also a fiction of transgenerational continuity. The body as a metaphor was, of course, a common one in Early Modern England. Dating back to at least St. Paul's description of the Church as the body of Christ, the corporation was a way to imagine "mystical" unity and continuity within the community. In particular, it was a way to preserve property, contracts, and political power across the chasm of death. In the first book of *The Laws of the Ecclesiastical Polity*, Hooker uses the metaphor to underscore the lasting force of the

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<sup>13</sup> The symbol used to denote the quire number in the original is the old capitulum symbol. In order to conform with modern typography, I have used its descendant, the pilcrow symbol.

social contract. When the body politic cedes authority to a sovereign, that agreement remains in force, even after the people who made the original agreement have died. In his discussion of Fee Simple, Coke similarly cites the legal principle that “bodies politique and corporate never die” (*First Part of the Institutes* 2<sup>v</sup>).

Coke does not explicitly state that the lawyers have a “mystical body,” but he uses language that hints in that direction. For example, in the preface to the Second Part of the Reports, Coke writes:

For thy comfort and encouragement, cast thine eye upon the Sages of the Law, that have beene before thee, and neer shalt thou find any that hath excelled in the knowledge of these Lawes, but hath sucked from the breasts of the divine knowledge, honesty, gravity, and integrity, and by the goodnesse of God hath obtained, a greater blessing and ornament then any other profession, to their family and posteritie: As by the page following, taking some for many you may perceive; For it is an undoubted truth that the just shall flourish as the Palme tree, and spread abroad as the Cedars of Lebanon. ( v<sup>r</sup>)

In this passage Coke figures the legal “profession” as a covenantal family. Within the larger narrative of sacred history, the common lawyers stand in for the church as the inheritors of Israel. They have sucked at the teat of divine wisdom; their peculiar English justice earns them (or is itself) a form of blessing that is passed down from generation to generation. The profession is not merely a corporation in the legal sense of the term, it is also a trans-generational covenantal people who, like the Puritan communities described by John Coolidge, aspire to inherit the land. While the language of a single mouth is

quite explicit, in other places the corporate unity of the legal profession is merely implied. In Part II of the *Institutes*, Coke again offers the tradition as a guide to legal hermeneutics: “Herby it appeareth (that I may observe it once for all) that the best expositors of this and all other statutes are our books and use or experience” (25). The first-person plural could be interpreted here as referring to the common books and experience of the current generation of lawyers. But there is a sense, too, that Coke has the longer experience of the profession in mind. “Our” experience may easily refer to the collected experience of all lawyers, both living and dead. What are books for Coke, after all, but a record of the “use and experience” of earlier generations of lawyers? In this reading, Coke is positing a transgenerational “artificial reason” that belongs to the professional corporation. Yet entry into this covenant community is not achieved through contract or divine election. Slow reading is rather the sacrament by which the individual lawyer enters into the mystical professional body. Coke’s imagined lawyer reads Littleton again and again. He chases terms down chains of texts that point backwards and forwards in time. Through this disjointed, lateral process of reading, he enters into the multigenerational life of the legal community. The lawyer who has internalized the multigenerational experience of the common lawyers has an advantage over judges at equity. Though both must ultimately rely upon discretion, the common lawyer draws from the wisdom of the ages rather than merely upon his own individual experience.

In summary of where we have come thus far, we can see that the form of the *Institutes* aids the two fictions by which Coke seeks to stabilize the common law in the face of historical change. By plunging the reader *in medias res* into the textual web of the common law tradition, Coke obscures the question of the law’s historical origins. In this,

he appears to follow the legal deceit detailed by Pascal: “The truth about the usurpation [at the foundation of any legal system] must be made apparent; it came about originally without reason and has become reasonable. We must see that it is regarded as authentic and eternal, and its origins must be hidden if we do not want it soon to end” (60). By pushing the origins of the common law back before the usurpations that mark British history and beyond the reach of the law’s textual tradition, Coke attempts to naturalize the law and give its written history the sense of having always already been. At the same time, the resistance of the *Institutes* to easy digestion requires slow, meticulous reading by the lawyers who approach it. Students who want to understand the law must cultivate reading as life-praxis. This life of slow, repeated reading allows students to enter into the mystical “artificial reason” of the legal profession.<sup>14</sup> In much the same way that legal corporations and Puritan generational theology seek to preserve contracts across death, this “artificial reason” preserves a single common law mind. It also preserves the blessings of English law for lawyers, their families, and their posterity. When all of this is taken together, we can see that Coke has naturalized, not only the origins of the common law, but also the “artificial reason” of the lawyers. If the law has existed from time immemorial, so too, has the common law mind.

However, as we will see, historical change is not so easily dispensed with. In the section below we will consider how the *Institutes* preserves traces of the historical change and violence that Coke seeks to elide. Moreover, we will see how this change exposes the limits of the law and reveals the acts of theology that underwrite legal systems.

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<sup>14</sup> I am indebted to Jean Howard for the phrase “slow reading.”

### III.

As we have seen, Coke asserts that the common law tradition speaks with a unified voice and that lawyers can discover this voice through diligent study. The hermeneutic approach that Coke prescribes for this study resembles humanist and Protestant exegesis by placing heavy emphasis on the plain, historical meaning of words: “For troth and falsehood are so opposite, as truth it self ought not to be proved by any glose or application that the true sence will not beare” (*La Tierce... Div<sup>r</sup>*). Coke also insists that readers plumb even the smallest particulars of language for significance. He writes, “And it is to be observed that every word of Littleton is worthy of observation [. . .] there is not knowledge, case or point in Law, seeme it of never so little account, but will stand our student in stead at one time or other, and therefore in reading, nothing [is] to be pretermitted” (*The First Part of the Institutes... 8<sup>v</sup>*).

Accordingly, a great deal of the *Institutes* is devoted to providing a clear definition of individual words as a key to understanding the law: “and to the end that our student should not be discouraged for want of knowledge [. . .] we have armed him with signification of [words], to the end he may proceed in his reading with alacrity, and set upon, and know how to worke into with delight these rough mines of hidden treasure” (6<sup>r</sup>). These definitions often resemble the enumerative structure of the *Institutes* in microcosm. Just as the *Institutes* collect a variety of texts in order to create unified meaning, so Coke’s glosses on particular terms collect the various definitions of a word in one place in an attempt to stabilize meaning. For example, in the opening chapter of

Part One, Coke defines “terre” in order to show what it might mean for a man to purchase “land” in fee simple. The definition attempts to refine meaning through collection:

Terra, Land in the legall signification comprehendeth any ground soile or earth whatsoever, as meadowes, pastures, woods, moores, waters, marishes, turfes and heath, terra est nomen generalissimum, and comprehendid omnes species terrae, but properly terra dicitur a terendo, quia vomere teritur and anciently it was written with a single r and in that sense it includeth whatsoever may be plowed, and is all one with arvum ab avando. It legally includeth also all castles, houses, and other buildings: for castles, house, etc. consist upon two things, viz. land or ground, as the foundation and structure thereupon, so as passing the land or ground the structure or building thereupon passeth therewith. Land is anciently called Fleth but land builded is more worthy then other land, because it is for the habitation of man, and in that respect hath the precedency to be demanded in the first place [. . .] for man cannot rest in any of the other elements, neither in the water, ayre, or fire. For as the heavens are the habitation of Almightye God, so the earth hee appointed as the suburbs of heaven to be the habitation of man.” (*The First Part of the Institutes* 4<sup>v</sup>)

This lengthy quotation represents only the beginning of the commentary that Coke provides to explain “land,” which would seem to be the most transparent word in the passage: the entire gloss on “land” takes nearly five pages of exceedingly small print. On one hand, the length of the definitions reinforces Coke’s claims about the amount of learning required of good lawyers. On the other hand, though, it reveals the limitations of

legal language – like all language, legal language can never have a stable “true sence.” No matter how carefully a statute or commentary is written, its meaning can never be transparent, for even basic names enter into an endless chain of signification and interpretation. If Coke needs five pages to define “land,” the law can have no simple meaning. The best a lawyer can do, it seems, is circle in upon a meaning through the juxtaposition of seemingly endless possibilities.

This definition not only reveals the impossibility of simple definitions. It also gives the lie to Coke’s fiction about a unified common law voice. Coke’s philological eruditeness reveals his awareness that words themselves carry history: their meanings change with time, and even small changes are significant. The change in spelling from “tera” to “terra” is significant, marking a shift from property as plowable land to something more inclusive. Moreover, the changes in the language of the law embody the political violence that Coke is so eager to raise the law above. “Terre” in French, from Latin, replaces the Anglo-Saxon term “Fleth.” The language of the law, then, marks the violent rupture to English law that occurred at the Norman Conquest. Coke’s own definition, then, reveals that he elides history by claiming that the common law has survived unaltered from time immemorial.

Early modern thinkers other than Coke were more willing to recognize the Norman roots of the common law. Christopher Hill has recorded the debates between those who believed in the ancientness of the law and those who, with Francis Bacon, argued that “The ancient laws of England [were] planted here by the Conqueror” (qtd. in “The Norman Yoke” 56-57). One writer who agreed with Bacon was Edmund Spenser, who identified the common law as “that which William of Normandie brought in with his

conquest and layde upon the necke of England” (*A View of the Present State of Ireland* 6).

Despite Coke’s opposition to the Baconian viewpoint on this issue, the law collected in the *Institutes* bears the marks of the Norman Conquest all over it. In part of the same long gloss on “terre,” Coke details the various legal names by which lands “may passé.” He repeatedly uses the Domesday book to define his terms:

Unum Solinum of Solinus Terrae in the domesday booke containeth two plow Lands and somewhat lesse then an halfe, for there it is said, Septem Soline, of Solina terrae Sunt [. . .] which is all one as a plow-land, viz. as much as a plow can till, sullerge also signifieth a plow-land, una virgara terrae, a yard-land, the Saxons called it a Girdland, and now the G is turned to a Y. (*First Part of the Institutes* 5<sup>r</sup>)

This section records a rewriting of the landscape (and the law that regulates it) by the Conqueror. The Latin (and later the Law French) of the Normans replaces Saxon names. Indeed, the linguistic conquest of England is so thorough that even the English names bear the marks of the conquest: the change from G to Y in “Yard-land” reflects the influence of French on the native tongue. The language of Saxon law is literally overwritten by the Normans.

Two things are particularly striking about this passage. One is the way in which Coke naturalizes the presence of Norman violence in the language of the law. In other places, he views later innovations to the law as abhorrent. (We will see below how he treats statutes as potential threats to the purity of the ancient law.) In particular, he is elsewhere adamant about his rejection of the Normans as a source of law, declaring to the

House of Commons in 1621, “We would derive from the Conqueror as little as we could” (qtd. in “The Norman Yoke” 60). Yet here he cites the Norman source of property terms and the erasure of Saxon legal language without comment. He makes no differentiation between Norman and Saxon names. The second striking feature of this passage is the way it exposes the ineradicable Norman influence on the law. As one of those who claimed that the law safeguarded ancient liberties against the Norman monarchy, Coke had good political reasons to translate the law from French and Latin back into English. Indeed, we can read his Englishing of the law as a restorative move; the rewriting of the law in the Saxon tongue that preceded the Conqueror. But the change of Girdland to Yardland reveals that English itself has been transformed by the conquest. Even a law translated back into English will necessarily carry the violence of England’s political history in its language.

Benjamin’s essay “The Task of the Translator” illuminates Coke’s anxiety about this multi-lingual history of the common law. For Benjamin, translations reveal the dialectical growth of languages. He writes:

While a poet’s words endure in his own language, even the greatest translation is destined to become part of the growth of its own language and eventually to be absorbed by its renewal. Translation is so far removed from being the sterile equation of two dead languages that of all literary forms it is the one charged with the special mission of watching over the maturing process of the original language and the birth pangs of its own. (73)

This passage registers the inequality of a source text and its translation. Translation reveals that language and meaning are not static, but rather malleable organic forms that grow in a temporally unfolding process. Translation cannot transplant the law from Norman French into Early Modern English. It instead marks and *enacts* a rupture in the continuity of the law and its language. According to Benjamin, translations are reinscribed into the language they have transformed. Coke's translation of Littleton, then, can be read as participating in a dialectical, historical process of growth in the language of the law. The *Institutes* do not just make a "sterile," static law available to a wider audience – they create a new law into which they are subsequently reabsorbed. They interrupt the tradition, but then are reabsorbed back into it. Coke himself is aware that translation destabilizes the unity of the law. In the preface to Part 1 of the *Institutes*, he responds to those who would criticize the grammatical impurity of Littleton's Law French by arguing that the long use of legal French has created a *sui generis* legal language that cannot be translated into proper French without distorting the law:

Yet the change thereof (having been so long accustomed) should be without any profit, but not without danger and difficulty: For so many ancient Termes and words drawne from that legall French, are grown to be *Vocabularia artis*, Vocables of Art, so apt and significant to expresse the true sense of the Laws, and are so woven into the laws themselves as it is in a manner impossible to change them, neither ought legall termes to be changed. (¶6<sup>r</sup>)

Coke here registers the untranslatable nature of the law. This defense of the uniqueness of legal French would seem at odds with Coke's project of translating Littleton into English.

Coke argues that the grammatical and syntactic peculiarities of law French must be preserved for the sake of protecting the law's integrity. There is equivalence, or even an identity, between the law and its language. This identity would seem to preclude Coke translating the law into English without altering its meaning. In other words, it would seem to force Coke to acknowledge that the common law is not a stable, knowable tradition, but rather one that is still in the process of being formed. Again, the ideological contradiction between history and Coke's desire to assert the stability of the law in the present is the core issue. Coke describes the development of the law in the past. He asserts that the language of the law gained authority through usage (much in the same way that customs gain legal authority through usage), but he also asserts that this growth calcifies at some point. Law French, and the "true sence" of the law become so tightly "woven" together that further growth is not possible without distortion. This formulation requires the kind of temporal rupture that Coke has been at pains to avoid. Coke has to assert that the law, once growing, has now become stable in a realized form of Law French. Coke's desire to defend Law French leads him to recognize the essential relationship between the law and its language. And yet his desire to translate the law into English forces him to elide the fact that Englishing the law ruptures this essential relationship.

The interlinear form of Book 1 of the *Institutes* can be read as a structural attempt to hold this contradiction together. Coke preserves Littleton's law French for the reader, allowing her to see Littleton's original and Coke's translation side-by-side. This could reflect a desire to keep the authoritative meaning of the law, tied as it is to Law French, while also making the law available to a wider readership. It is, in other words, an

attempt to have growth without innovation. In this sense, the interlinear form materializes Coke's transgenerational lawyerly subject. It renders in text the unity of the law over time while also revealing the impossibility of such unity.

We could, perhaps more generously, also read the interlinear form of Book 1 as a tacit acknowledgement that all the words of the law, Latin, French, or English, all merely gesture towards an unwritten ideal that the words of the law themselves are inadequate to express. Benjamin's insights into the nature of translation are again helpful here.

Contrasting the aims of poetry and translation, Benjamin writes:

Not only does the aim of translation differ from that of a literary work – it intends language as a whole, taking an individual work in an alien language as a point of departure – but it is a different effort altogether. The intention of the poet is spontaneous, primary, graphic, that of the translator is derivative, ultimate, ideational. For the great motif of integrating many tongues into one true language is at work (Benjamin 76-77).

While original works are, for Benjamin, written within a specific language “forest,” translation views things from outside any one language. Translations are not concerned with a specific code, but rather with the meta-linguistic, and perhaps, metaphysical problem of language itself. They aim at a transcendent unity of language, or an “ideational” pure language beyond the historically particular. By translating the law, then, Coke aspires to a pure, unified legal language that transcends the difference inherent in particular language. The collected, poly-lingual words of the common law ultimately signify an absent, transcendent signified. Each term, statute, and precedent are part of the law, but they are also each inadequate to the aspirations of law.

Understood in this way, *The Institutes* participate in the logic of mystical theology detailed by Ernesto Laclau. In his essay “On the Names of God,” Laclau describes the theological strategy of enumeration used by mystics like Dionysius the Areopagite, in which the mystic attempts to represent God by collecting the various names of God together. While each name attempts to name the divine, the strategy as a whole recognizes that none of the given names adequately express divine reality. Laclau explains that “each of the terms in the enumeration is part of a chain which, *only when it is taken as a totality*, expresses the non-essence of that Who is the Cause of All Things” (139). Taken as a totality, the enumerated names serve to show what God is not. He (not-He) is actually represented by the failure of each word to signify divine reality. In other words, the collection of equal names represents God by revealing the impossibility of naming Him. For Laclau, however, even this strategy is ultimately futile because the mystic can never escape the particularity of language: “The remainder of difference and particularism cannot be eliminated and, as a result, necessarily contaminates the very content of the “beyond” (148). Even as the names gesture towards a non-named divine essence, they cannot “express” that essence because the particularities and differences inherent in language remain. For Laclau political legitimacy relies on a similar strategy of enumeration: “Like mystical fullness, political fullness needs to be named in terms deprived, as much as possible, of any positive content” (146). But while mysticism may find the ineradicable impurity of the name an embarrassment, political discourse is likely to try to represent the fullness of the political community with a single name like “market economy” (146).

Laclau's exploration of the enumerative logic of mystical theology allows us to bring together the enumerative definitions and interlinear form of Book 1 and draw out the theological nature of Coke's formal strategy of collection. By enumerating the various names of "terre," and by collecting the language of the law in interlinear form, Coke gestures towards an unwritten political and legal "fullness." But like the political discourse Laclau describes that would turn "market economy" into a transcendent signifier, Coke turns the common law tradition into the transcendent unity signified by all the particularities of English legal history. I am not arguing here that Coke is ascribing divine origin to the common law, though, as we have seen, he does do that at times. What I am arguing is that the enumerative form of the *Institutes* gives the absent totality of the common law a transcendent status within the text not unlike the status of the absent God in mystical theology. Using Kevin Hart's argument that mystical theology is a form of deconstruction, we can see the *Institutes* as a text that deconstructs itself. Richard Helgerson has argued in *Forms of Nationhood* that, taken together, Coke's Reports and *Institutes* intend to show that "the Law is always elsewhere" (92), namely, in the minds of the common lawyers. In this light, we might understand the enumerative logic of the *Institutes* as deconstructing the presence of the law in the law. If the multiplied definitions of "terre" serve to show that language will always be insufficient to the demands of law, they also reinforce the necessity of interpretation and judgment. In other words, by using the negative theology of enumeration to deconstruct the language of the law, Coke reinforces his other theological fiction, namely his assertion that law dwells in the mystical body of the legal profession. In mystical terms, the positive certainty of the letter is replaced by the apophatic, explorative, subjective experience of mystical

knowledge. In deconstructive terms, the logocentric certainty of presence is replaced by the need to interpret an always already present sea of legal textuality.

If the written law does not express the law itself, the certainty and authority of the law must reside in the mind of the lawyers. The process of slow reading the law, then, is not a matter of learning the particulars of the *Institutes* as law themselves. Rather, it is a habitus designed to form what Tubbs calls “the common law mind” in the student. It is on the stability of this common law mind that the stability of law depends. And indeed, as we noted above, the mind of lawyers is remarkably consistent over time: “And our Expositions or Commentaries upon *Magna Charta*, and other Statutes, are the resolutions of Judges in Courts of Justice in judicall courses of proceeding [. . .] and therefore being collected together, shall (as we conceive) produce certainty, the Mother and Nurse of repose and quietnesse” (*The Second Part of the Institutes* A6<sup>v</sup>). In this passage the unity of the common law mind and the concord of common law judgments creates childlike peace – the common law creates a nurturing, safe haven for its subjects and students.

In light of this, ruptures in the equanimity of the tradition pose a serious threat. One such threat is the statute, which is enacted by a body of men who are not necessarily trained lawyers and which can change the law of the land as understood through common law tradition. Not surprisingly then, Coke often views those statutes which change the common law as regrettable. For example, he complains about a statute that altered the common law’s prohibition against constables taking rewards from anyone but the king, a prohibition that was intended to prevent extortion:

But after that this rule of the Common law was altered, and that the Sherife, Coroner, Gaoler, and other of the King’s ministers, might in some

case take of the subject, it is not credible what extortions, oppressions have thereupon ensued. So dangerous a thing it is, to shake or alter any of the rules or fundamentall points of the Common law, which in truth are the maine pillars, and supporters of the fabrick of the Common-wealth. (*The Second Part of the Institutes* 74).

Throughout the *Institutes*, Coke recognizes parliamentary statute as the highest legal authority in the land. But, he repeatedly warns against the dangers of statutes that modify the ancient law. For example, he excoriates a statute passed by Dudley during the reign of Henry the Seventh that altered the guarantee of trial-by-jury in an attempt to allow justice to be dispensed more efficiently. For Coke, the abuses that resulted from this statute affords a “good caveat to Parliaments to leave all causes to be measured by the golden and straight metwand of the law, and not to the incertain and crooked cord of discretion” (*The Fourth Part of the Institutes* 41). Not only can innovative statutes result in undesirable law, they can also create legal confusion. Coke complains that many parliamentary acts are “overladen with provisos, and additions, and many times upon a sudden penned by men of none or very little judgement in Law” (*Second Part of the Reports* 5<sup>r</sup>). He reflects:

And if Acts of Parliament were after the old fashion penned and by such onely as perfectly knew what the Common Law was before the making of any Act of Parliament concerning that matter, as also how farre forth former Statutes had provided remedie for former mischiefes and defects discovered by experience; Then should very few questions in Law arise, and the learned should not so often and so much perplex their heads, to

make atonement and peace by construction of Law betweene insensible and disagreeing words, sentences, and provisos, as they now doe. (*Second Part of the Reports* 5<sup>v</sup>)

The lament for the loss of the “old fashion” here reflects the fall narrative that Coke tells about English law as a whole. English law, in its current form, has fallen from its former greatness because the common law has been modified: “albeit the Law of England, is a Law of mercy, yet is it a law which is now turned into a shadow” (*Second Part of the Institutes* 28).

Perhaps curiously in light of his repeated warnings about the dangers of innovative statutes, Coke does hold a positive view of Magna Carta. Indeed, he devotes a lengthy section of the *Institutes* to a favorable explication of Magna Carta. However, unlike innovative statutes that modify the ancient law, Magna Carta represents a reinstitution of the ancient laws. In Part One of *The Institutes* Coke claims that John granted Magna Carta as a “renovation of the ancient Lawes” (Citation wrong; find). Similarly, throughout his long explication of Magna Carta in Part Two of *The Institutes*, Coke frequently explains how given provisions of Magna Carta are “merely declaratory of the common law.” Coke is not absolute in his assertion that Magna Carta is a renewal of the common law. He recognizes that some provisions of the charter change the older law, and recognizes one alteration of the ancient law as a “great mercy” because it strengthened protection against royal abuses. Yet, in the main, he views Magna Carta as a document that writes the older common law in statute form. Indeed, because no statute can be passed that overturns Magna Carta, the charter serves as a statutory bulwark against the innovative statutes that threaten the authority of the common lawyers.

In contrast to statutes, which form an external interruption of the common law tradition, the judgment of lawyers and judges themselves form an internal interruption that may be more threatening. Even though lawyers work within a long interpretative tradition, each act of interpretation and judgment requires a break from tradition at the moment of decision. Since law cannot be applied flatly, since justice requires the application of the common law mind in new interpretative situations, the interpreting lawyer must always act outside the law. In his essay, “The Force of Law: The Mystical Foundations of Authority,” Derrida explains this dynamic:

This “fresh judgment” can very well – *must* very well – conform to a preexisting law, but the reinstituting, reinventive and freely decisive interpretation, the responsible interpretation of the judge requires that his “justice” not just consist in conformity, in the conservative and reproductive activity of judgment. In short, for a decision to be just and responsible, it must, in its proper moment if there is one, be both regulated and without regulation: it must conserve the law and also destroy it or suspend it enough to have to reinvent it in each case, rejustify it, at least reinvent it in the reaffirmation and the new and free confirmation of its principle. Each case is other, each decision is different and requires an absolutely unique interpretation, which no existing, coded rule can or ought to guarantee absolutely. (23)

Derrida further explains that the fresh judgment may be later reincorporated back into the law, but at the moment of judgment it must actually do violence to the law. Applying this notion of interpretative violence, we can see that the judgments required by the common

law must entail an act of violence against the interpretative tradition of the common lawyers. The principles of common law thinking that the lawyer has absorbed through slow-reading cannot be applied flatly anymore than the law itself can be. To make a fresh judgment, the lawyer must destroy the interpretative principles that he has learned to embody. He must *decide* against history before his judgment can be brought back into it.

There is a frightening freedom in this idea. Yet it need not be an unfortunate one. Derrida claims that the “decision that didn’t go through the ordeal of the undecidable would not be a free decision, it would only be the programmable application or unfolding of a calculable process. It might be legal; it would not be just” (24). If this is the case, the rupture from tradition, the isolation of the lawyer in the moment of decision is what makes justice possible.

This imperative to decide also gives an eschatological dimension to Coke’s theological fiction. Coke must claim eschatological status for his generation of lawyers. The moment of decision gives the lie to Coke’s promise that his readers will find “repose and quietnesse” in the common law. At the moment of decision, they must choose at the frontier of the tradition. It is as if they themselves are living *after* the common law tradition has been fulfilled. In the moment of decision, they stand as the fulfillment of the law. This the temporal orientation of the lawyer towards the tradition is like that described in the passage from Benjamin earlier in the chapter: “The past carries with it a temporal index by which it is referred to redemption. There is a secret agreement between past generations and the present one. Our coming was expected on earth. Like every generation that preceded us, we have been endowed with a *weak* Messianic power, a power to which the past has a claim” (254). This Messianic logic of the decision made as

the fulfillment of tradition underscores the theological legitimacy that Coke appropriates for the common law. It also registers the difficulty of true interpretation, which must be made outside the “repose and quietness” of law and tradition. Unable to simply follow and apply precepts, Coke’s judges and lawyers must ultimately decide.

### Chapter 3

#### Inheritance and Atonement in Donne's Devotional Poetry

In this chapter I explore how John Donne uses the language of inheritance law to plead his case before God in an imagined courtroom. In the first section of the chapter I demonstrate the anxiety about final judgment that characterizes many of Donne's devotional poems. In the second section I argue that Augustine's notion of time as a *distentio animi* provides a useful matrix through which we can understand Donne's anxiety. The *distentio animi*, I suggest, not only illuminates Donne's juridical fear, it also illuminates the ways Donne uses lyric form to delay death and judgment. In the third section, I demonstrate Donne's ambivalence towards the penal accounts of Christian atonement that dominated the post-Reformation period. I show how Donne seeks alternative avenues of salvation that bring the affective experience of redemption out of the future and into the present. In the final sections of the chapter, I explore how Early Modern inheritance law provides Donne with an alternative model of law through which he can imagine God as a father rather than as a judge. At the same time, the language of inheritance law cannot completely transform the legal into the filial. Donne ultimately stands under the uncertain verdict of God. Moreover, by highlighting the violence and familial conflict endemic to inheritance law, Donne's poems reveal the dark implications of inheritance when it is leveraged within Christian theology.

## I.

In a sermon delivered “*to the Lords upon Easter-day, at the Communion, The King being then dangerously sick at New-Market,*” John Donne asserts that human life consists of the time between two criminal verdicts: “Wee are all conceived in close Prison; in our Mothers wombes, we are close Prisoners all; when we are borne, we are borne but to the liberty of the house; Prisoners still though within larger walls; and then all our life is but a going out to the place of Execution, to death” (“Sermon Number 1” 29). Donne here figures the entirety of human life as a scene of capital punishment. The relevant judicial drama having already transpired in Eden, all people are born as convicted criminals, and every human life is merely a drawn out procession from jail cell to scaffold. Yet while this first conviction for capital felony is certain, a second, unknowable verdict awaits at the judgment seat of Christ:

Take then that which is certain; It is certain, a judgment thou must passe: If thy close and cautelous proceeding have saved thee from all informations in the Exchequer, thy clearnesse of thy title from all Courts at Common Law, thy moderation from the Chancery, and Star chamber, [. . .] All those judgements, and all the judgements of the world, are but interlocutory judgements; there is a finall judgment, [. . .] against Prisoners and Judges too, where all shal be judged again; [. . .] A judgment is certain, and the uncertainty of this judgment is certain too.

(37-38)

Donne here places his hearers in a kind of legal limbo. On the one hand, they are convicted criminals, condemned to a death that is the very *telos* of their life. On the other

hand, they still await a judgment that will determine the far weightier matter of their eternal fate. And while their first condemnation is certain, the second remains an open matter, at least from their perspective within human time. By figuring the human experience of time in this way, Donne posits a subjectivity that is dominated by its awareness of criminal law. To pass through time is to suffer a legal *distentio animi*, a stretching of the soul from judgment to judgment.

Many of Donne's devotional poems also occupy this temporal space between criminal verdicts. In Holy Sonnet IV, "Oh my blacke Soule! now thou art summoned," The speaker describes himself as a criminal fearing the impending execution of his sentence. "Sickness, death's herald and champion" has summoned the speaker to death and post-mortem judgment. Like Hamlet choosing the known prison of Denmark over the uncertainty of the life to come, he finds the miseries of human life preferable to the judgment of God:

Thou art like a pilgrim, which abroad hath done  
 Treason, and durst not turne to whence hee is fled,  
 Or like a thiefe, which till death's doome be read  
 Wisheth himself delivered from prison;  
 But damn'd and hal'd to execution  
 Wisheth that still he might be imprisoned. (3-8)

These lines blur the distinction between the scene of judgment and the site of execution, underscoring that the speaker's death involves two scenes of criminal judgment. Like the thief "hal'd to execution," he is summoned to suffer death as part of the general punishment decreed against humanity in Eden. Like the traitor summoned home from

exile, he fears the judgment that awaits at the end of his journey through death.

This fearful expectation of final judgment recurs throughout the Holy Sonnets. In Holy Sonnet VII, “At the round earth’s imagin’d corners, blow,” Donne imagines the final resurrection of the dead as an event that reverses history’s injustices. Those who have died under divine judgment (in the “flood” of the past or the “fire” of the future) and those who have died of natural causes (“age,” “agues,” and “chance”) are raised alongside those “slaine” by the violent forces of human history (“war,” “tyrannies,” “despaire,” and “law”). In this respect, the judgment of Christ promises to right the tyrannies which have plagued humanity. But like the reluctant prisoner in Holy Sonnet IV, the speaker of Holy Sonnet VII seeks to forestall the advent of this justice: “But let them sleep, Lord, and mee morne a space, / For if above all these, my sinnes abound, / ‘Tis late to aske abundance of thy grace / When wee are there” (9-12). The speaker here asks God to delay the eschaton so that he can mourn his sins and thereby prepare his soul for final judgment.

The octave of Holy Sonnet VI, “This is my playes last scene,” also reflects anxiety about divine judgment after death:

This is my playes last scene, here heavens appoint  
 My pilgrimages last mile; and my race  
 Idly, yet quickly runne, hath this last pace,  
 My spans last inch, my minutes latest point,  
 And gluttonous death, will instantly unjoynt  
 My body, and soule, and I shall sleepe a space,  
 But my’ ever-waking part shall see that face,

Whose feare already shakes my every joynt: (1-8)

The speaker's assertion that he has run the race of his life "Id'ly, yet quickly" indicates that the end has come unanticipated and that the poet, having misspent his short time on earth, finds himself unprepared to face God. In light of this sooner-than-expected judgment, the sestet of the poem can be read as the speaker's attempt to secure a favorable verdict for himself. Playing off the Pauline notion that sin resides in the members of the body, he argues that the "unjoynting" of his body and soul will provide the mechanism of his purification:

Then, as my soule, to'heaven her first seate, takes flight,  
 And earth-borne body, in the earth shall dwell,  
 So fall my sinnes, that all may have their right,  
 To where they are bred, and would presse me, to hell.  
 Impute me righteous, thus purg'd of evill,  
 For thus I leave the world, the flesh, the devill. (9-14)

This description of sanctification reads like a classical or naturalistic account of elements falling out to their natural place. Purification seems to happen by default rather than through the agency of God or the speaker. The body rests in its native earth, sins fall into their native hell, and the unfettered, purified soul ascends to its proper home in heaven.<sup>15</sup> The final couplet reveals this naturalistic description as legal rhetoric. The speaker is not confidently awaiting his natural sanctification, but rather pleading his case before God. Because his soul has been "purg'd," because he has left "world," "flesh," and "devil" behind, he charges God to do him justice and "impute [him] righteous." The speaker's apparently non-judicial account of sanctification actually draws its impetus and energy

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<sup>15</sup> I am indebted here to Ramie Targoff's reading of this poem in *John Donne, Body and Soul*, 125.

from his fear of the divine bench.

## II.

By describing Donne's conception of time as a legal *distentio animi*, I am, of course, drawing on Augustine's meditation on time from Book 11 of the *Confessions*. In this section, I explore how Augustine's theory of time can help us understand Donne's temporal orientation towards the law in his devotional poems. Out of the *distentio animi*, I will argue for a theory of lyric reading that will deepen our understanding of both Donne's anxiety about divine law and his attempts to respond to that anxiety.

In Book 11 of the *Confessions*, Augustine asks what it is we measure when we measure time. He argues that, despite our common sense understanding of what time is, we are actually ignorant of the object whose extension we measure:

When time is measured, where does it come from, by what route does it pass, and where does it go? It must come out of the future, pass by the present, and go into the past, so it comes from what yet does not exist, passes through that which lacks extension, and goes into that which is now non-existent. [. . .] In what extension then do we measure time as it is passing? Is it in the future out of which it comes to pass by? No, for we do not measure what does not yet exist. Is it in the present through which it passes? No, for we cannot measure that which has no extension. Is it in the past into which it is moving? No, for we cannot measure what not does not exist. (11.21)

This passage reveals that Augustine's temporal aporia is both ontological and semiotic. It is ontological because even though we casually refer to past and future times, the past and future have no existence in themselves and therefore cannot be measured. The aporia is semiotic because, while the present does exist, it has no extension and therefore cannot be properly signified by the units of time by which we try to name it. The present that does exist, in other words, is *not* the same as the present minute ("It is 5:34"), the present day ("It is Tuesday") or the present year ("It is 2010").

Augustine solves this conundrum by radically subjectivizing time. Time, Augustine claims, is not something external that can be measured. Rather, it is an internal *distentio animi*, a stretching of the soul by which the mind of the individual holds together an awareness of the past (through memory) and the future (through expectation). In this way, the present intention of the mind is stretched across all three times (past, present, and future): "In you [my mind] I affirm, I measure periods of time. The impression which passing events make upon you abides when they are gone. That present consciousness is what I am measuring, not the stream of past events which have caused it" (11.27). Accordingly, units of time measure the extension of our acts of remembering and anticipating: "A long future is a long expectation of the future. [. . .] A long past is a long memory of the past" (11.27).

In a move that suggests the usefulness of the *distentio* for studying the lyric, Augustine illustrates the structure of the *distentio* by describing the experience of reciting a psalm:

Suppose I am about to recite a psalm which I know. Before I begin, my expectation is directed towards the whole. But when I have begun, the

verses from it which I take into the past become the object of my memory. The life of this act of mine is stretched two ways, into my memory because of the words I have already said and into my expectation because of those which I am about to say. But my attention is on what is present: by that the future is transferred to become the past.” (11.27)

In the final sentence of this passage, Augustine emphasizes that, though his mind is “stretched” to encompass both past and future parts of the psalm, the only place where time exists is in his present intention. Indeed, more than being the location of time, human intention has become the agent of time. It is “by that” (*per quam*) that things future are transferred into the past. Strangely, the action of intending the passing syllables of the psalm is the action that effects the passage of time.

Augustine’s introjection of time into the intending subject seems to run the risk of a proto-Humean solipsism in which the individual experience of time is severed from the social realities of history and tradition. However, for Augustine, the structure of the *distentio* connects the individual experience of time to the larger sweep of human history:

What occurs in the psalm as a whole occurs in its particular pieces and its individual syllables. The same is true of a longer action in which perhaps that psalm is a part. It is also valid of the entire life of an individual person, where all actions are parts of a whole, and of the total history of the “sons of men” (Ps. 30:20) where all human lives are but parts. (11.28)

Augustine argues here that the structure of time is identical in both the shortest syllable and the whole of one’s life. This reveals that the dynamic of the *distentio* is not limited to acts like the recitation of a psalm in which the psalm is so well known that the subject can

expect an entirely predictable future. It also obtains in less repeatable actions. For example, if we were to consider the longer action of which reciting the psalm is a part, we might imagine Augustine going to and from the church service at which he recites the psalm. He may not know exactly whom he will meet or what conversations might occur, but his general anticipation of the larger action will create the sense of expectation required by the *distentio*. We will see below that this openness to non-specific expectation will allow us to apply the *distentio* to our reading of Donne's poetry.

Beyond this demonstration that the *distentio* obtains in all the actions of an individual life, Augustine audaciously claims that the structure of the *distentio* holds for "the total history of the sons of men." The *distentio*, that is, extends beyond the normal bounds of our memory and expectation, early childhood and death. Augustine himself acknowledges that he does not remember his infancy, let alone the time before his birth: "What, Lord, do I wish to say except that I do not know whence I came to be in this mortal life or, as I may call it, this living death? [. . .] But the consolations of your mercy upheld me, as I have heard from the parents of my flesh, him from whom and her in whom you formed me in time. For I do not remember" (1.6) The limit death places on expectation is perhaps less self-evident since one can anticipate things which will occur after one's death. But a gift for prediction or prophecy will not satisfy the condition of the *distentio*. For after the death of the individual there is no present intention by which the future can be transferred into the past. It would seem, then, that the "life of this act" that is history cannot be completed unless we posit a corporate, transhistorical subject whose present attention can effect the movement of time.

While I do not want to dismiss outright the possibility that Augustine imagines a

mystical, corporate subjectivity shared by all believers or all humans, I think we can find a more useful explanation in his reflections on infancy. Augustine is able to extend his account of the past beyond that of his conscious memory because of the story his parents tell him. In a similar way, we can imagine that he might extend his memory beyond birth through the oral and written histories of his community. Indeed, revelation, that history which has been told by God, provides the only mechanism through which Augustine can remember the beginnings of history and anticipate its apocalyptic end. The scriptural narrative provides the framework within which the shorter narrative of his life occurs.

Throughout the *Confessions* Augustine reveals how the biblical story has entered into the stretching of his own soul. In particular, he understands his life against the backdrop of the Fall. For example, he understands his early intellectual frustrations as a manifestation of God's curse upon the land in Genesis 3: "You had commanded and so it came about in me, that the soil would bring forth thorns and brambles for me, and that in toil I should gain my bread" (4.16). This is no mere heuristic for Augustine; his toil is not merely like the toil of Adam. Rather, frustrated labor is part of his real inheritance from Adam. Augustine, in this respect, remembers the curse in Eden as part of his own story.

Similarly, Christian eschatology (or at least Augustine's neo-Platonic version of Christian eschatology) shapes Augustine's expectation for the end of his own life:

But now "my years pass in groans" (Ps. 30.11) and you Lord are my consolation. You are my eternal Father, but I am scattered in times whose order I do not understand. The storms of incoherent events tear to pieces my thoughts, the inmost entrails of my soul, until that day when, purified and molten by the fire of your love, I flow together to merge into you.

(11.29)

Like Donne, Augustine uses violence to describe the experience of time. And just as Donne understood his execution as the result of Adam's condemnation, Augustine understands the painful tearing of time against the backdrop of the Fall. The Fall is the condition of possibility for the *distentio*. The violence of time in this passage flips the direction of time's agency. Before, the stretching of the soul was active. The soul reached out from the present to encompass past and future; the soul's active attention moved the future into the past. Now the soul is passive before a sequence of disordered events that Augustine identifies as the fatherly discipline of God. In this light, the stretching of the soul becomes an image of torture akin to a man on the rack. Indeed, Augustine bemoans that his life is a "distention in several directions" (11.29). Time itself seems to be that which violently separates creatures from God.

Paul Ricouer argues that this contrast of the temporal *distentio* and eternity exposes time as negative, not merely in its structural definition as non-eternal, but also affectively negative. All Augustinian time is, according to Ricouer, sorrowful: "[. . .] the absence of eternity is not simply a limit that is thought, but a lack that is felt at the heart of temporal experience. The limiting idea then becomes the sorrow proper to the negative. [. . .] Intensified in this way on the existential level, the experience of distention is raised to the level of a lamentation" (26). Ricouer's suggestion that the experience of all time *is* a lamentation provocatively extends Augustine's choice of a psalm as representative of the *distentio*. Lyric does not just represent time; the experience of time itself *is* a lyric. Ricouer has here followed Augustine in overlaying the structural and the semantic. The syllable is structurally united to longer moments of time through the

uniformity of the *distentio* for all temporal units. But it is also semantically linked to the rest of history as well. Because the structure of time is located within the distended mind, the experience of one moment carries within it the *meaning* of a reader's memory and expectation. For the Christian reader Augustine, the experience of every moment carries cosmic significance: to stretch the mind across the duration of a syllable is to experience the pain of time in a fallen world. The experience of time is, in the language of this dissertation, part of the sorrowful inheritance bestowed by Adam and Eve.

How can these observations about Augustinian time help us to understand Donne's religious lyric? Or to turn the question around, why is the religious lyric a productive site for studying the legal *distentio animi* as an early modern cultural phenomenon? Augustine himself strongly implies the utility of the lyric for an understanding of the *distentio* by choosing psalm reading as his key illustration of time's structure. How can the *distentio*, in turn, help us understand the structure of the lyric? To begin, the repeatability of the psalm reveals a dialectical tension between the lyric and time. As Augustine has shown, the brevity of the psalm allows us to examine the dynamic between past, present, and future in microcosm. The bounded form of the psalm, that is, both participates in and points to the relentless flow of consecutive time from creation to apocalypse. But the repeatability of the psalm also suggests its use as a bulwark against that same relentless flow. Psalm reading is a central feature of Christian liturgy both for Augustine and, as Ramie Targoff has shown, for Early Modern English Protestants (*Common Prayer*). Liturgy is that place where Christians attempt to order Augustine's "disordered moments;" where they infuse the confusion of consecutive time with redemptive meaning through the rites of the church service and the festivals of the

liturgical calendar. Lent, for example, transforms late winter into a directed progression through repentance and fasting towards the feast of Easter. If, following Targoff's argument, Donne's religious lyrics can be read as part of an English lyric tradition that flows from verse translations of the Psalms, then we might be able to detect in them a liturgical impulse to infuse consecutive time with eternal meaning.

Yet even outside of this liturgical frame, we can see how lyric poetry more generally participates in a similar dialectical struggle with consecutive time. As the literary genre that most self-consciously foregrounds its smallest formal features, lyric is the site of our most intricate attempts to order the temporal experience of language. Moreover, the lyric is the form which, rather than providing a longer story, represents the utterance of one person at a particular moment within a larger story. This is true of the Psalms, many of which dramatize moments from the life of David. But is also true of Shakespeare's sonnets, which capture various moments in the obscured narratives of love and bitterness to which they allude. Lyric seeks to compress and order the longer sweep of consecutive time.

George Puttenham, the Elizabethan poetic theorist, contrasts the activity of poetry with the relentless demands of political life. To attend to poetry requires free time.

Bemoaning the decline of patronage for poets, Puttenham writes:

And peradventure in this iron and malicious age of ours, princes are less delighted in it, being over earnestly bent and affected to the affairs of empire and ambition, wherby they are, as it were, enforced to endeavor themselves to arms and practices of hostility, or to intend to the right policing of their states, and have not one hour to bestow upon any other

civil or delectable art of natural or moral doctrine. (111)<sup>16</sup>

Puttenham does not refer here, strictly speaking, to the lyric. Many modern critics have, however, identified a break from consecutive time as the essence of the lyrical. Northrop Frye argues, for example that temporal rupture is constitutive of lyric: “The poem may still be continuous, but in “verse,” where we keep coming to the end of a line and then starting another, there is a germ of discontinuity. The more this sense of the discontinuous increases, the more closely we approach the lyrical area. [. . .] In the lyric, then, we turn away from our ordinary continuous experience in space or time” (31). Similarly, Helen Vendler has argued that lyrics which address invisible readers (a category that includes Augustine’s psalm and Donne’s devotional poems) create an idealized space for exploring human emotions and ethics without the complications of real relationships. (Here she echoes Augustine’s longing for space apart from his duties as a bishop). Timothy Bahti has also theorized the lyric as a form that interrupts consecutive time. In *Ends of the Lyric*, he argues that chiasmus is the master trope of the lyric, suggesting that lyric poems do not end, but rather fold back in on themselves in an internal (eternal) feedback loop.

In tension with this seeming *momentariness* of lyric utterance, however, is the way that lyric heightens our expectation of endings. Again, Augustine’s psalm is helpful here, demonstrating that the best efforts of liturgy and lyric are unable to halt the flow of consecutive time. Expectation relentlessly passes into memory; time hurtles on towards its ends. Lyric language, too, races towards its ends. The form of the lyric demands it. The fourteen lines of the sonnet must be fulfilled; the expectation of a rhyme must be

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<sup>16</sup> With the exception of Figures 3.1 and 3.2, citations from Puttenham are to the Whigham and Reborn edition.

satisfied.

In Book Two of *The Art of English Poesie*, Puttenham explores this unavoidable pull of endings on poetic language. In a chapter on “Caesura” he argues that poetry needs pauses because “the breath asketh to be now and then relieved with some pause or stay” (163). He explains that there are three types of caesuras, each of varying duration. The comma is short, the colon longer, and the period represents the long pause at the completion of a thought. Puttenham compares these different pauses to the different kinds of breaks a traveler might take on a journey:

This cannot be better represented than by example of these common travelers by the highways, where they seem to allow themselves three manner of stays or easements: one a-horseback calling perchance for a cup of beer or wine, and having drunken it up, rides away and never lights; about noon he cometh to his inn and there baits himself and his horse an hour or more; at night when he can conveniently travel no further, he taketh up his lodging and rests himself till the morrow. (164)

Though rests are necessary, the end is inevitable. Puttenham does not entertain the idea that the traveler might be a drunkard and decide to spend the day in the tavern. An incomplete journey is unthinkable for Puttenham because the beauty of a verse lies in its achieving “symphony,” or rhyme. The demand for an end, that is, comes not only from the poet’s need to complete his thought, but also from the reader’s desire for musical “concord.” Puttenham explains that, because English lacks the fluidity of Greek and Roman feet, English poets compensate by making “in the ends of our verses a certain tunable sound, which anon with another verse reasonably distant we accord together in

the last fall or cadence, the ear taking pleasure to hear the like tune reported, and to feel his return” (165-66). This account of English rhyme mirrors Augustine’s eschatological hopes from Book 11 of *The Confessions*. Just as Augustine suffered the disordered events of time while hoping for his final union with God, so Puttenham’s reader passes through the dissonance of unrhymed words anticipating the pleasing return of a vowel sound. The poet can variously defer the pleasure of rhyme for different effects, but resolution must come. Puttenham’s diagrams of various rhyme schemes make visible the fact that the art of English poetry consists of creating and manipulating the expectation of endings (See Figures 1 and 2). Perhaps even more than the art of Latin psalms, English poetry is eschatological art.<sup>17</sup>

I am not arguing, of course, that lyric is unique in this respect: Spenser’s epic stanza and Marlowe’s dramatic blank verse both create and manage phonic expectations. I am arguing, however, that the form of the Early Modern English lyric dramatically heightens our awareness of deferred, inevitable endings. Lyric uniquely invites attention to its formal deferrals. For example, the sonnet form utilized by Donne, with its movement through octave and sestet and its set of conventional rhyme schemes, create strong expectations in the reader. The pull of these expectations are so strong that deferrals or exceptions are foregrounded. Moreover, the visual image of the lyric on the page highlights the “sense of an ending,” to borrow a phrase from Frank Kermode. Most lyrics are so short that the reader can see the end before they even begin reading. This

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<sup>17</sup> Agamben makes a similar point in *The Time that Remains*: “The poem is therefore an organism or a temporal machine that, from the very start, strains toward its end. A kind of eschatology occurs within the poem itself. But for the more or less brief time that the poem lasts, it has a specific and unmistakable temporality, it has its own *time*. This is where rhyme, which in the sestina consists in repeated and often rhyming end words, comes into play.” (79)

general shortness of the lyric affects the experience of reading even those poems which take up multiple pages. When we don't see the end of a lyric, we nevertheless expect to see its end when we turn the page. The end of the lyric is always imminent.

With this pull of endings in mind, we can return to the three sonnets with which we opened and see the legal *distentio animi* at work. Where Augustine has figured the *distentio* as a story of exile and return, in Donne's poems it is a story of impending judgment. While the poems reflect the illusion of momentariness ("now thou art summoned;" "this is my playes last scene," emphasis mine), they also manifest the speaker's anxiety about the ineluctable slide towards death. If this hesitation is expressed semantically in the speaker's express desire to delay judgment until he has repented, it also manifests itself formally. The caesuras of the poems overlay with the speaker's desire to delay his end. For example, the punctuation in the first quatrain of Holy Sonnet IV interrupts the flow of the lines, giving the poems a more halting feel than those in a poem in which lines and thoughts are co-terminous:

Oh my blacke Soule! now thou art summoned  
 By sicknesse, deaths herald, and champion;  
 Thou art like a pilgrim, which abroad hath done  
 Treason, and durst not turne to whence hee is fled. (1-4)

The exclamation at the end of the first four words brings the poem to a noticeable pause just after it has begun. In addition, the first four words thwart our expectation of an iambic flow. The enjambment of lines three and four similarly frustrates the flow that results when lines and thoughts are coterminous. Moreover, by ending a clause after the first word of line four, Donne further heightens the sense of temporal disruption. The

short phrases of the first six lines in Holy Sonnet VI similarly reflect the speaker's desire to slow the progress of his play's final scene:

This is my playes last scene, here heavens appoint  
 My pilgrimages last mile; and my race  
 Idly, yet quickly runne, hath this last pace,  
 My spans last inch, my minutes latest point,  
 And gluttonous death, will instantly unjoynt  
 My body, and soule, and I shall sleepe a space, (1-6)

In these first four lines, the short, halting phrases correspond to a progression of ever smaller units of space and time. This is a clear indicator that time is drawing short, but it also seems to relativize these various units. The figurative distance of this final moment is at once a mile, a pace, and an inch. Just as Augustine posits the structural equivalence of all units of time, so Donne suggests that any unit will serve to stand for the expectation of imminent death. While the frequency of commas interrupts the flow of the lines, the relativizing of the temporal/spatial units suggests the futility of such interruption. For all his formal ingenuity, Donne's speaker cannot delay his end.

### III.

The *distentio animi* primarily operated along the axis of criminal guilt and punishment in post-Reformation England. In the sermon we studied at the beginning of the chapter, Donne figuratively represents all of human life as a procession to the scaffold. Yet we have also seen that, while death at the scaffold is certain, the outcome of

the final criminal trial is uncertain. That this final condemnation is at all uncertain is, of course, dependent upon a third verdict, namely the judgment of human sin that occurs at the crucifixion. (The crucifixion, of course, is a doubled act of capital punishment. While the Romans punish Jesus for insurrection, God punishes him for the insurrection of all humanity.) This reliance upon a judgment that occurred in the historical past for help in future judgment further complicates the temporal orientation of Donne's audience vis-à-vis the law. Not only are they to imagine themselves as passing from a pre-historical judgment towards a post-historical one, but they must also try to appropriate the historical condemnation of Jesus as a substitute for their own future condemnation. This feat of legal-temporal imagination is further complicated by the doctrine of predestination, which asserts that the final judicial verdict is actually determined "before" the original condemnation of Adam.<sup>18</sup> The doctrine of predestination thus intensifies the imaginative stretch required of the legal subject. The subject knows that she stands judged under Adam from the beginning of history, and she knows that she will be judged for all eternity at the end of history. This ultimate verdict depends, simultaneously, on the death of Christ and the pre-temporal choice of God. The subject must treat it as uncertain while knowing that it has always already been decided.

Unlike the Augustinian *distentio*, in which the present is part of an integral whole, in the legal *distentio* I am describing here, the present is apparently superfluous. All the truly decisive judicial events occur in the past and future, independent of the lived experience of Donne's audience. This apparent severing of the present from past and future highlights the imaginative challenge that this juridical scheme requires of the

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<sup>18</sup> Technically, of course, this decision is made outside of time altogether. Predestination is itself an oxymoron, there being no "pre" in eternity.

subject. The forensic theology that imagines the relationship between God and humans as a mode of criminal law provides no access to redemption in the present. The person who wants to experience the assurance of redemption in the present must imagine ways to bridge the gap between the historical scene of the crucifixion and her own historical moment.

The Early Modern moment, in particular, is one in which the need to forge imaginative links between the crucifixion and the present was particularly acute. According to Robert Mackintosh, legal-penal explanations of the atonement appear in the post-Reformation period “not as symbol but as fact, as gnosis, as ‘philosophy of the plan of salvation’” (160). These theories of the atonement describe Christ taking upon himself the capital punishment that is owed to sinful humans. By punishing Jesus as a penal substitute, God is able to forgive humans while also exacting the penalty that justice requires.<sup>19</sup>

Similar to Mackintosh, Debora Shuger has argued that early modern intellectuals used Roman law as a “theoretical basis for the development of new disciplines” including theology (*Renaissance Bible* 57-66).<sup>20</sup> For both Mackintosh and Shuger, the characteristic move of post-Reformation atonement theology is a move from law as metaphor to law as *actual*. In other words, law no longer serves as a symbol of the mysterious relationship between God’s justice and God’s mercy. Rather, the cosmos comes to be seen as actually legal. Moreover, according to Alister McGrath, Reformation theologians broke from earlier theology by explicitly splitting off forensic justification

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<sup>19</sup> For a brief summary of historical atonement theories, see Appendix 1.

<sup>20</sup> Shuger argues that this tendency is exemplified by Grotius’s influential 1617 work on atonement theology, *De Satisfactione Christi*. For her, the work is Grotius’s “attempt to analyze Christ’s death in terms of coherent and widely accepted normative principles, and attempt to replace myth with theory.” (*Renaissance Bible* 66)

(the mechanism by which one is declared innocent) from the process of sanctification through which one is made holy (84). Where earlier theologians (following Augustine) had used the term “justification” to signify the entire redemptive process, Reformation theologians only use it to signify a favorable legal verdict. In so doing, they drive a new wedge between the forgiveness of sins and the rest of life.

Indeed, one could argue that this post-Reformation emphasis on the juridical downsizes the meaning of forgiveness until it means little more than “acquittal.” Mackintosh argues that the Reformation emphasis on the legal logic of the atonement not only limits the meaning of salvation but also confines God to the role of judge: “in logic, this is what [satisfaction theory] comes to; [. . .] God is essentially just – according to the principles of penal law – and accidentally or contingently loving, gracious, redemptive. Catholicism had hinted at this; [. . .] Protestantism embarked upon definitions which could have no other outcome than the naked assertion itself” (152). A juridical conception of atonement, then, not only separates the work of the cross from the temporal experience of the subject, it also distances God himself from lived experience. If criminal judgment is the fundamental axis on which God relates to humans, if God primarily reveals himself not through paternal love but through his verdicts, then God is temporally removed (we have seen that his verdicts reside in the past and future) and affectively distant (paternal love is overwhelmed by juridical fear).

The three sonnets that we have been reading throughout this chapter all reflect the devotional difficulties created by penal satisfaction theories of the atonement. All three of the sonnets end by appealing to the blood of Christ as the vehicle for acquittal. But each of these appeals displays ambivalence (if not downright disavowal) towards the penal

logic of the atonement. The final four lines of Holy Sonnet IV suggest that mourning and shame are as efficacious for obtaining grace as the blood of Christ: “Oh make thy selfe with holy mourning black, / And red with blushing, as thou art with sinne; / Or wash thee in Christ’s blood [. . .]” (11-13). Holy Sonnet VII expresses a similar sentiment in its closing couplet: “Teach mee how to repent for that’s as good / As if thou hadst seal’d my pardon, with thy blood” (13-14). Taken together these poems suggest that the pardon obtained by Christ on the cross is optional. One can, perhaps, read them from an orthodox Protestant perspective as merely asserting that repentance will always accompany salvation. But, if we understand the rhetoric of these poems as expressing legal strategy, the impression arises that the speaker believes his tears make some *claim* on the mercy of God.

This legal claim on God’s forgiveness is more explicit in Holy Sonnet VI. The final imperative draws on the Lutheran concept of imputed righteousness, namely that the righteousness of Christ is forensically transferred to sinners so that they are found righteous before God. Luther explains that “Christ by means of righteousness, [. . .] alien to them and unmerited, makes all those born out of him righteous and saved ones” (“Sermon on Threefold Righteousness”). In contrast to this picture of the alien righteousness of Christ meriting salvation for sinners, Donne’s speaker demands that God “impute him righteous” based on the purity of his own condition. In Ramie Targoff’s words about this passage, “Donne attempts to create for himself the conditions of a righteous soul and, in so doing, to cancel his dependence on the sacrifice of God’s son” (*John Donne, Body and Soul* 126). Indeed, the speaker seems to deny that his sins belong properly to himself – they descend to hell where they belong. He suggests, rather, that

purity is his natural condition.

Together these three poems battle the temporal and affective distance of the atonement. By equating tears with the crucifixion, they suggest the need to appropriate the historical cross in the emotional present. And by claiming righteousness according to his own purity rather than according to the merits of Christ, Donne rejects the logic by which he is judged according to the alien sin of Adam and the alien righteousness of Christ. As Richard Strier has argued, Donne wants “actual purity” over “imputed righteousness” (“John Donne Awry...” 374).

Donne expresses this ambivalence towards the penal accounts of the atonement throughout his devotional poetry. Like Holy Sonnet VI, “Good Friday 1613. Riding Westward” reveals ambivalence about Christ’s alien righteousness and asserts a desire for realized, personal purity. The poem opens with the speaker relating the disjuncture between the demands of his daily life and the demands of liturgical time. Because he has fallen under the gravitational pull of “pleasure or businesse,” he finds himself riding west on the morning of Good Friday, when devotion would have him looking towards the East (towards Jerusalem perhaps, but more specifically towards the “Rising Sunne” that signifies both the sun coming up in the east and Christ “the Sunne” being elevated on the cross). This sets up the dominant image that drives the rest of the poem, that of the speaker riding with his face set against the spectacle of punishment. In the middle section of the poem, the speaker describes the spectacle while disavowing it. He suggests that the scene might be too much for him and then describes the blood mingling with dirt and the ragged, torn flesh of Christ that he dare not look upon. Throughout this description, he avoids any juridical language with respect to the death of Christ. He speaks of the blood

of Christ as the “seat of all our Soules,” an image expressing the union of body and soul that evokes sacrifice and sacrament more than punishment. And he also appeals to the ancient “ransom” theory of the atonement, which describes God as having tricked Satan into trading his rights over humankind for the death of Christ, only for Satan to discover that death cannot hold Christ.

In the final section of the poem, however, the speaker does turn to penal language. But rather than describing how the death of Christ paid the capital penalty for sin, the speaker invokes corporal punishment upon himself. The speaker begins the final section explaining how, despite riding in the wrong direction, he sees the spectacle of the cross in his memory: “Though these things, as I ride, be from mine eye, / They are present yet unto my memory, / For that looks towards them; and thou look’st towards mee, / O Saviour, as thou hang’st upon the tree;” (33-36). Memory has agency of its own here, looking back to the scene of the cross and bridging the gap between past and present. In the terms of the Augustinian *distentio animi*, the scene of the cross is made present to the subject by the present intention of the past. Memory also makes the Saviour himself present to the subject. The speaker sees, not the juridical Father, but the self-giving Son whose look towards the speaker evokes a shift from third to second person.

Yet when the scene of punishment and the victim himself are made present, the speaker turns away a second time:

I turne my backe to thee, but to receive  
 Corrections, till thy mercies bid thee leave.  
 O thinke mee worth thine anger, punish mee,  
 Burne off my rusts, and my deformity,

Restore thine Image, so much, by thy grace,

That thou may'st know mee, and I'll turne my face. (37-42)

This passage is, of course, a plea for purification. The speaker turns away, until, through violent correction, he is made fit to return the gaze of Christ. But this passage also constitutes a rejection of the cross's juridical logic. The speaker's own corporal punishment replaces the crucifixion at the climax of the Good Friday narrative. The speaker wants to be punished until mercy bids Christ leave. In other words, he wants to be beaten within an inch of his life. What are we to make of this plea for punishment? On the one hand, we can read the desire for correction as an extension of the impulse to bring redemption into the present. While Christ's death is mediated by memory, the purifying discipline of God can be felt directly in the body (metaphorically in beating, and, quite literally, in illness or other worldly "trial"). On the other hand, we can also read this as a rejection of the humility and passivity required by the Protestant theology of salvation. The speaker cannot bear to look at Christ while he remains sinful. He turns away from the offer of penal substitution, preferring to pay himself. Rather than claiming the merits of Christ's worthy death, the speaker concludes Good Friday hoping that he will merit Christ's anger.

Where "Good Friday" ends passive aggressively, Holy Sonnet IX mounts a frontal attack on the justice of God. Donne begins by asking why animals and inanimate objects are not held accountable for their harmful effects when he is:

If poysonous mineralls, and if that tree,

Whose fruit threw death on else immortall us,

If lecherous goats, if serpents envious

Cannot be damn'd; Alas; why should I bee?

Why should intent or reason, borne in mee,

Make sinnes, else equall, in mee more heinous?

And mercy being easie, and glorious

To God; in his sterne wrath, why threatens hee? (1-8)

The first challenge, why intent should make a person morally (or legally) culpable, seems more witty than serious as a matter of law. Considerations of intent and reason, while conceptually associated with equity, the principle by which the rigor of the law could be mitigated in the interest of justice or mercy, were often used to make judgments in both the common law courts and the Chancery courts that had official jurisdiction over equity cases.<sup>21</sup> J.H. Baker relates, for example, how common law criminal courts could find a defendant innocent if she lacked intent, or had lost possession of her sanity (523-25). However, viewed in light of the Fall, the charge is deeply serious. One of the effects of Original Sin is the corruption of the will and the reason. In light of this, Donne might be understood to be asking why he is held responsible for his “intent” and “reason” when those faculties were both passed down to him in corrupted form.

The second challenge more directly confronts both the common law and the juridical account of the atonement. While a common law judge could weigh intention and reason, he could never set aside the law altogether and pardon a criminal simply out of his glorious mercy. Such language by the speaker appeals to God as though he were the king's Chancellor in the court of equity. Debora Shuger has demonstrated how the early

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<sup>21</sup> See, e.g. Fortier 59-86 for a discussion of equity in English law. On the role of equity within the common law, see Fortier 71-73.

modern English equity courts were associated with absolutism and has argued that, prior to the 1616 clash with Coke and the common law courts, this absolutism at equity was conceived, not in terms of tyranny, but in terms of mercy (*Political Theologies* 72-101). The notion that God, in his glorious sovereignty, could be merciful without respect to the law also evokes Socinus and his influential attack on juridical theories of the atonement. For Socinus, God does not need to receive payment or exact punishment on Christ in order to forgive sins. As a sovereign, he is free to forgive whomever he wishes, without respect to any legal formulations. The octave of the sonnet ends with a direct challenge to God's right to punish either the speaker or Christ: "in his sterne wrath, why threatens hee?" In one sermon, Donne uses this tension between the common law and Chancery courts to explain the Patristic understanding of the atonement: "[The Fathers] knew God's ordinary proceeding. They knew his Common Law, and they knew his Chancery. They knew his chief Justice *Moses*, that denounced his Judgements upon transgressors of the Law; and they knew his Chancellor Christ Jesus, into whose hands he had put all Judgements, to mitigate the rigor and condemnation of the Law" (February 20, 1617). Donne here analogizes the Mosaic Law, which, in his view, rigorously condemns wrong doers, with the common law, and he portrays Christ as the magnanimous, merciful Chancellor who can judge *as he sees fit*. Of course, even in this picture, it is Christ's life, death, and resurrection that have gained him the right to judge. However, Donne here places the emphasis on the freedom of God to forgive over against the rigorous legal necessity to condemn.

In the concluding sestet of Holy Sonnet IX, however, the speaker withdraws his challenge and appears to align himself with the cosmic/juridical schema of salvation:

But who am I, that dare dispute with thee  
 O God? Oh! of thine onely worthy blood,  
 And my teares, make a heavenly Lethean flood,  
 And drowne in it my sinnes black memorie;  
 That thou remember them, some claime as debt,  
 I think it mercy, if thou wilt forget. (9-14)

Scaling back his aggression, the speaker prays that God will combine the “worthy blood” of Christ and his own tears of repentance into a Lethean flood of forgetfulness. The description of the blood of Christ as “worthy” signals that the speaker is drawing on the notion of Christ making a payment that he himself cannot make. Moreover, the combination of the blood and tears brings the judicial past into the affective present. But the speaker does not seek forgiveness through the blood of Christ. Rather, he asks that the combination of Christ’s blood and his own tears will erase his own black memory of sin. The final couplet gives up this ambivalent attempt to understand the legal force of Christ’s “worthy blood.” The speaker rejects the logic of those who defend God’s need to punish and opts to renew his appeal to a merciful sovereign who is not governed by the calculus of debt, guilt, and punishment.

#### IV.

Recourse to equity is not the only avenue by which Donne attempts to plead his case before God. He also uses inheritance law to provide a rhetorical defense against Doomsday. In an undated sermon at St. Dunstan’s he claims that God gives us earthly joy

as “an earnest here as may binde to us that inheritance hereafter which his Sonne our Saviour Christ Jesus hath purchased for us with the inestimable price of his incorruptible blood” (16). The crucifixion here is not figured as criminal substitution. Rather, it is that by which Christ purchases a joyful inheritance for his church. As a reaction against the hegemony of penal satisfaction theories of the atonement, this turn to inheritance law makes perfect sense. I have, following Mackintosh, argued that criminal-law accounts of atonement can hinder affective devotion by rendering God “essentially just” and only “contingently loving.” Moreover, we have seen how Donne attempts to bring feeling back into his accounts of redemption by equating the sorrow of repentance and the pain of discipline with the substitutionary death of Christ. This desire for affect helps explain the attraction of inheritance law for Donne, for inheritance law is that body of law concerned with filial relationships and interpersonal generosity. It is through the inheritance regulations of the common law that real estate passes from a dying landholder to his family members. And it is through the testamentary law overseen by the ecclesiastical courts that the dying can choose to give their movable goods to persons of their choosing. Whereas criminal law only operates where one person has wronged another (or has wronged the community), inheritance law can be the vehicle for gift and blessing.

There is, moreover, biblical precedent for Donne’s turn to the rhetoric of inheritance law. Indeed, Donne could have already seen one such turn translated into English verse. In her translation of Psalm 74, *Ut Quid Deus*, Mary Herbert calls on God to soften his wrath for the sake of his inheritance, Israel:

O God, why hast thou thus

Repulst, and scattred us?  
 Shall now thy wrath no lymmitts hold?  
 But ever smoke and burne?  
 Till it to Asshes turne  
 The chosen folk of thy deare fold?

Ah! think with milder thought  
 On them whom thou has bought,  
 And purchased from endlesse daies:  
 Thinck of thy birthright lott,  
 Of Sion, on whose plott,  
 Thy sacred house supported staies. (1-12)

Picking up this Old Testament theme, Paul argues that those with faith in Christ are the heirs of the blessings God promised to Abraham. Indeed, inheritance of the promises to Abraham is a key theme in both Galatians and Romans, the two books which most fully work out the idea of justification by faith so central to Protestant thought. This is significant because the metaphor of justification refers to God's judicial verdict concerning human beings. Divine judgment and inheritance are intertwined for Paul.

In Galatians, Paul criticizes Christians who feel obligated to observe the rituals and ceremonies of Mosaic law. Comparing their state to that of minority heirs who have come into full inheritance, he writes:

And if ye be Christ's, then are ye Abraham's seed, and heirs according to the promise. Now I say, that the heir, as long as he is a child, differeth

nothing from a servant, though he be lord of all; But is under tutors and governors until the time appointed of the father. Even so we, when we were children, were in bondage under the elements of the world: But when the fullness of the time was come, God sent forth his Son, made of a woman, made under the law, to redeem them that were under the law, that we might receive the adoption of sons. And because ye are sons, God hath sent forth the Spirit of his Son into your hearts, crying, Abba, Father. Wherefore thou art no more a servant, but a son; and if a son, then an heir of God through Christ. (Galatians 3:29-4:7)

Though Abraham's seed were always heirs, they were heirs, Paul argues, in minority until the advent of Christ. Now, through Christ, the heirs of Abraham have come into full possession of their inheritance. Moreover, they have come into maturity as full children of God. This passage contains the language of relational intimacy lacking in penal accounts of the atonement. Through the Holy Spirit, the mature heir experiences the filial intimacy shared between God and Christ. The mature heir, that is, participates in the life of the Trinity. Inheritance is not merely an organic family matter, however. Rather, the language of children "under tutors and governors until the time appointed of the father" explicitly borrows from the practice of inheritance law. Calvin's commentary on this passage reflects its legal nature:

[The heir's] guardian [. . .] is to take care of his person and estate; and to each of these the heirs to large inheritances are generally subject, even as servants are subject to their proper masters. But the period of guardianship lasts lonely "until the time appointed by the father" after which he enjoys

his freedom. [. . .] Lawyers enumerate various methods by which the tutelage or guardianship is brought to a close; but of all these methods, the only one adapted to this comparison is that which Paul has selected, “the appointment of the father. (*Commentary on Galatians...*)

Provisions for tutors were an important part of inheritance law in Donne’s England as well. In his 1590 work, *A Briefe Treatise of Testaments and Last Wills*, English Civilian Henry Swinburne devotes a whole section to the law governing tutors for heirs who are not yet of age.<sup>22</sup> Indeed, it is not only Paul and Calvin who use Roman law to explain the adoption of Christians into the divine family; Donne, too, affirms the legality of the Christian’s adoption according to Roman law:

The Roman stories have that when *Claudius* saw it conduce to his ends, to get the tribuneship, of which he was incapable, because a Patrician, he suffered himself to be adopted. But against this Adoption, two exceptions were found; one, that he was adopted by a man of lower ranke, a Plebian; which was unnaturall; and by a younger man then himselfe, which took away the presentation of a Father. But our adoption is regular. For first, we are made the sonnes of the Most High, and this alsoe by the ancient of daies. (“Sermon Number 5” 119)

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<sup>22</sup> Because the regulations governing tutors varied throughout England, Swinburne only describes the local customs of York, where he has experience. He explains that Roman law (to which Galatians may refer) gave fathers nearly autocratic power in assigning tutors. In Elizabethan York, by contrast, boys over the age of 14 and girls over the age of 12 could choose their own tutor against the direction of their father’s will. The period of tutorship was not determined by the will of the father, but by a legally determined age of adulthood (95-103).

This passage represents the legal turn of the early modern theological mind. Just as Grotius turns to Roman law to defend the legality of atonement, Donne turns to the law to assure his listeners that their adoption in Christ is “regular.”

In Romans, Chapter 8, Paul again describes adoption into the divine family in terms that echo Galatians:

For as many as are led by the Spirit of God, they are the sons of God. For ye have not received the spirit of bondage again to fear; but ye have received the Spirit of adoption, whereby we cry, Abba, Father. The Spirit itself beareth witness with our spirit, that we are the children of God: And if children, then heirs; heirs of God, and joint-heirs with Christ; if so be that we suffer with him, that we may be also glorified together. For I reckon that the sufferings of this present time are not worthy to be compared with the glory which shall be revealed in us. (Romans 8:14-17)

Just as in Galatians, the Spirit is the agent of adoption that draws the Christian into the filial intimacy of the Son and the Father. In addition, the presence of the Spirit is the temporal sign that the Christian will inherit God’s kingdom as a “joint heir” with Christ.<sup>23</sup> Ephesians makes this point even more explicitly, stating “Ye were sealed with that holy Spirit of promise, which is the earnest of our inheritance until the redemption of the purchased possession” (1:13-14). The notion of the Spirit as a seal and as an early payment on a future inheritance enhances the legality of Paul’s account of adoption. The language suggests a contractual formality that might make the inheritance legally binding.

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<sup>23</sup> I have narrowed the grammatical person here. Where Paul uses the plural throughout, I have adopted the singular to correspond to the individualistic emphasis of Reformation accounts of justification, adoption, and election.

The presence of the Spirit, then, is a sign of adoption, but the inheritance comes with a condition. Paul argues that Christians are joint-heirs with Christ only if they “suffer with him.” While this is a *condition* of inheritance, it can also serve as a *sign* of inheritance. Those who participate in Christ’s suffering in the present are those who will inherit God’s kingdom with him in the future. Donne explains how sufferings inflicted by God are a sign for him that he is a joint-heir with Christ:

[He shall bring that scourge, that is some medicinally correction upon me, and so give me a participation of all the stripes of his son; [. . .] and if he draw blood, if he kill me, all this shall be but [. . .] a death of rapture towards him, into a heavenly and assured Contemplation, that I have a part in all his passion, yea such an *intire interest* in his whole passion, as though all that he did or suffered, had been for my soule alone (“Sermon Number 1” 43, italics added).

Donne’s belief here that present sufferings are a sign of God’s disciplinary love echoes, too, the assertion in Hebrews that discipline is the sure sign of true sonship: “[I]f ye endure chastening, God dealeth with you as with sons; for what son is he whom the father chasteneth not? But if ye be without chastisement, whereof all are partakers, then are ye bastards, and not sons” (Hebrews 12:7-8). It is the absence, not the presence, of suffering that should cause a person to worry. If God does not trouble to punish a person, that person is an illegitimate child who will receive no inheritance.

These two signs of inheritance, the presence of the Spirit and paternal discipline, can help us understand the rhetorical leveraging of inheritance in Donne’s devotional poems. In his reading of Romans 8:16, Calvin asserts that peaceful assurance is the chief

mark of the Spirit's presence: "Paul means that, the Spirit of God gives us such a testimony, that when he is our guide and teacher, our spirit is made assured of the adoption of God [. . .] he at the same time pours into our hearts such confidence, that we venture to call God our Father" (*Commentary on Romans*). In light of this, we can see how the anxiety about judgment in the Holy Sonnets might easily compound itself. If Donne is fearful about judgment, if he mistrusts God's judgment enough to plead with him, then perhaps he is lacking the Spirit and therefore not an heir of the kingdom. We can thus read Donne's repeated pleas for the tears of repentance as manifesting his anxiety about this lack of assurance, for repentance, too, is a work of the Spirit.<sup>24</sup> In the absence of the complete certainty that seems impossible for Donne, tears may serve as a seal of the poet's inheritance. The desire for disciplinary violence in "Goodfriday..." and Holy Sonnet XIV can also be understood as a desire for the assurance of adoption. By asking Christ to beat him within an inch of his life in "Goodfriday," Donne asks Christ to assure him that they are brothers. By asking God to "Batter" him in Holy Sonnet XIV he asks God not only to purify him, but also to treat him like a beloved son.

## V.

In contrast to such allusions to inheritance, Holy Sonnet XVI addresses God explicitly in the terms of adoption and inheritance that we have been tracing in the last part of this chapter. Indeed, the poem is one of Donne's most calm and self-assured utterances. This calmness might seem boring or even dogmatic if read alone, but in the context of the other Holy Sonnets, it is striking. It is as though, in the promise of adoption

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<sup>24</sup> See, e.g., Calvin's *Institutes*, 3.3.

through Christ, Donne has finally found sure ground upon which to approach God. The poem begins not with agonized pleading or questioning, but with a straightforward account of redemption in the language of inheritance:

Father, part of his double interest  
 Unto thy kingdome, thy Sonne gives to mee,  
 His joynture in the knottie Trinitie  
 Hee keepes, and gives to me his deaths conquest.  
 This Lambe, whose death, with life the world hath blest,  
 Was from the worlds beginning slaine, and he  
 Hath made two Wills, which with the Legacie  
 Of his and thy kingdome, doe thy Sonnes invest. (1-8)

Jesus, here, abides by the rules of English inheritance law. He cannot leave his “joynture” in the Trinity to the speaker because people cannot leave by inheritance those goods that they hold jointly with others (Swinburne 92). Again avoiding penal language for the atonement, Donne figures the crucifixion as the death through which Christ both wins and effects the speaker’s inheritance.

The second half of the octave shifts the speaker’s subject position vis-à-vis the inheritance. Where in the first four lines he is the recipient of the inheritance, in the second four lines he becomes co-executor of Christ’s legacy. Christ’s two wills “invest” the sons of God with the power to distribute according to their instructions. Donne here puns on “testaments”: the two wills are the Old and New Testaments respectively, and the instructions of the will which the sons are to carry out are the moral precepts of those two testaments. These four lines are striking within the context of the Holy Sonnet

sequence. Where Donne generally has been passive before his foreboding judge of a God, he here views his role as one of active participation in carrying out the will of Christ. And where he has been largely isolated in individual pleadings with and against God, he here envisions himself as part of a community of sons.

The sestet raises an objection, namely that the executors are unable to carry out the instructions of the wills. Donne answers the objection by appealing to grace:

Yet such are thy laws that men argue yet  
 Whether a man those statutes can fulfill;  
 None doth; but all-healing grace and spirit  
 Revive againe what law and letter kill.  
 Thy lawes abridgement, and thy last command  
 Is all but love; Oh let this last Will stand! (9-14)

In this passage the sons of God are simultaneously executors and recipients. The lines imagine the fulfillment of Paul's description in Galatians of children who have come out from the guardianship of the law into the freedom of "grace and spirit." Indeed, the executors distribute the inheritance to one another by following the last command of God that they love one another.

While the first thirteen lines of the sonnet have confidently used the language of inheritance law to tell the Christian story of redemption, in the final line, Donne returns to the language of pleading. His final words, "Oh let this last Will stand!" reflect the uncertainty about wills and testaments that makes testamentary law necessary. Indeed, testamentary litigation in the ecclesiastical courts revolves around two instabilities that both appear in Holy Sonnet XVI. On the one hand, courts have to decide the validity of

the wills themselves. Wills are texts that require interpretation. Their meaning is never transparent and sometimes obscure. On the other hand, courts have to regulate the activity of executors to ensure that goods reach their intended beneficiary.<sup>25</sup>

Donne explores the failure of executors to carry out a will in “The Legacie,” a poem that we will study in the next section. He also fuses the uncertainties of wills and the uncertainties of biblical interpretation in the dedicatory poem of *La Corona*, which is addressed to Lady Magdalen Herbert. The poem begins by considering the property rights of Lady Herbert’s namesake, Mary Magdalen: “Her of your name, whose fair inheritance / Bethina was, and jointure Magdalo” (1-2). Mary Magdalen is the inheritrix of Bethany and the possessor of Magdalen by jointure, a term which signifies the land that passes to a widow upon her husband’s death. By linking Lady Magdalen and Mary Magdalen by name, the first two lines suggest that the patroness might be heir to both the spirit *and* land that Mary Magdalen was possessed of. They establish a link between the spiritual legacy of a saint and the material concerns of inheritance law. However, the poem immediately undermines the veracity of this scriptural will by demonstrating that the early Fathers were unsure about the actual number of historical Marys who existed. The proliferation of Magdalens to “two or three” undermines the law’s ability to confidently oversee the transmission of her property. If Mary of Bethany and Mary Magdalen are not the same woman, then the same woman cannot be the inheritrix of both properties. This uncertainty in the will destabilizes both the property and spiritual inheritance that Lady Herbert is said to receive. The inability of the will to transparently transfer property mirrors the inability of scripture to transparently transfer spiritual blessing.

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<sup>25</sup> For a study of the ecclesiastical courts in this period, see Helmholz.

The twin uncertainties of execution and interpretation create a genuine threat to the standing of the will in Holy Sonnet XVI. Reformation battles over the meaning of scripture suggest the possibility that Donne's account of redemption is invalid. And the very real physical battles of the Reformation indicate that Christians may not follow through on the directions in Christ's will that they love one another. However, the final words of the poem reveal that the most serious threat to the standing of the will is the will of the judge. Donne's plea to God to let the will stand makes a legal claim on God, suggesting that he ought to honor the will of Christ. But the poem leaves open the possibility that God might not let the will stand. Ultimately, this poem fails to mitigate the fear of judgment running throughout Donne's poems. Despite using the language of inheritance to claim God for his father, Donne nonetheless ends the poem standing before the uncertain decision of a divine judge.

## VI.

If the threat to inheritance comes from the unpredictability of the judge in Holy Sonnet XVI, in other poems inheritance becomes the site for erotic violence, betrayal, and deceit. "The Legacie" depicts the administration of a will after the (sexual) death of the speaker. The poem opens with a description of time that evokes the Augustinian temporality of the Fall considered above. Donne writes:

When I dyed last, and Deare, I dye  
 As ofte as from thee I goe,  
 Though it be but an hour agoe,

And Lovers houres be full eternity (1-4)

Describing the repetition of sex, the speaker overlays the physical death of orgasm with the sentimental death of a lover departing. Though the poem recounts a specific incident, when this “last death” occurred is undetermined. Like Augustine’s fallen time, the units of erotic time are indistinguishable from each other. Donne here turns a cliché on its head: the “full eternity” of erotic time does not connote the timeless feeling of being in love, but rather disorientation and indeterminacy. This sense of indeterminacy is heightened by the deferral of a main clause. The first quatrain ends without the speaker reaching subject or verb. This grammatical deferral reflects a speaker who is trapped in a cycle of erotic repetition that never moves forward.

The second quatrain accentuates this disorientation and indeterminacy by leaving the “when” clause hanging. The main clause, “I can remember [. . .]” begins a new thought without completing the thought begun by “When I dyed last.” Moreover, while it does finally address the specific event, it remains vague:

I can remember yet, that I  
 Something did say, and something did bestow;  
 Though I be dead, which sent mee, I should be  
 Mine own executor and Legacie. (4-8)

The fuzziness of the speaker’s memory – he can still remember, but what he remembers are a pair of undefined “somethings” – highlights the epistemological failure that testamentary law sought to protect against. Because it recognized the difficulty of determining the will of decedents, especially among the competing claims of self-interested parties, ecclesiastical law required that testaments be validated by witnesses

(Houlbrooke 97-102). In contrast, the speaker's will amounts to hearsay. That this legacy would be legally invalid thus accentuates the unreliability and the potential deceit of the erotic/emotional exchange between the speaker and his lover.

That the legacy depends upon unreliable hearsay is underscored by the grammatical vagueness of the will itself. In particular, the multiplication of legal actors represented by the grammatical first-person forces the reader to slow down and parse the language carefully:

I heard mee say, Tell her anon,  
                   That my selfe, (that is you, not I)  
                   Did kill me, and when I felt mee dye,  
                   I bid mee send my heart, when I was gone. (9-12)

The lack of distinction between the I of the speaker and the “my selfe” of the beloved no doubt expresses the blurring of physical and personal boundaries during sex. But it also highlights the indeterminacy of the speaker's identity within the legal narrative. In the first line the “I” of “I heard me say” is clearly the speaker as executor, and the me of “mee say” clearly belongs to the speaker as decedent. The next part of the reported will maintains this identification of the executor as “I” (“that is you, not I” is an aside from executor to the beloved/beneficiary) and of decedent as mee (“did kill mee.”) The distinctions are messier, however, at the moment of death/orgasm. The executor (still “I”) does not witness the death, but rather feels it himself. The self-referring grammar of the will blends into the self-referring bodily experience of orgasm. Indeed, the line reveals that the reported death “you did kill me” does not refer to a previous sexual encounter with the beloved, but rather to auto-erotic climax that occurs in the absence of

the beloved. The split-self feeling itself die is thus also a masturbator feeling himself climax. In a literal sense the speaker “dies” of self-slaughter.

The undefined temporality of the poem further frustrates the efficacy of the will. The speaker is bid by the decedent to send his heart “When [he is] gone.” However, the erotic death related in the poem is not final; the openness of “when I was gone” also suggests future deaths. Indeed, the speaker dies again three lines later when he cannot find the heart he is supposed to bestow. The overall impression is that the time of love is a futile, repetitious cycle of auto-erotic climax.<sup>26</sup> The self is distended (literally) and fragmented by this fallen Augustinian time. It is repeatedly turned inward, away from the beloved and onto the self.

The legacy ultimately fails because the speaker has lost possession of his heart and is consequently unable to bestow it. The lines relating the speaker’s failure to execute the legacy communicate both agony and frenetic erotic pleasure:

But I alas could there finde none,  
 When I had riipp’d me, and searched where hearts did lye;  
 It kill’d me againe, that I who *still* was true  
 In life, in my last Will should cozen you. (italics added)

The auto-erotic pleasure of the earlier lines takes a self-destructive turn here. The speaker rips open his own chest. Confronting his inability to fulfill his legal obligations, the speaker is horrified, but also delighted to the point of another death at his failing.<sup>27</sup> The

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<sup>26</sup> The futility I am suggesting here has nothing to do with the failure to reproduce, but merely with the failure of this particular speaker to effect the physical/emotional/legal exchange with the beloved that he desires.

<sup>27</sup> Though cozening certainly refers to general theft, trickery, we should not screen out its frequent associations with the Coney-catchers. In this light the implication is that the speaker “dies” at the thought of his own sexual deviance/trickery. I am indebted to Ari Friedlander for this point.

tension between the second death and the assertion that he is carrying out his “last Will” reinforces the auto-erotic recursivity. As there is no final death, there can be no last will, no exchange of hearts, no bestowal of gift. The interpersonal giving suggested by the testaments is defeated, not only by the inability of the speaker to locate his own heart, but also by the very structure of repetition created by the poem.

The final stanza completes the vision of auto-eroticism. The object he finds looks like the beloved’s heart, but it is artifice. In contrast to the speaker’s supposed “truth,” the beloved’s artificial heart is elusive, “entire to none” and unable to be held by any man. Defeated in his attempt to bestow his own heart, the speaker seeks to compensate the benefactress/beloved by giving the heart-like object he does find within him. He is, of course, frustrated in this because the beloved’s own un-heart is impossible to possess: “But oh, no man could hold it, for twas thine” (24). Again, however the desire is for self-referential giving. Even if he were able to hold the object he would only be giving her what she already possesses.

Similar to “The Legacie,” Holy Sonnet II (“As due by many titles...”) infuses inheritance law with a violent and frustrated eroticism. Like the more famous Holy Sonnet XIV (“Batter my heart..”), the poem pleads with God to violently seize the speaker. And like Holy Sonnet XIV, it figures the speaker as a physical domain that Satan has usurped. In both poems, then, the speaker begs God to violently take back what is rightfully his. But where the dominant image in Holy Sonnet XIV is a besieged town, the dominant image in Holy Sonnet II is a contested piece of property. The logic of the poem is thus primarily legal rather than military.

The speaker recounts the various titles by which he belongs to God in the sonnet's octave:

As due by many titles I resigne  
 My selfe to thee, O God, first I was made  
 By thee, and for thee, and when I was decay'd  
 Thy blood bought that, the which before was thine;  
 I am thy sonne, made with thy selfe to shine,  
 Thy servant, whose paines thou hast still repaid,  
 Thy sheepe, thine Image, and, till I betray'd  
 My selfe, a temple of thy spirit divine, (1-8)

Like “the Legacie” these lines represent the speaker trapped in recursive futility. The first quatrain recounts the broad sweep of salvation history from creation through the Fall to atonement. The second quatrain undercuts the sense of progressive narrative, however. It begins with the speaker's status as a Son of God but ends with the loss of divine presence. The temporality is again disjointed. Grammatically, the speaker claims to be a temple of the Spirit in the present: “I am [ . . . ] a temple of thy spirit divine.” But this present-tense presence is undercut by a betrayal that has already occurred. This betrayal also undermines the past-tenseness of the decay described in line three. God purchased title to the speaker when he was decayed in sin, but this has not rescued him from sin. Nor has it provided him with a sense of divine presence. The work of the crucifixion resides in the past, while the present is defined by a sense of God's absence. All of this also indicates the futility of the speaker's attempt to “resigne” himself to God. A traitor locked in recursive sin, he is unable to give himself back to God.

The sestet, however, shifts responsibility from the traitorous speaker to God, the absentee landlord:

Why doth the devil then usurpe on mee?  
 Why doth he steal, nay ravish that's thy right?  
 Except thou rise and for thine own work fight,  
 Oh I shall soone despaire, when I doe see  
 That thou lov'st mankind well, yet wilt'not chuse mee,  
 And Satan hates mee, yet is loth to lose mee. (9-14)

These lines evoke inheritance at both theological and legal levels. Theologically, they describe the paralysis of the subject within a predestinarian scheme. Bound by the corrupted nature associated with original sin, the speaker is unable to repent on his own. Consequently he is controlled by Satan and entirely dependent upon God for his rescue. Unable to act, he is forced instead to look for signs that he has been chosen. The absence of the Spirit, the absence of any divine activity or discipline in his life, tempts him to the sin of despair.

The sestet also describes an act of common law *disseisin*, the term denoting the unlawful dispossession of a freeholder from their land. Where Holy Sonnet XIV describes Satan holding a town that is “due” to God, here the speaker’s complaint that Satan “usurps on” him suggests that the devil has taken possession of God’s land. That Satan “ravishes” God’s “right” makes the scene one of erotic violence, infusing Satan’s usurpation with connotations of sexual domination. The ravishing also suggests, however, that Satan is enjoying the fruits of the land. In the language of the common law,

he possesses the land *and* enjoys the “taking of esplees” from that land.<sup>28</sup> He has thus disseised God and established his own seisin.<sup>29</sup> By doing so, he has also established his own title and right over the speaker. The common law recognized any seisin, even one wrongfully taken, as a basis for title. This worked because title was *relative* under the common law. Anyone who could claim that they or their ancestor had been seised of the land could claim title. Those whose claim was rooted in an older seisin were judged to possess a superior title.<sup>30</sup> By establishing seisin over the speaker, Satan would not have a superior claim to God, but he would have rights against anyone else who might come along. The common law also prevented disseised owners from taking back their land by force. In Maitland’s phrase, the law enforced a “rigorous prohibition of self-help” against ejected land owners (52). The law thus prevents the very violence that the speaker invites when he asks God to “rise” and for his “owne worke fight.”

The speaker may also be pleading with God to fight for his right within the scope of the law. English land law provided for both literal and fictional violence in contests over right. The original action for contesting right, the Writ of Right, was resolved through trial by battle (Maitland 21). By the early seventeenth century, however, the Writ of Right had largely been abandoned in practice. During Donne’s lifetime, the primary means of trying title was through the fictional action of Ejectment. Ejectment evolved as

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<sup>28</sup> Maitland writes that all titles must be rooted in “an exploited seisin, seised with a taking of esplees” (Pollock and Maitland 80).

<sup>29</sup> “Seisin” is the medieval forerunner of “possession” in the law. On its centrality to the law, Maitland writes: “In the history of our law there is no idea more cardinal than that of seisin. Even in the law of the present day it plays a part which must be studied by every lawyer; but in the past it was so important that we may almost say that the whole system of our land law was law about seisin and its consequences (Pollock and Maitland 29). For Maitland’s full discussion of seisin, see Pollock and Maitland, *The History of English Law before the time of Edward I*, Chapter 4, Section 2. Though this important history is officially attributed to Pollock and Maitland, it is widely taken to be the work of Maitland and is conventionally attributed to him in the literature.

<sup>30</sup> Maitland again: “English law both medieval and modern seems to accept to the full this theory: -- Every title to land has its root in seisin; the title which has its root in the oldest seisin is the best title” (Pollock and Maitland 46).

a remedy for tenants who did not possess a freehold. Because it was more expedient than the Writ of Right, freeholders came to use it as well through the fictional creation of two tenants. In the fiction's classic form, the fictional tenant of one freeholder ejected the fictional tenant of the other freeholder from the land in question. The ejected tenant would then bring suit against the ejecting tenant, and the courts would use the suit as a pretense for trying which freeholder possessed superior title. Whether through the archaic violence of the Writ of Right or the fictional violence of Ejectment, the common law both reflected and perpetuated a culture of violence surrounding contests over title. On the one hand, the law sought to prevent violence between putative landholders. On the other hand, the law perpetuated the shadow of this violence within its own bounds.

If Donne's speaker is evoking the violence of English land law in his plea to God, what does this suggest about the devotional stance of the poem? On the surface, the invocation of violence echoes the plea for punishment in "Good Friday." In the face of divine absence, the speaker asks for the felt, bodily presence of erotic violence, violence which will in fact show that God has not abandoned him. Indeed, as argued above, violence may be read as an oblique sign of paternal care.

That the speaker's plea draws on the language of possession law reinforces the sense that his theological despair is a form of filial despair. The speaker's question, "Why doth the devil then usurpe on mee?" is the plea of an unwanted son who has not been chosen. The language of disseisin strengthens the force this plea, suggesting that the speaker fears he has been disinherited. Though the speaker is not literally the heir of the poem's battle for possession, he is the inheritance being contested. By juxtaposing the image of the speaker as an unwanted inheritance with the speaker's fear that his brothers

have been favored over him (“thou lov’st mankind well, yet wilt’not chuse mee”), the poem blurs the distinction between heir and inheritance. The speaker is at once an unwanted inheritance and an unwanted, disinherited son.

Where Holy Sonnet II evokes the fear of divine disinheritance, Holy Sonnet XI evokes both the consolation and terror that accompany theologies of inheritance. The poem goes against the grain of the other Holy Sonnets by embracing the atonement logic of penal substitution. The narrative of the poem follows a Protestant conversion. In the opening quatrain, the speaker seeks to supplant Christ at the scene of the cross. He seeks, that is, to take his own punishment for sin. In the second quatrain, however, the speaker recognizes that his own death cannot satisfy the demands of justice: His sin is too great to be compensated for by his own (deserved) death. This recognition leads the speaker, immediately after the volta, to praise the love of the God who dies in his place: “Oh let mee then, his strange love still admire: / King’s pardon, but he bore our punishment” (9-10). Where Holy Sonnet IX questions why a sovereign God cannot pardon without exacting punishment, here the speaker asserts that God has outdone the mercy of kings.

Alongside this narrative of substitutionary atonement, however, the poem also develops the logic of inheritance that we have been tracing. The opening two quatrains locate the speaker’s sin within the recursive futility of Augustinian time:

Spit in my face you Jewes, and pierce my side.

Buffet, and scoffe, scourge, and crucifie mee,

For I have sinn’d, and sinn’d, and onely hee,

Who could do no inequitie, hath dyed:

But by my death cannot be satisfied

My sinnes, which passe the Jewes impiety:

They kill'd once an inglorious man, but I

Crucifie him daily, being now glorified (1-8)

The repetition of sin (“I have sinn’d, and sinn’d;” “I crucifie him daily”) joins with the short repetition of punishment (“Buffet, and scoffe, scourge, and crucifie”) to suggest the cyclical nature of sin and the futility of human attempts to overcome it. The speaker’s address to the Jews places this futility within the context of the Fall by making the rejection of Christ part of the universal human condition. The speaker simultaneously confirms and, to a limited extent, troubles the long Christian history of anti-Semitism associated with the crucifixion. He sets up “the Jewes” as the standard of “impiety” against which he judges himself, but he then confesses to out-sinching the Jews both quantitatively and qualitatively. He out-sins them quantitatively because he crucifies Christ repeatedly. He out-sins them qualitatively because, where the Jewish people might plead ignorance based on Christ’s “inglorious” appearance, the speaker can have no excuse for crucifying the resurrected, “glorified” Christ. The speaker thus recapitulates the sin of the Jewish nation, suggesting a universal participation in the corruption descended from Adam. If anything, the death and resurrection of Christ has merely intensified the problem.

Read in light of the Fall, the sestet of the sonnet offers an account of the atonement that is doubly substitutionary. The crucifixion is indeed an act of penal substitution, but considered within the larger framework of the Fall, it is also an act of substitutionary *inheritance*:

Oh let mee then, his strange love still admire

King's pardon, but he bore our punishment.  
 And Jacob came cloth'd in vile harsh attire  
 But to supplant, and with gainful intent  
 God cloth'd himselfe in vile mans flesh, that so  
 Hee might be weake enough to suffer woe. (9-14)

Penal substitution is not an abstract, legal transaction in these lines. Rather, it occurs within the embodied, temporal space of history. The speaker's emphasis on the incarnation is important in a literal sense. By taking on "vile man's flesh," Christ becomes an heir of Adam who is "weak enough to suffer" the crucifixion. He is weak enough, that is, to suffer the punishment that all flesh inherits from Adam. As an heir of Adam, too, he becomes a representative of humanity who can win a greater inheritance for his brothers and sisters.

The emphasis on incarnation may also explain the relative lack of anxiety at the end of this sonnet. Meditating on a God who clothes himself in flesh appears to provide a measure of consolation that is lacking in most of the other Holy Sonnets. By becoming a human descendant of Adam, God declares familial allegiance with humanity in the strongest terms. That this happens in flesh also answers the problem of bodily absence that marked both "The Legacie," and Holy Sonnet II. The God of these lines is not a judge waiting on the other side of death. He is, rather, one who comes near in a human body.

Christ not only bears humanity's inherited punishment, however. He also undermines the competitive approach to inheritance that has marked human history. The speaker contrasts the self-giving action of Christ with the "gainful intent" of Jacob, who

comes to his blind father Isaac disguised as his older brother Esau. Through this trickery, Jacob steals the blessing that Isaac intends to give to Esau, this after he has already tricked Esau into selling his birthright cheaply for a bowl of soup (Genesis 25-27). The Jacob story thus highlights inheritance as a site of human conflict. Moreover, the juxtaposition of this story with Christ's own acceptance of the Adamic punishment suggests that Christ dies precisely to save humanity from such conflict.

The Jacob story also recalls the darker side of election, however. Both Jewish and Christian theologies of election draw on the preference of brother over brother. Indeed, God's preference for devious Jacob over Esau becomes biblical shorthand for election. As noted in the previous chapter, when Paul discusses election in Romans 9, he cites the prophet Malachi: "Jacob have I loved, and Esau have I hated" (Romans 9:13). The poem thus ends with a split perspective on divine inheritance. On one hand, Donne reads the crucifixion as an act that counters the fraternal violence surrounding human inheritance. On the other hand, Christian theology (at least of the predestinarian variety), depicts a God who participates in, and even furthers, that same fraternal violence.

The problem of this split is the focus of the following two chapters. Donne's allusion to Jacob bears directly on the representation of inheritance in Herbert. Jacob's story indicates that inheritance contests not only occur between rival heirs. They also foster aggression and mistrust between fathers and sons. As we shall see, aggression from the son towards the father characterizes Herbert's approach to salvation and inheritance.

## Chapter Four

### The Violence of Sacred Inheritance in George Herbert's *The Temple*

Like Donne's devotional poems, Herbert's lyrics in *The Temple* betray ambivalence towards the logic of penal satisfaction that constituted much Reformation atonement theology. And like Donne, Herbert exploits the language of inheritance law as an alternative vehicle for imagining salvation. Herbert's use of inheritance, however, differs from Donne's in two key ways. First, where Donne generally maintains clear distinctions between criminal law and inheritance law, Herbert erases the distinctions between the two. Where Donne seeks refuge from the coercive menace of the law in the filial language of inheritance, Herbert leverages inheritance law as one more tool in his legal antagonism towards God. This is not to say, however, that Herbert does not also seek solace in the resources afforded by inheritance law. To the contrary, inheritance is more central to Herbert's devotional imagination than to Donne's; inheritance language and imagery are ubiquitous throughout the *The Temple*. This centrality of inheritance in Herbert points to the second key difference in the way the two poets treat inheritance law. Donne primarily turns to inheritance law to find assurance of salvation in the face of impending judgment. Herbert, in contrast, uses biblical and English inheritance law to imagine how salvation can be experienced through the long duration of the liturgical year and the longer duration of ecclesiastical history. Because he is less concerned with final judgment and more concerned with the epicycles of liturgical and generational time,

Herbert cultivates a theology of inheritance that is less about escaping judgment and more about the sacramental presence of salvation in history.

The present chapter explores the tension raised by these two movements. On one hand, the poems of *The Temple* embrace the violence and aggression that is part of both biblical and English forms of inheritance. On the other hand, inheritance provides the language through which the poet can imagine the saving presence and activity of God across generations. In the pages that follow, I trace how the curses and blessings of inheritance law interact throughout *The Temple*. In elucidating both the ethical problems and imaginative possibilities created by Herbert's devotional appropriation of inheritance law, I seek to show how attending to inheritance law in *The Temple* can deepen our understanding of the poems' energy. Though law may not make for clean theology, its inherent tensions and fissures contribute much to the theological and emotional force of Herbert's poetry.

## I.

If Herbert is more ambivalent than Donne about the legal nature of devotion, he is also less precise in his use of legal categories. Perhaps due to the dominance of one central conceit in his poems, Donne generally maintains jurisdictional distinctions: "Good Friday" and Holy Sonnet IV imagine the scene of criminal punishment, Holy Sonnets IX and XI evoke the ability of kings to pardon at equity, and "The Legacie," "The Will," and Holy Sonnet XVI all leverage the logic of inheritance law. Herbert, on the other hand, regularly mixes the language of criminal and moral law with the language of inheritance and property law. The resulting jumbled legality in his poems exploits the

tensions between the various legal jurisdictions in English law and the tensions between the various axes of salvation in early modern theology.

Jurisdictional overlap can be found early in “The Church Porch,” the long moral-didactic poem that opens *The Temple*. Apologizing for the “bounds and stays” that direct the path of a Christian’s sexual desire, Herbert’s speaker declares:

If God had laid all common, certainly  
 Man would have been th’ incloser: but since now  
 God hath impaled us, on the contrary  
 Man breaks the fence, and every ground will plough.  
 O what were man, might he himself misplace!  
 Sure to be cross he would shift feet and face. (19-24)

Herbert here refigures classical Pauline logic about law and guilt in the terms of contemporary English debates over property and inheritance rights. The passage evokes the Pauline dynamic of law and grace in which the law serves to expose our inherent sinfulness, thus driving us into the arms of grace.<sup>31</sup> Just as Paul only comes to know covetousness because the law commands him not to covet, mankind here only transgresses because God has set up laws governing desire. Similarly, just as in Paul sinful persons are guilty of a capital offense, here Herbert refigures adulterers and fornicators as felonious trespassers.<sup>32</sup> By placing the logic of sin and forgiveness squarely

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<sup>31</sup> “What shall we say then? Is the law sin? God forbid. Nay, I had not known sin, but by the law: for I had not known lust, except the law had said, Thou shalt not covet. But sin, taking occasion by the commandment, wrought in me all manner of concupiscence. For without the law sin was dead. For I was alive without the law once: but when the commandment came, sin revived, and I died. And the commandment, which was ordained to life, I found to be unto death. For sin, taking occasion by the commandment, deceived me, and by it slew me.” (Romans 7.7-11)

<sup>32</sup> Describing the persistent disobedience of wicked persons, Paul writes “Although they know God's righteous decree that those who do such things deserve death, they not only continue to do these very things but also approve of those who practice them.” (Romans 1:32)

within contemporary debates over enclosure, however, Herbert calls the goodness of divine law into question. Jess Edwards has described how, in the early seventeenth century English law shifted from defending common lands against enclosure to defending the right of property owners to enclose their land (6-9). On the one side, defenders of the poor's customary rights to common lands argued that enclosures led to exacerbated poverty and depopulation. On the other side, proponents of the right to enclose argued that enclosure would improve the yield from particular pieces of land, thereby benefiting the commonwealth and the poor. Moreover, they argued that the right to enclose was an "ancient liberty" protected by English law.

Both sides of the debate argued that the protection of inheritance was at issue. In his 1604 book *The Humble Petition of Two Sisters the Church and Common-wealth for the Restoring of their Ancient Commons and Liberties*, Francis Trigge argues that the commons are the proper inheritance of the poor. Some commons, like the common lands of Kent which have been added by the sea, are the natural gift of God. Others have been given by dying noblemen and by Kings (such as William the Conqueror) in exchange for military service. Evoking the theme that we traced in Donne's poems, Trigge asserts that the king cannot morally revoke this common inheritance:

Oh Inclosure then, to be hated of all Gods children, which deuoureth their fathers inheritance! and to be detested of all your Maiesties faithfull subiects, which dishonoureth your Highnes, by diminishing the people of your land, and procureth your Maiesties destruction (as saith Salomon) and to be abhorred of all true harted English men, which bringeth a famine, one of Gods plagues vpon this our Common wealth. Nay, which

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goeth about to impouerish our Grand mothers and most famous Cities.

(A5<sup>r</sup>)

The suggestion that a biblical famine will plague England reflects Trigge's habit of linking the common inheritance of the English poor with the inheritance given to the biblical people of Israel. Trigge devotes an entire section of his book to showing that the practice of enclosure was outlawed in the "commonwealth" of Israel. For our purposes, what is more interesting than the suggestion that the land laws of Israel should be normative for England is the assertion that the inherited right of the poor to common lands is bound up in God's saving covenant with the children of Abraham. Just as Abraham's calling to a great inheritance was a calling to a life of wandering, and just as Christ lived in the world as a "travailer or pilgrime, and not as [. . .] an inhabiter," so Christians are called, not to possess the earth, but to use it according to their needs. Those who are called as part of God's covenant people cannot use the rationale of the enclosers, who argue, "Is it not lawfull for vs to vse the earth to the most aduantage?"(D1<sup>r</sup>) Trigge sees in such a rationale a naked assertion of power by landowners against the poor, who are Christ's own inheritance: "And this cankred Thorne also deuoureth Gods people, which is his inheritance, as the Psalme teacheth vs, Aske of me, (saith God) & I will giue thee the people for thine inheritance &c. and the vttermost parts of the earth for thy possession. Inclosers to maintaine their owne inheritances, doe make no conscience to impaire this inheritance"(A3<sup>v</sup>-A4<sup>f</sup>). In a manner of speaking, the legal interests of landowners are at odds with the legal interests of Christ.

In direct contrast with Trigge's argument, Adam Moore's *Bread for the poor, and advancement of the English nation promised by enclosure of the wastes and common*

*grounds of England*, written around 1623, asserts that enclosure makes the best use of the common person's inheritance. We can detect in Moore the general movement towards a sanctification of private property that has been traced by Edwards, among others. Where Trigge posits the commons as the communal inheritance of the poor, Moore exhorts each villager and poor person to seize and cultivate his personal share of the land. Moore also places an ethical premium on the value of hard work. Worker "bees" who labor in the service of productivity are welcome in the community, while unproductive and counterproductive "droans" are exiled: "An idle Member in a Common-wealth (as a droan in the Bee-hive) is either actually cast out by Justice, or at least suffereth a divorce from the generall affection. [. . .] your demeanor [will] prove you either a Bee or a droan. Neither may we account him a droan only that sitteth still and is idle, but him also (and worse) that is busie in hindring commodity" (B1<sup>f</sup>). The community is not formed here through calling, but rather through hard work. The Inheritance of the commonwealth is only as good as what one makes of one's particular piece. Like Trigge, Moore also likens England to the biblical land of Israel. But where Trigge's Israel is a land without borders in which the poor have rights to glean leftover grain, Moore's Israel is desirable because it is cultivated land. Would you, he asks his poorer readers, remain in the uncultivated Arabian wilderness when you can enter the cultivated, fruitful land of Canaan (B1<sup>v</sup>)? Would you, in other words, disobey the Lord and cling to common wastelands rather than enter into the promised land of enclosed, private property? To reject enclosure, Moore implies, is not only to misuse one's inheritance, it is to opt out of election.<sup>33</sup> Private property becomes a form of salvation.

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<sup>33</sup> Moore further emphasizes the idea that commons are a misuse of the poor's inheritance by telling a parable in which a dying man leaves a Garden to his three sons. An artist discovers that there is treasure

Herbert's evocation of the inclosure debates in "The Church Porch" shares a certain affinity with Moore's argument. Whether Herbert endorses enclosure is ambiguous. The suggestion that "Man would have been th' incloser" if God had made all common links the practice of enclosure to the concupiscent desire of fallen humanity. Christopher Hill follows Sidney Gottlieb at this point, suggesting that Herbert is contrasting the bad human practice of enclosure with the good "fence" of holy matrimony ("Customary Liberties..." 36). But this contrast is far from clear. The boundaries around human sexuality are necessary, in the words of the Anglican marriage service, "for the procreation of children [ . . . ] and as a remedy for sin, to avoid fornication." Marriage then, in addition to signifying the mystical relationship between Christ and his church, also provides the boundaries through which a man may create his own heirs. Rather than contributing to an undifferentiated "common" pool of desire, a married man can cultivate and till his private ground in order to produce progeny that he knows are his own. In this way, marriage can be seen as participating in the same gendered logic of private cultivation that Moore endorses.<sup>34</sup> The problem, perhaps, is not that man has a desire for private property, but that he is not satisfied with his own property and tries to till in another man's field. To sin carnally is to violate another man's private property.

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buried in the garden, but because the brothers cannot agree on how to "partition" the treasure, they leave it buried. Would you not, Moore asks his readers, rather have a divided part of the treasure than have an undivided but unused treasure rot in the ground (A2<sup>v</sup>)? Borrowing here the language of some New Testament parables (which tell about fathers and sons, inherited vineyards and buried treasure), Moore further links the question of enclosure with the question of who shall inherit the kingdom of God. But, tellingly, he does so in a way that emphasizes the individual's inheritance rather than the community's. The morality that emphasizes the use of personal property appears to mirror the Protestant concern with individual religion that we find in these poems.

<sup>34</sup> Moore also links the enclosure of one's wife with the enclosure of one's land, and suggests that the natural goodness of land enclosure can be inferred from the natural desire not to share one's sexual property: "Would any man admit of a partaker in his house, his horse, his ox, or his wife, if he could shun it? And why is it otherwise in land?" (B1<sup>v</sup>-A2<sup>f</sup>)

Whether Herbert is endorsing or critiquing the practice of enclosure is ultimately less important for our purposes than recognizing that Herbert has implicated God in the human violence of the law. Herbert's speaker describes God "impaling" his creatures with his moral law. The word "impaled" is trebly violent here. In its oldest sense of "fencing in" impaling does violence to the landscape and to the community by separating one person from another. But, by the time Herbert is writing, impaling also carries its more explicitly violent meanings of erecting a military wall and running a person through with a stake or spear (*OED*). Does the law then protect God's creatures or skewer them? In his preface to the New Testament, Luther suggests that the divine law, like all law, inherently does violence to those it governs. Contrasting the Mosaic law with the New Testament gospel, he writes: "Moses, in his books, urges, drives, threatens, lashes out, and severely punishes; for he is a maker and administrator of law" (17-18). In addition to inflicting this type of psychic violence, God's laws also perpetuate the human violence they seem meant to prevent. Herbert's assertion that man "would have been th' incloser" if God hadn't been suggests the possibility that God has set boundaries around sexuality so that men wouldn't be left to do the job in their own inferior way. But rather than putting an end to things, law merely calls forth the violence that Herbert represents as sexually transgressive "breaking" and "ploughing" (22). Though Richard Strier does not talk about this passage specifically, we can imagine it fitting into the larger Lutheran narrative that he finds in *The Temple (Love Known)*. Law calls forth violence in order to show the impossibility of achieving salvation through obedience to the law, the impossibility of earning one's own salvation. Even if we accept such a theological recuperation, however, the violent language of the passage reminds us that when we talk

about God in legal terms, we necessarily talk about him in violent terms as well. Even if we are prepared to accept a larger theological scheme within which divine law is beneficent, the legal language itself forces us to imagine God being violent with his creatures. To use the language of human law to describe God is to evoke God's coercive power.<sup>35</sup>

All of this suggests a difficulty for the dynamic we have traced above in Donne. I argued above that Donne seeks refuge from God's criminal law in the filial language of inheritance law. I also argued that inheritance law, however, fails to provide the assurance that Donne seeks because inheritance, too, is subject to the unstable language of the law and the uncertain decisions of a judge. Herbert's evocation of the violence of enclosure allows us to suggest further that Donne's attempt to use inheritance law to create devotional intimacy is likely to fail because inheritance law and criminal law alike depend upon the coercive power that Donne wishes to avoid. In the pages that follow, I argue that Herbert foregrounds a form of mimetic violence intrinsic to inheritance law and that, consequently, he deepens our awareness of the contradiction at the heart of covenant theologies that figure redemption in terms of inheritance. Like Donne, Herbert wrestles with ambivalent feelings about the penal violence of Christ's crucifixion and its implications for Christian devotion, and like Donne, he leverages the language of inheritance to appeal to God in familial language. But where Donne's use of inheritance is driven by an anxious desire for assurance of salvation, Herbert recognizes the aggressive nature of inheritance law and leverages it as a weapon in his spiritual struggle with the God who "prevents" him at every turn.

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<sup>35</sup> Aquinas claims that all human law should be accompanied by coercive power in order to be effective (9).

## II.

The form of the poem that comes first in “The Church” suggests the recursive temporality of the sequence as a whole. In contrast to the eschatological pull of endings that characterize Donne’s Holy Sonnets, “The Altar” creates a gravitational pull to the middle of the poem. The varying line lengths of the poem create a visual and aural chiasmus that focuses attention upon the poem’s crucial pressure point (pun intended). Here, as in “Easter Wings,” it is in the short middle lines where change occurs. In particular, the short middle lines of “The Altar” suggest the intense pressure of the spiritual alchemy at work. In the close dimeter couplets, God cuts and then presses the speaker’s heart into the narrow central body of the altar.

A broken ALTAR, Lord, thy servant rears,  
 Made of a heart, and cemented with tears:  
 Whose parts are as thy hand did frame;  
 No workman’s tool hath touched the same.

A HEART alone  
 Is such a stone,  
 As nothing but  
 Thy pow’r doth cut.  
 Wherefore each part  
 Of my hard heart  
 Meets in this frame,  
 To praise thy name:

That if I chance to hold my peace,  
 These stones to praise thee may not cease.  
 O let thy blessed SACRIFICE be mine,  
 And sanctify this ALTAR to be thine. (1-16)

The crucial encounter between God and the speaker comes, not in a dramatic judicial climax, but in the midst of the speaker's lived experience. Indeed, the end of the poem suggests repetition rather than finality. The stony heart of the speaker has been broken, but the pieces of that heart remain hard, in need of further softening through continued poetic praise of God's name and liturgical ritual. The violent surgery on the speaker's heart must be repeated in the formal "frame" of each poem and in each appropriation of Christ's sacrifice at the Eucharistic table. This temporality of repetition is mirrored in the larger structure of "The Church." The sequence is bookended by a concern with epochal events: the early poems describe poetic attempts to wrestle with the crucifixion and resurrection of Jesus and the last poems deal with the general resurrection, final judgment and heaven. But the long middle stretch of the sequence, which deals with the rhythms of personal and corporate spirituality, and the sequence's ambiguous conclusion in "Love (III)," which evokes both a heavenly feast and the repetitive Eucharistic feast, give a sense of judgment deferred. One comes to the end of the sequence, as one comes to the end of the liturgical year, only to find that one must start over. Where Donne's Holy Sonnets emphasize that final judgment is as imminent as the fourteenth line, Herbert's sequence reminds us of the generations that have passed without witnessing the anticipated culmination.

This emphasis on the generations of the Church Militant makes the matter of inheritance doubly important in Herbert. Not only does Herbert's speaker use the language of inheritance to establish the assurance of his personal salvation, but inheritance also gains a communal dimension. Salvation is not passed directly from the dying Christ to the believing individual, but is rather a gift passed on by believing parents to their children, whether through the sacraments or education in morality and charity. In "The Church Porch," Herbert blames the slothfulness of the English on the failure of fathers to properly educate their sons:

This loss springs chiefly from our education.

Some till their ground, but let weeds choke their son:

[ . . . ]

Some great estates provide, but do not breed

A mast'ring mind; so both are lost thereby: (97-98, 103-04)

This overlay of material and spiritual inheritance is even more explicit in Chapter 10 of *The Country Parson*, where Herbert argues that a father's own stake in both the heavenly and earthly kingdoms depends upon his educating his sons as subjects for both kingdoms: "His children he first makes Christians, and then commonwealth-men, the one he owes to his heavenly country, the other to his earthly, having no title to either except he do good to both" (215). Though Herbert urges such a pedagogical mechanism for conveying spiritual and economic inheritance, he is not optimistic about the efficacy of spiritual education in the face of human sinfulness. In "Sin," the cumulative educational efforts of parents, schoolmasters and preachers are blown away by a single "cunning bosom-sin"

(14). Unsurprisingly, then, Herbert gives little attention to the educational aspect of spiritual inheritance in the main body of “The Church.”

Herbert does, however, leverage other inheritance motifs as a way of bringing the key events of the Christian past into the felt present. The penultimate line of “The Altar,” “O let thy SACRIFICE be mine,” sounds like a displaced cousin of Donne’s “Oh let this last will stand!” Though Herbert’s plea is less explicitly related to inheritance law, it nonetheless figures redemption as an object to be given by Christ. Moreover, the rest of the poem draws on key biblical images of inheritance, suggesting the possibility that when the speaker asks to possess Christ’s sacrifice, he is asking to be included in the inheritance. The tears of repentance that figure in Donne as a sign of election are present here as the glue that holds the broken pieces of the speaker’s heart together; repentance is the condition of possibility for worship. By placing repentance before praise, Herbert follows a reformed chronology of events. Herbert’s altar of praise only exists because of the prevenient grace of God that, through the operation of the Holy Spirit, has caused the speaker to repent of his sins. The act of writing, then, is a mark of the Spirit and, consequently, a sign that the poet is an adopted heir of the kingdom.<sup>36</sup> The image of the stony human heart (one of Herbert’s favorites in “The Church”) further establishes the presence of theological inheritance in the poem by evoking Ezekiel 36, one of the key Old Testament passages that promises the new covenant that God would make with Israel. In particular, Ezekiel 36 promises that God will place his spirit within the people and restore them to their fathers’ land:

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<sup>36</sup> Margaret Oakes argues that Herbert seeks assurance of salvation through the act of praise (*‘By These We Reach Divinity’...*).

A new heart also will I give you, and a new spirit will I put within you: and I will take away the stony heart out of your flesh, and I will give you an heart of flesh. And I will put my spirit within you, and cause you to walk in my statutes, and ye shall keep my judgments, and do them. And ye shall dwell in the land that I gave to your fathers; and ye shall be my people, and I will be your God. (Ezekiel 36: 26-28)

The removal of the stony disobedient heart is here a sign of the end of exile and the recovery of Israel's covenant inheritance. Borrowing this image, Herbert states that he only praises God in poetry because he is part of the elect people that Christianity identifies with the post-Pentecost church. Indeed, by equating his poetry with the Eucharistic altar, Herbert ties his poetry to the central ritual of the Christian community. In the oldest extant written record of Christ's words at the last supper, 1 Corinthians 11, Paul quotes Jesus explicitly linking his blood, communion, and covenantal inheritance:

For I have received of the Lord that which also I delivered unto you, that the Lord Jesus the same night in which he was betrayed took bread: And when he had given thanks, he brake it, and said, Take, eat: this is my body, which is broken for you: this do in remembrance of me. After the same manner also he took the cup, when he had supped, saying, this cup is the new testament in my blood: this do ye, as oft as ye drink it, in remembrance of me. (1 Corinthians 11:23-25).

Interestingly, Paul makes it clear that the words of institution of the sacrament that he has "received" and "delivered" are themselves an integral part of the community's inheritance.

Herbert's speaker draws, then, on three central scriptural images of inheritance (tears of repentance, the transfigured stony heart, and the Eucharistic ritual of the new covenant) in order to establish his status as an heir. But there is a twist, one that perhaps explains why the speaker pleads for his inheritance rather than demanding it. God has not exactly removed the speaker's heart of stone and replaced it with a heart of flesh. He has, rather, smashed the speaker's heart into pieces. And it would appear that he has left the pieces for the speaker himself to reassemble; the *pieces* are the explicit workmanship of God, but their reconstruction is the work of the poet. The ambiguity here is hellishly deep. Either the speaker is a chosen child of God who has experienced the first violent stage of redemption, or he is a reprobate left to piece himself together in the aftermath of God's furious judgment.

### III.

The series of poems that immediately follow "The Altar" record the poet's attempt to appropriate Christ's sacrifice to himself. If in "The Altar" the sign of divine inheritance doubles as a sign of judgment and abandonment, in these poems the inheritance itself, the sacrifice of Christ, is a double-edged gift. More precisely, these poems manifest the Girardian claim of Anthony Bartlett that the sacrificial reading of Christ's crucifixion is a cursed inheritance that perpetuates rather than ends human violence. Herbert's intertwining of criminal and inheritance law closes down the possibility that inheritance can provide an escape from the violent images of God perpetuated by satisfaction theories. Rather, this intertwining exposes inheritance law as

bound to the same logic of mimetic violence that underwrites criminal law. As a result, Herbert's use of inheritance law reveals that attempts to explain redemption through human legal categories necessarily involve God in human violence. It also mirrors the cultural struggles over property and inheritance rights, debates that were about to play a key role in revolution.

"The Sacrifice" picks up the ambiguity of "The Altar" and develops it within the framework of Christ's historical crucifixion. This significantly locates the dark side of "The Altar" not so much in the anxiety of the individual over predestination, but rather in the mimetic violence of atonement itself. Critics since Rosamond Tuve and William Empson have recognized "The Sacrifice" as a poem that holds together the contradiction of sacrificial atonement. More recently, Michael Schoenfeldt has drawn attention to the antagonism between the speaker and God that drives "The Sacrifice" and the poems that immediately follow it. While Strier is certainly right in *Love Known* to locate this antagonism within a larger narrative in which the speaker must learn to accept the radical, unmerited grace of God, Schoenfeldt reminds us that the aggression and power-plays of culture and discourse are the "human ground upon which [Herbert's] theology rest" (12). In particular, Schoenfeldt argues that the gift-giving between the speaker and God in "The Sacrifice" and "The Thanksgiving" carries a structural affinity with the aggressive competition inherent in all human giving ("That Spectacle..."). Because violence is inherent in the theological structure of giving, resting as it does on human culture, the speaker turns his aggression back on himself; poetry about the cross becomes a poetics of "self-immolation" ("That Spectacle..." 577).

In “The Sacrifice” the historical death of Christ, an act of capital punishment, is transferred into a realm of economic exchange. The refrain of the poem, “Was ever grief like mine?” suggests that sorrow and passion are quantifiable and comparable. It moreover suggests that, like money or land, passion can be exchanged and create debt obligations between persons. Christ, the speaker of “The Sacrifice,” makes explicit what is everywhere implicit in the poem when he describes his agony in Gethsemane:

Therefore my soul melts, and my heart’s dear treasure  
 Drops blood (the only beads) my words to measure  
 O let this cup pass, if it be thy pleasure

Was ever grief like mine? (21-24)

The “therefore” in these lines refers to Judas’s act of betraying Jesus. Judas has sold Jesus for only thirty-pence after complaining when Mary, the sister of Lazarus, anointed Jesus for his burial. Though there are synoptic parallels to this story, Herbert evokes here the version in The Gospel of John, in which Judas objects to the extravagance of Mary’s gesture under the pretence that the money could be better spent on the poor. John’s narrator makes it clear that Judas actually intends to steal the three-hundred pence for himself. Jesus rebukes Judas and states that Mary’s extravagant gift is appropriate in light of the extravagant sacrifice that he is about to make. Herbert draws out the irony of Judas selling Jesus for only thirty pence when even three-hundred pence comes far short of the value of Christ’s sacrifice. In Herbert’s poem, Christ, not Judas, is the one who places a monetary value on the Crucifixion by declaring that three hundred is “Not half so sweet as my sweet sacrifice.” The problem, according to Jesus, is not that comparing money and grief is a category mistake, but simply that three hundred is not a large enough price.

Christ picks up this thread when he describes his experience in Gethsemane. Christ sweats drops of blood *for the purpose* of measuring his agony. Anticipating the poet's own anxiety in "Thanksgiving" and "Good Friday," Christ suggests that his anguish can be measured in words. His assertion that drops of blood are "the only beads" cuts two ways: it places a critique of the external numbering of prayers in the rosary, but it nonetheless suggests that the internal emotions of prayer can be measured. The value of the soul can be measured, but in blood rather than beads. The passive aggressive refrain, "Was ever grief like mine?" can be read, then, as an extension of this principle of measurement. The primary relationship between sinner and savior that Christ fashions is one of quantitative comparison.

The speaker's own aggression towards Christ in the poems that follow "The Sacrifice" is theologically anchored. He anxiously desires to pay Christ back, to extricate himself from an economy of debt by repaying Christ's expenditure on his behalf. "The Thanksgiving" and "The Reprisal" both confront the fact that nothing the speaker possesses can adequately compensate Christ. "Good Friday" reiterates the idea that Christ's blood can be measured in poetic feet: "How shall I measure out thy blood? / How shall I count what thee befell, / And each grief tell?" (2-4) But the poet finds again that his resources are too meager and ends by asking God, instead, to write on his heart. Schoenfeldt calls the dynamic in these poems "a potlatch that mortals can never win" (578). This is certainly true, but it is also true that the idea of a divine/human potlatch is odd. It is not, perhaps, odd that humans would attempt to square themselves with God. We might read the absurdity of this potlatch as part of the Lutheran narrative described by Strier: the proud speaker is resistant to the idea of grace; he would rather pay his own

debts and needs to learn that he can only trust in the merciful agency of God. What the speaker needs to learn is that his agency and God's are on separate plains; they cannot be compared or related through a common currency. But such a reading overlooks the origins of this dynamic in Christ's own words in "The Sacrifice." If the speaker attempts to measure the blood of Christ, he does so in response to Christ's invitation.

We must look, then, for other explanations for the speaker's resistance to the crucifixion than sinful self-reliance. We have seen above that Donne objects to the impersonal remove of God that results from penal-satisfaction theories of the atonement. But in "The Sacrifice" and its subsequent poems, God the father is not figured as a criminal judge. In fact, God the father is noticeably absent from these poems. Christ is the object of the speaker's attention and the speaker reveals Christ to be a mimetic rival rather than a savior. Girard's theory of mimetic violence provides one explanation for the speaker's resistance to the crucifixion. According to Girard, all human culture depends upon the disavowal of an original murder through the mechanism of a sacrificial victim. Moreover, Girard contends, this original murder is itself the product of mimetic rivalry over desired material objects. The progression looks something like this: one person finds an object to be desirable; following the human instinct to imitate, another person also comes to desire the same object; the resulting rivalry, rooted in mimesis, carries the latent potential for violence; humanity transfers the guilt for this violence onto a third-party who is sacrificed in an effort to achieve stability. What the sacred conceals is the fundamental competition over possession that constitutes human personality and community. Girard makes the centrality of "possessive mimesis" explicit when he criticizes Plato for excluding acquisition from his representational theory of mimesis:

It was Plato who determined once and for all the cultural meaning of imitation, but this meaning is truncated, torn from the essential dimension of acquisitive behaviour, which is also the dimension of conflict. If the behaviour of certain higher mammals, particularly the apes, seems to foreshadow human behaviour, it does so almost exclusively, perhaps, because the role of acquisitive mimesis is so important in their behaviour, although it is not as central as it is for human beings. If one ape observes another reach for an object, it is immediately tempted to imitate the gesture. [. . .] It makes the animal a sort of brother to us by showing it subject to the same fundamental rule as humanity – that of preventing conflict, which the convergence of two or several avid hands toward one and the same object cannot help but provoke. (*Things Hidden...* 8-9)

For Girard the potential violence carried in acquisitive imitation is the dark secret that human cultural institutions attempt to repress. Religious sacrifice, human law, and the potlatch (which Girard calls an “unrivaled mimesis of renunciation”) all work to prevent mimetic rivalry from erupting and disrupting the community.

Using Girard’s insights, we can read the rivalry between Herbert and Christ in the early poems of the “The Church” in new light. Herbert has, as it were, taken us behind the cultural veil of sacrificial substitution and exposed the wizard of mimetic rivalry concealed within. We should not be surprised to find Jesus and the poet engaged in the spiritual “potlatch” that Schoenfeldt identifies because sacrificial substitution and the potlatch are structural siblings, dual offspring of ordinary mimetic rivalry. Herbert recognizes this dependence of the potlatch dynamic on acquisitive mimesis. Christ is able

to out give Herbert's speaker because he has accumulated more beads of blood. Unable to match the value of Christ's gift, the speaker reverts to acquisitive mimesis by seeking to appropriate Christ's sacrifice in the blood of his own heart. If Girard is right, Herbert has highlighted what Donne could not. The problem is not merely the logic of penal satisfaction theories of the atonement. All satisfaction theories that quantify the relative merits of Christ and the sinner, whether these be primitive sacrificial models or more rational legal models, participate in and perpetuate the logic of mimetic rivalry.

Herbert's presentation of the death of Christ as a "Sacrifice" and his speaker's aggressive reaction to that death dramatizes, then, a rivalry that is at the heart of the poetic and theological tradition that Herbert inherits. Rosamond Tuve's well-known demonstration of Herbert's indebtedness to liturgical tradition in "The Sacrifice" merely reinforces the point that Herbert is wrestling with an underlying tension between the love of God and the violence of God that is deeply embedded in Christian tradition. For Girard, of course, these traditional readings are misreadings that distort the radical meaning he finds in the Christian gospels. For Girard, the death of Christ is the moment that unmask the founding violence behind all human culture. By exposing both the crucifixion and the promised apocalypse as the work of violent human agents, the gospels reveal God as a God of love who manifests his non-violence precisely through his defeat: "A non-violent deity can only signal his existence to mankind by having himself driven out by violence – by demonstrating that he is not able to establish himself in the Kingdom of Violence" ("Things Hidden ..." 219).<sup>37</sup> By interpreting the crucifixion as a sacrifice (and later as a mechanism of legal satisfaction), Christianity, Girard argues, regressed

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<sup>37</sup> Girard's full argument on this point can be found in the chapter entitled "A Non-Sacrificial Reading of the Gospels" (*Things Hidden...* 180-223).

back into a form of the sacrificial culture whose violence it was meant to expose and arrest: “Historical Christianity covers the texts with a veil of sacrifice. Or, to change the metaphor, it immolates them in the (albeit splendid) tomb of Western culture. By this reading, the Christian text is able to found something that in principle it ought never to have founded: a culture” (249). In a striking twist, however, Girard does not view this misreading as a tragic return to violence, but rather as an inevitable, regressive epicycle in the larger unfolding of Jesus’ message. Drawing on the Pauline notion that the Old Testament law was a guardian for Israel until it came of age, Girard asserts that the sacrificial reading of the Gospels is necessary preparation for the final unmasking of human violence. Just as Jewish culture needed the Old Testament to prepare it for the arrival of Jesus, Gentile culture, which did not have the benefit of the Hebrew scriptures, needs the sacrificial reading to prepare it to accept the full impact of Jesus’ message: “It is Christianity – in the sacrificial version, which is in religious terms very close to the Old Testament—that will educate the Gentiles. Christianity can only play this role to the extent that the sacrificial veil spread over its radical messages enables it to function once again as the founding element of a culture” (*Things Hidden* 253). We have, through an unexpected avenue, found ourselves back in the realm of inheritance. For Girard, the cultural inheritance that Herbert reworks in “The Sacrifice” is the Pauline guardian watching over the divine inheritance until humanity matures. Girard would, it seems, rewrite the Lutheran narrative that Strier identifies in “The Temple.” It is not that the speaker needs to stop trusting his own moral agency and receive the radical sacrifice offered by Jesus. Rather, the speaker needs to struggle within the divine-human rivalry

perpetuated by the sacrificial vision until he (and his culture) learn to see behind the sacrificial narrative itself.

Here we need, no doubt, to tie some threads together. How does a Girardian reading of the Christian tradition help us understand the discomfort with satisfaction theories of the atonement that we traced in Donne and which we have suggested also exist in Herbert? More pressingly, how does this relate to the role of inheritance law in Herbert? Even if the Girardian reading connects satisfaction theories of the atonement to the deep structure of human violence, how does it help us understand the relationship of penal and inheritance paradigms of salvation in Herbert's poetry? To the first question we can answer that Girard's insights help us to see that Herbert's speaker in "The Thanksgiving" and the "Reprisal" has not merely misread the gracious message of Christ's sacrifice. The competitive impulse to repay Christ rather recognizes the rules of the game that Christ sets up when he calculates the value of his sacrifice. Girard, then, helps us to understand more fully why satisfaction theories prevent the feeling of historical salvation in the affective present. Rather than bringing a sense of forgiveness and peace, they perpetuate the violence that they seek to end. To the second question, we can answer that Girard's reading allows us to better understand why Herbert so often intertwines the language of penal satisfaction with property and inheritance related images. It is not merely a matter of historical accident that Christian redemption is both a matter of satisfaction and covenant. Sacrifice, criminal punishment, and inheritance law are all cultural branches off the same tree. That the tree in question is acquisitive mimesis suggests that inheritance law, which so explicitly regulates the distribution of

possessions, may in fact be closer to the root of human violence than either sacrifice or criminal retribution.

This sense that criminal retribution finds an older brother in inheritance law makes excellent sense of one of the odd features of “The Sacrifice.” In his poem that most clearly references the criminal nature of Christ’s death in terms of real politics, Herbert does not refer to Christ’s death as making satisfaction for a criminal punishment demanded by God’s justice. Where Pilate’s justice demands the death of Christ, God’s justice does not. “The Sacrifice” makes it clear throughout that Jesus dies at the hands of human political power. Jesus reminds the reader that the Jews only have the freedom to arrest him because he freed them from Egyptian slavery; those who arrest him come after him with “clubs and staves” and take him “as a thief” (37); he is sent from the Jewish priests and rulers to the Galilean king Herod and then to the Roman governor Pilate. The usually antagonistic powers of Jerusalem find an unexpected “friendship” through their agreement that Jesus must die at the hands of the state. Throughout the poem Christ ironizes these powers by showing how they exercise their might over the true sovereign of the universe. This irony is brought into particular focus when Christ stands before the judgment seat of Herod:

*Herod* and all his bands do set me light,  
 Who teach all hands to war, fingers to fight,  
 And only am the Lord of hosts and might:  
 Was ever grief like mine?

*Herod* in judgement sits, while I do stand;

Examines me with a censorious hand:

I him obey, who all things command:

Was ever grief like mine? (77-84)

There is a sense of divine violence here; Jesus is the true lord of all military power. He is also the judge with the ultimate right to inflict capital punishment: “They buffet me, and box me as they list,/ Who grasp the earth and heaven with my fist, / And never yet, whom I would punish, missed” (133-35). Jesus here endures criminal punishment, and indicates that he inflicts criminal punishment when he wishes. This potential (and past) judgment notwithstanding, there is no active divine judgment in the poem. Jesus submits to the violence of political power without promising retribution; he doesn’t promise that Herod and Pilate will one day suffer for their huge mistake. More surprisingly, there is no indication that Christ is satisfying the justice of the Father. Indeed, the Father is absent from the poem. Jesus is the only divine judge in the poem, and he submits to the power of human violence. Christ is not here suffering the punishment demanded by the justice of the Father. He is the only judge, yet he submits to the violence of religious and political power.

If substitutionary atonement works in “The Sacrifice,” it works according to a logic of substitutionary *inheritance*. Herbert again draws upon the metaphor of stony human hearts, suggesting that the death of Christ saves by inaugurating a renewed covenant with humanity. Christ refuses to answer his accusers, refuses, that is, to enter into the rhetoric of criminal accusation. Instead he patiently tests whether “stony hearts will melt with gentle love” (90). In a more complex allusion, Christ bemoans the betrayal

of the chief priests, who protest before Pilate that they have no king but Caesar<sup>38</sup>: “Why, Caesar is their only King, not I: / He clave the stony rock, when they were dry; / But surely not their hearts, as I well try” (117-19). Christ sarcastically registers the folly of trading covenant inheritance under God for the inheritance of the *pax romana*. It was God, not Caesar, who brought water out of a rock for the people of Israel when they were parched in the desert. Christ then insists that his own intent in suffering is to cleave the stony hearts of his people. Again the passage evokes the new covenant logic of Ezekiel. Christ’s people have signed on for the violent inheritance of empire, and he suffers at the hands of that empire in order to renew their inheritance as God’s people. Christ emphasizes Caesar’s disinterest in the hearts of his subjects while also suggesting something more violent than melting of hearts with gentle love.

The actual judicial verdict of the Jewish leaders is also figured in language that evokes inheritance/covenant theology. Christ overlays the words of criminal condemnation with the betrayal of inheritance:

Then they condemn me all with that same breath,

Which I do give them daily, unto death.

Thus *Adam* my first breathing rendereth:

Was ever grief like mine? (69-72)

Herbert here links the breath of the Sanhedrin with the breath that God breathes into

Adam in Genesis 2. Adam here functions as both a collective noun and a synecdoche. As

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<sup>38</sup> “When Pilate therefore heard that saying, he brought Jesus forth, and sat down in the judgment seat in a place that is called the Pavement, but in the Hebrew, Gabbatha. And it was the preparation of the passover, and about the sixth hour: and he saith unto the Jews, Behold your King! But they cried out, Away with him, away with him, crucify him. Pilate saith unto them, Shall I crucify your King? The chief priests answered, We have no king but Caesar. Then delivered he him therefore unto them to be crucified. And they took Jesus, and led him away.” (John 19:13-16)

a collective noun, Adam becomes shorthand for all humanity. But as a synecdoche, Adam also serves as a single actor who represents his entire race. This is a synecdoche with real force in Christian theology. As the representative for his descendants, Adam passes on sin and death as an inheritance to his children.<sup>39</sup> Moreover, this inheritance includes murderous (mimetic) violence: Adam's first son Cain kills his second son Abel in a fit of religious rivalry. The condemnation of Christ by "Adam" is the summation of this inheritance. The rebellion against God and the resulting violence between brothers come together as the Jewish leaders condemn the innocent kinsman who is also their unrecognized God. Christ's reminder that this is what Adam has done with his "first breathing" suggests, of course, a second breathing. Herbert evokes the "second breathing" recorded by John's gospel: after his resurrection, Jesus breathes on his disciples and commands them to receive the Holy Spirit.<sup>40</sup> In the place of the inheritance of death and violence that comes through the breath of Adam, Jesus substitutes the new covenant inheritance of the indwelling spirit.

Jesus develops this notion of the passion as an act of substitutionary inheritance when he narrates his mock coronation at the hands of the Romans. Again, Jesus emphasizes the irony of corrupt and fragile human power mocking the sovereignty of Christ when it is in fact their own systems of power that are barren and decaying:

Then with a scarlet robe they me array;  
Which shows my blood to be the only way,  
And cordial left to repair man's decay:

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<sup>39</sup> "For as in Adam all die, even so in Christ shall all be made alive." (1 Corinthians 15:22)

<sup>40</sup> "Then said Jesus to them again, Peace be unto you: as my Father hath sent me, even so send I you. And when he had said this, he breathed on them, and saith unto them, Receive ye the Holy Ghost" (John 20:21-22).

Was ever grief like mine?

Then on my head a crown of thorns I wear:

For these are all the grapes *Sion* doth bear,

Though I my vine planted and wat' red there:

Was ever grief like mine?

So sits the earth's great curse in *Adam's* fall

Upon my head: so I remove it all

From th'earth unto my brows, and bear the thrall;

Was ever grief like mine? (157-68)

The first stanza suggests, again, that Christ's death is the violent consummation of human culture. In an act replete with dramatic irony, the Romans dress up Christ in a scarlet robe that parodies, not Christ's claims of kingship, but their own empty gestures of power. Christ's blood is not here the price demanded by the justice of God, but rather a medicinal cure for the decay at the heart of human culture. The crown of thorns, similarly, is not an act of substitutionary punishment, but rather the ironic "fruit" of Christ's private property. Moreover, the vineyard that Christ cultivates is not a bad business investment that he has undertaken on his own. Rather, it is his lethal inheritance, left to him by his absentee landlord father. Herbert's Christ here invokes the parable which, in all three synoptic gospels, is a proximate cause of Jesus' death. Here is the parable as it appears in Mark:

A certain man planted a vineyard, and set an hedge about it, and digged a place for the winefat, and built a tower, and let it out to husbandmen, and went into a far country. And at the season he sent to the husbandmen a servant, that he might receive from the husbandmen of the fruit of the vineyard. And they caught him, and beat him, and sent him away empty. And again he sent unto them another servant; and at him they cast stones, and wounded him in the head, and sent him away shamefully handled. And again he sent another; and him they killed, and many others; beating some, and killing some. Having yet therefore one son, his wellbeloved, he sent him also last unto them, saying, They will reverence my son. But those husbandmen said among themselves, This is the heir; come, let us kill him, and the inheritance shall be ours. And they took him, and killed him, and cast him out of the vineyard. (Mark 12-1-8)

Within the context of enclosure, it is interesting to note that the man who plants the vineyard builds a wall around the land that he plans to cultivate. The violence in the parable fits well within Girard's framework of mimetic rivalry. The tenants beat and kill the servants who come to collect the grapes and then kill the heir in order to wrest the inheritance for themselves. Reading Herbert in light of this, the violence expressed through the crown of thorns is Christ's own dark inheritance. But, as Herbert's Christ makes clear, this is an act of substitution. While the thorns are not his rightful inheritance, they are the rightful inheritance of Adam's children. By taking the thorns upon his head, Christ removes the Edenic curse from the land and "bears the thrall" himself. Once again, where we might expect to hear that Christ has borne God's wrath, we instead find Herbert

transforming the political violence of the crucifixion into the language of inheritance. Even the language that suggests the bearing of God's violent wrath blurs into the language of agriculture and real property. Christ's declaration that he "[bears] the thrall" of sinful humanity suggests penal violence while also completing the logic of harvest and inheritance in the passage. The thrall that God puts in the ground in Genesis is not death, but rather the thorns that make for hard agricultural labor. When Christ places this upon his brows, he strangely submits to this curse, winning his true inheritance (the redeemed people who are the hoped for fruit of the vineyard) through the bloody sweat of his brow. Redemption happens when Christ takes Adam's inheritance upon himself, winning a better inheritance for himself and for Adam's children.

With this complex interaction of Christ's and Adam's inheritances in mind, we can read an old critical crux in new light. I want to consider the passage in the context of its surrounding stanzas because, taken together, the three stanzas draw together the conflicting vectors of inheritance based soteriology that we have been tracing. Having spent nearly two hundred lines leading up to the appearance of the cross, Christ narrates his procession and elevation with striking brevity:

My cross I bear myself, until I faint:

Then Simon bears it for me by constraint,

The decreed burden of each mortal Saint:

Was ever grief like mine?

*O all ye who pass by, behold and see;*

Man stole the fruit, but I must climb the tree;

The tree of life to all, but only me:

Was ever grief like mine?

Lo, here I hang, charged with a world of sin,

The greater world o' th two; for that came in

By words, but this by sorrow I must win:

Was ever grief like mine? (197-208)

These stanzas offer three different frames for thinking of salvation as a matter of inheritance. In the first, Jesus makes Simon a type of all Christians who will follow. Like Simon, “all mortal saints” are to bear the cross of Christ “by constraint.” But what exactly will constrain Christ’s heirs? Certainly we can understand this as a decree that Christ’s followers must also suffer at the hands of religious and political power. In this light, coercion comes from earthly powers that be. Christ decrees that his saints must imitate him by submitting to such powers rather than reacting through retributive violence. Christians are to participate in the salvation of the world by suffering with Christ at the hands of evil. The metonymic linking of Rome’s “constraint” and Christ’s “decreed burden,” however, makes such a clean distinction between coercive power and divine vocation difficult to maintain. Where a theological gloss might keep them separate, the movement of the poem bleeds the violence of Rome into Christ’s command that Christians imitate him. Here again we find inheritance participating in the same mimetic violence that underwrites penal substitution. Christ replaces the violent

inheritance of Rome with a legacy of non-violent praxis, but the invitation to imitate itself carries something of the violence of constraint.

Of course, imitation in itself need not be violent. One could argue that a vocation to imitate Christ in resisting mimetic violence is precisely an invitation to a different kind of violence, one underwritten by renunciation rather than acquisition. Indeed, Bartlett's Girard-influenced theology of the cross posits non-acquisitive imitation as central to the saving work of Christ's death. Following Girard, Bartlett posits that the crucifixion opens up, for the first time in human history, the possibility of non-acquisitive, non-violent imitation. The economy of salvation is, for Bartlett, a non-economy in which both God and his followers give absolutely without demanding recompense.<sup>41</sup> But the uncomfortable juxtaposition of Roman "constraint" and Christian "decree" forces us to hold any such recuperative reading of the passage alongside a reading that recognizes the passage's persistent mimetic violence. The commandment to imitate Christ here itself performs constraining violence, forcing the disciple into antagonistic competition with Christ.

The next stanza also forces us to hold these same two readings together. On the one hand, we find Christ again reversing the inheritance of Adam. Where Adam sinned by taking the fruit of the tree, Christ removes the curse of sin by climbing the tree of the

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<sup>41</sup> Bartlett argues, against the Derrida of *The Gift of Death*, that the gospels do not perpetuate the violent economies of exchange and retribution. In particular he disagrees with Derrida's reading of Matthew 6:6: "But when you pray, go into your room, close the door and pray to your Father, who is unseen. Then your Father, who sees what is done in secret, will reward you." Derrida reads this as a perpetuation of an exchange economy of rewards and threatened violence. Bartlett argues that this elides the fact that the Father in this passage is also unseen. For Bartlett, the hiddenness of the father is crucial. The father is not doling out rewards from afar, but it is rather inviting the disciple into the very hidden, non-violent place of "abyssal" compassion where he himself exists: "If the disciple is required to practice such giving in the new time when the Kingdom is "at hand," then it is because the Father also does, in an-archic solidarity with her. Because the Father is in the abyss, gives abyssally, from the hidden place obscured to normal economic-ontological sight and time, so does the disciple" (244). Simone Weil holds a similar view of God as a giver who gives so absolutely that he "cancels himself as a giver" (Williams). Perhaps not coincidentally, Weil's "conversion" experience occurred while she read Herbert's "Love (III)."

cross. Where Adam gained an inheritance of death for humanity, Christ substitutes an inheritance of eternal life.<sup>42</sup> The cross, the instrument and image *par excellence* of Roman intimidation and domination, substitutes for the tree of life that Adam lost for his children. If we read this in the light of the enclosure debates, Christ here stands on the side of the dispossessed, winning back the common access to the tree that had been closed off by the angel and flaming sword of Genesis 3. And yet the overtones of mimetic rivalry are also unmistakable. Christ outdoes Adam by taking possession of the tree. (In Genesis, Adam appears to be on the scene but lacks the nerve to even touch the tree himself.) At the same time, he outdoes Adam by giving a far superior gift to his heirs. He also outdoes Adam and humanity by taking possession of suffering. The image of Christ actively climbing the tree, with its connotations of boyish eagerness, suggests a desirability in the suffering. There is a sense that Christ is showing he can seize possession of what Adam can only have imposed upon him.

More than any other passage in “The Sacrifice,” the final of the three stanzas carries language that connotes penal satisfaction. Christ being “charged with a world of sin” strongly suggests Christ standing under a criminal charge against the world’s sin. But there is no explicit statement that it is God who brings the charge.<sup>43</sup> Within the real-politic context of the poem, it makes as much sense to read the charge in terms of the

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<sup>42</sup> cf. Romans 5:12-15: “Wherefore, as by one man sin entered into the world, and death by sin; and so death passed upon all men, for that all have sinned: (For until the law sin was in the world: but sin is not imputed when there is no law. Nevertheless death reigned from Adam to Moses, even over them that had not sinned after the similitude of Adam’s transgression, who is the figure of him that was to come. But not as the offence, so also is the free gift. For if through the offence of one many be dead, much more the grace of God, and the gift by grace, which is by one man, Jesus Christ, hath abounded unto many.” Again, we find in the New Testament, and particularly in Paul, the conflation of inheritance and criminal language in the representation of salvation.

<sup>43</sup> When the Father is mentioned in the poem, he is described in filial, not judicial terms. Christ bears his father’s disapproval and abandonment, not his just verdict against sin: “I left my crown / And father’s smile for you, to feel his frown:” (221-22).

Girardian scapegoat. In this case Jesus is charged by the community with its own disavowed violence; he is charged with a world of sin by the sinners themselves.<sup>44</sup> But however we read this criminal language, we once again find it morphing into the language of property and inheritance. Though “charge” had not yet, perhaps, acquired its meaning of “charging a price for an object,” one could, by the early seventeenth century, be charged with pecuniary liability for a debt. The *OED* cites Francis Bacon using it this way in his 1626 work *Use of the Common Law*. Bacon asserts that an heir can be charged “of his own lands and goods” for a deed made by his ancestor. In this light, we can understand Herbert’s language as participating in the logic of inheritance. Christ is held liable for the financial debt incurred by Adam and pays it out his own life. More than just paying down an inherited debt, however, Christ also purchases an inheritance for himself. The “world of sin” becomes literally a piece of real estate. Substitutionary inheritance is operative as well. This is not merely the restoration of an original inheritance. Jesus distinguishes between the first world, bought “cheaply” with God’s creative words in Genesis, and the world of sin, bought at the dearer price of Christ’s inimitable sorrow. The inherited debt of Adam is replaced with a new inheritance, the transformed and renewed “world” of sinful humanity, where, however, the shadow of mimetic violence lurks. Christ can pay off his ancestor’s debt and purchase a more costly inheritance for

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<sup>44</sup> Girard does read the death of Christ in this manner: Jesus is the victim of a culture in crisis. To deal with their own violence, Roman and Jewish authorities and the Jewish crowd collude to expunge Jesus from the community: “The final feature [that links the death of Jesus to all human ritual] is the degrading punishment that takes place outside the holy city in order not to contaminate it” (*Things Hidden* 167). For Girard, however, the gospel accounts of Jesus’ death do not, like other myths, collude with this disavowal of violence. Rather, the gospels deconstruct sacrificial myths by exposing the innocence of the victim: “For the gospel text to be mythic in our sense, it would have to take no account of the arbitrary and unjust character of the violence which is done to Jesus. In fact the opposite is the case: the Passion is presented as a blatant piece of injustice. Far from taking the collective violence upon itself, the text places it squarely on those who are responsible for it” (*Things Hidden* 170). There is an affinity here between Girard’s reading of the gospels and the command of Herbert’s Jesus to “behold and see.” The death of Christ, for Girard, demands that humanity look upon the spectacle of its own violence without displacing the responsibility for that violence onto a third party scapegoat.

himself precisely because he alone possesses the capital to do so. “Was ever grief like mine” is both a call to gratitude and a declaration of Christ’s greater wealth in the poem’s currency of suffering.

The inheritance that Christ has substituted in place of Adam’s legacy is finally represented as a matter of sacrament. In a moment of prophetic anticipation, Jesus describes how the “spite” of his killers will act beyond the moment of his death: “For they will pierce my side, I full well know; / That as sin came, so Sacraments might flow” (246-47). Jesus here looks beyond the scene immediately following his death to the future history of the church. The inheritance of sin, which came through the fruit of the tree in Eden, is replaced by the fruit of the cross, which separates into the sacramental water of baptism and blood of communion. An inheritance in sacraments anticipates the long arc of Christian history. Here we can again contrast Herbert’s concern with the cyclical nature of liturgical time with Donne’s preoccupation with time’s impending end. Both baptism and communion reflect the epicycles of Christian time as it is experienced between the climactic events of Christ’s ascension and return. Baptism marks the linear transmission of faith from one generation to another, while communion ritualizes, through repetition, Christ’s death. Whether this repetition is understood in terms of real presence or “mere” commemoration is immaterial to the point here; in either case the sacrament provides a ritualized mechanism through which to experience salvation in the time of the interim. For Calvin, both sacraments function as a seal of the elect’s inheritance – they are physical tokens meant to assure Christians of God’s favor (*Institutes* 3.14). The despair and futility inherited through Adam (in “Repentance” Herbert identifies the sorrow that comes through “Adam’s fall” as the primary thing that

“life feeleth”), are replaced by the material assurance of adoption into the divine family. What tears and the presence of the Holy Spirit did for Donne, baptism and, in particular, the wine of communion, seem to do for Herbert.

This sacramental assurance does not have the last word in “The Sacrifice,” however. The poem ends with one last iteration of Christ’s unmatched suffering:

But now I die; now all is finished.

My woe, man’s weal: and now I bow my head.

Only let others say, when I am dead,

Never was grief like mine. (249-52)

We can, of course, recuperate Christ’s final wish into a less competitive theological scheme. Christian salvation can, in part, be understood as a recognition that Christ suffered an immeasurable amount of pain on behalf of humanity. Protestant salvation, in particular, requires that each sinful person recognize that Christ has paid a debt that the sinner could not pay. Only Herbert’s Christ doesn’t sound like a loving God eager to save. Eager that his tale be told in a manner that vindicates him, he sounds more like Hamlet than the Jesus of the gospels. Indeed, the word “only” suggests that reputation is one of Christ’s central motivations. He seems willing to accept his death, not in the hope of rescuing fallen humanity, but upon the promise that his inimitable feats of suffering will be recounted in history and in the liturgical acts of Christian remembrance.

#### IV.

The poems between “The Sacrifice” and “Easter” develop Herbert’s preoccupation with inheritance as a vehicle of salvation. In particular, these poems foreground the economic and property metaphors of “The Sacrifice” and move them in an explicitly legal direction. This movement culminates in the sequence’s two crucifixion poems, “Good Friday” and “Redemption.” Like “The Sacrifice,” these poems represent the crucifixion, not as a matter of criminal substitution, but as a matter of Christ generating inheritance. But where “The Sacrifice” exploits the dominant scriptural metaphors of inheritance, “Good Friday” and “Redemption” turn to the logic of English possession law. Rather than representing Christ replacing the futility and death inherited from Adam, these latter poems figure salvation as a matter of Christ enjoying what Maitland has termed “the beatitude of seisin.”

Though I focus on “Good Friday” and “Redemption” in this section, the ubiquity of economic and inheritance metaphors in this part of “The Church” is worth noting. All four poems between “The Sacrifice” and “Good Friday” share a preoccupation with measuring Christ’s passion. In “The Thanksgiving,” the speaker is angry, not relieved, that Christ has outdone him in suffering. In Giradian terms, he is chafed by Christ’s ability to acquire more capital in an economy of suffering. Though less obviously angry, the speaker of “Agony” rejoices in the sacramental gift of Christ’s blood, which alone can “measure” the value of true love, and the speaker of “The Sinner” contrasts the “quarries of piled vanities” with the small “shreds of holiness” in his soul.

Three of the four poems, moreover, avail themselves of inheritance imagery as a vehicle for thinking the divine-human relationship in quantitative terms. “The Thanksgiving” adopts the form of a legacy poem not unlike Donne’s “The Will.” The

speaker promises to give his wife and heirs back to God, and also pledges to give his goods “unto some Chapel, die or live” (28). With “die or live,” Herbert attempts to avoid the charge of Popery. His goods are given for the benefit of others and not to found a chantry-house. Nonetheless, one of the most popular post-mortem legacies of pre-Reformation Christianity here becomes a weapon in the gift-off between Christ and the speaker. In “The Agony,” moreover, the speaker discusses philosophy as a matter of measuring land: “Philosophers have measured mountains, / Fathomed the depths of seas, of states, and kings, / Walked with a staff to heav’n, and traced fountains” (1-3). The measure of “spacious” love, however, cannot be quantified in land, but rather in the sacramental inheritance of Christ’s blood. Finally, in “The Sinner,” Herbert’s speaker slides from discussing his soul in terms of piled objects to discussing it in terms of geometric area. He compares the sinful parts of his soul to the circumference of a circle and his goodness to a small point at the circle’s center. He then turns geometry into geography, claiming that the “good extract” of his heart “comes to about the many hundreth part” (9-10). This may, of course, be merely a statement of fractions. But we can also hear Herbert evoking the hundreds, which were the basic geographic divisions of the English county for law enforcement purposes (cf. Lambarde 28-30). “The Sinner” also draws on the inheritance imagery of Ezekiel and Jeremiah: reminding God that he initiated his covenant with Israel by writing on stone tablets, the speaker asks God to write on his own stony heart.

The echoes of land-law and inheritance in these poems lay groundwork for the explicit focus on land and inheritance in “Good Friday” and “Redemption.” “Good Friday” picks up the theme of quantifying Christ’s blood. Here, however, the poet is less

concerned with repaying Christ than he is with adequately capturing the passion through the numbers of poetic meter:

O my chief good,  
 How shall I measure out thy blood?  
 How shall I count what thee befell,  
 And each grief tell? (1-4)

In the first half of the poem, the poet realizes that neither his words nor his own imitative suffering can represent Christ's passion. In the last half of the poem, the speaker yields his own attempts at authorship, asking Christ to "write" his "sorrows" in the blood of the speaker's heart:<sup>45</sup>

Since blood is fittest, Lord, to write  
 Thy sorrows in, and bloody fight;  
 My heart hath store, write there, wherein  
 One box doth lie both ink and sin:  
  
 That when sin spies so many foes,  
 Thy whips, thy nails, thy wounds, thy woes,  
 All come to lodge there, sin may say,  
*No room for me, and fly away.*

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<sup>45</sup> One can also argue that the speaker has yielded agency in the third and fourth stanzas, in which he asks that Christ would let the grief of the passion and the consequences of his own sins work together for his purification. However, the speaker here would still have the passion manifest in the events of his own life. There may be a progression from self-authorship to divine authorship in these lines, but the real break seems to come with the sixth stanza. The move from the more sophisticated metrical scheme of the first five stanzas to the plainer, quatrain couplets of the last three reinforces our sense of the poet abandoning his own attempts at ingenuity.

Sin being gone, O fill the place,  
 And keep possession with thy grace;  
 Lest sin take courage and return,  
 And all the writings blot or burn. (21-32)

The material text and its meaning are unified in this passage. The pieces of the crucifixion story function both through the meaning they convey and the physical space they occupy. The “whips” and “nails” of the Passion narrative function as tenants in an adverse possession legal plot. They act as the disseisors, driving out sin, which would, of course, have a prior claim on the heart through the sin of Adam. Herbert here explores possession as an alternative legal mechanism for thinking the atonement. Like the ancient ransom theory of the atonement, “Good Friday” suggests that evil (Satan or sin) has legal rights over humanity. But unlike those theories, Herbert does not portray God inducing Satan into making a foolish contract. (This is the trickery that Bartlett deplors as an *imitatio diaboli* (43-94)) Rather, Christ takes possession through the material text of his story and keeps it long enough to establish legal standing.

The taking and keeping of possession were crucial concepts in English property law. Indeed, Maitland claims that possession is at the root of all proprietary rights in English law: “Every proprietary right must have a seisin at its root. In a proprietary action the demandant must allege that either he or some ancestor of his has been seised, and not merely seised but seised with an exploited seisin, seised with a taking of esplees” (80).<sup>46</sup> In other words, any claimant to title in English property law needs to establish that he or an ancestor has both possessed and enjoyed the fruits of the land. Possession, in Maitland’s terms, “generates” right. Consequently, possession also generates inheritance.

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<sup>46</sup> Esplees are the product yielded by the ground (OED).

Under the common law, persons who possess a proprietary right to a parcel of land but fail to actually enter that land during their lifetime cannot pass that land on to their descendants.

In his commentary on Littleton, Coke provides various examples that demonstrate how the failure of an heir to take possession could alter the lines of inheritance. In one, he explains that if a son who has a father and an uncle purchases land in fee simple and dies without issue, his uncle, not his father, will inherit that land; while title cannot ascend from son to father, it can move laterally from son to uncle. If the uncle takes possession of the land and also dies without issue, the father can then inherit it laterally from the uncle, but if the uncle has not entered the land, the father cannot inherit (11<sup>v</sup>-12<sup>r</sup>). Coke gives another example of a father who has a son and daughter by his first wife and a younger son by his second wife. If the eldest son inherits and takes possession of the father's estate in fee simple and dies without issue, the sister will inherit the estate because she is a full-blooded sibling of the eldest son. However, if the elder brother dies without taking possession of the estate, the younger son will inherit the estate as the remaining son of his father, the last person to die seised of the property: "[For] if the eldest son doth not in that case enter, then without question the yongest sonne shall be heire, because as it hath beene said before regularly hee must make himselfe heire to him that was last actually seised" (14<sup>v</sup>-15<sup>r</sup>).

The common law protected even those who had taken possession of land illegally. Because it was concerned to ensure the peaceful holding of estates and to prevent repeated land-seizures by competing claimants, the law prevented even the rightful tenant from entering land against a disseisor. If a rightful tenant was disseised from his land, he

had four or five days in which he could attempt to regain the land by his own strength. After that period, however, he was forbidden from entering the land and forced to seek redress through the courts. Moreover, even wrongful possession generated legal title for the disseisor against everyone but the rightful tenant. The disseisor, that is, not only gained the benefits of seisin, but also gained a relative proprietary right superior to that of any person without an older proprietary claim.<sup>47</sup> This proprietary right generated by seisin was not absolute. The disseissee could bring a Writ of Right against the disseisor and have the matter of title judged in court. However, the process of contesting right was timely and cumbersome.<sup>48</sup> Moreover, the defendant who was seised enjoyed the “benefit of proof” against the plaintiff. Absent other evidence, the law assumed that the one in possession of the land was the one with a right to it. Maitland explains that “the benefit of the proof was often enormous; the party to whom it is adjudged may have merely to swear to his right and find others who will swear formally and in set phrase that his oath is true” (47). Coke similarly explains that if all witnesses to a charter of land in fee simple are dead then the court will presume “continuall and quiet possession” to stand as proof of right (*The First Part of the Institutes* 6<sup>v</sup>).

Because of the legal benefits of seisin, a distinct body of law developed that disregarded proprietary right and focused exclusively on who had the right to enter the land. These possessory actions, among which the writ of Novel Disseisin and the Writ of

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<sup>47</sup> Maitland explains: “We have gone far beyond the protection of seisin against violence. The man who obtains seisin obtains thereby a proprietary right that is good against all who have no older seisin to rely upon, a right that he can pass to others by those means by which proprietary rights are conveyed, a right that is protected at every point by the possessory assizes and the writs of entry. At one and the same moment there may be many persons each of whom is in some sort entitled in fee simple to this piece of land” (75).

<sup>48</sup> The Writ of Right case required the lengthier process of a jury trial. It also involved the often nearly impossible process of determining who had the oldest right. This could involve tracing title and possession back over centuries. It was much more convenient to establish who had enjoyed seisin in the immediate past.

Entry were the most common, allowed disseised persons to sue for entry rather than undergoing the long process of establishing title through a Writ or Right. They resolved the question of who had the right to possess the land, but they left the question of title unresolved. Indeed, one could win a possessory case and force the removal of a tenant even if the tenant had superior title. Maitland cites an example from Bracton in which William Marshall, the Earl of Pembroke, had a wife who was entitled to land that was withheld by Richard Curpet. The Earl, possessing a superior title to Curpet, removed him from the land by force. After the Earl and his wife died, his son took possession of the land. A writ of entry was brought against him because he had come into the land through disseisin and he was forced to leave the land. Maitland sums up the case: “He had to give up what was his own because he and his mother before him had come to it by virtue of a disseisin. To-morrow he may bring his writ of right and get back this land; but at present he must give it up, for into it he had no entry save as the successor of a disseisor”(67).<sup>49</sup> In other words, even a person in wrongful possession of land has the right to eject the rightful title holder if the rightful title holder has disseised them.

Herbert’s speaker in “Good Friday” evokes this body of possessory law. He pleads with Christ to take and “keep possession” of his heart with his “grace”; and he appears to disregard the vexed question of proprietary title. Persons familiar with the history of English possession law might find this move oddly anachronistic. Percy Bordwell and J. H. Baker have both argued at length that the history of English property law consists in a movement away from this priority of naked possession and towards the

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<sup>49</sup> Maitland cites this case to illustrate the principle that one cannot appeal “behind” the action brought to court. Even though the heir to the Earl had a superior title, he could not appeal to that title in order to win the possessory case. He must appeal his right to the land in a separate case after first abandoning the land as the vanquished party in the possessory case.

priority of right. By the Jacobean period, many of the privileges given to possession had been eroded by various statutes and decisions. In particular, changes in the law in the centuries preceding Herbert extended the amount of time a disseisor had to hold onto the land before the disseisee's right of entry was revoked (technically, the disseisee who had his right of entry taken away had his entry "tolled"). Where the disseisee under the medieval law had only four days to recover his land before losing right of entry, the disseisee under Tudor law maintained a perpetual right of entry during the life of the disseisor. Bordwell explains that "[entry] on the disseisor became lawful no matter what the length of his holding. It became a maxim of the law that to be free from entry the tenant must be 'in by title' and not 'in by tort' [i.e., in by disseisin]" (Bordwell, "Seisin and Disseisin" 610). Coke, too, registers that disseisors have lost protection against entry by the disseisee: "In ancient time if the disseisor had beene in long possession, the disseisee could not have entred upon him. Likewise the disseisee could not have entred upon the feoffee of the disseisor, if he had continued a yeare and a day in quiet possession. But the law is changed in both these cases [ . . .]" (237<sup>v</sup>).

In light of this large scale movement away from the protection of possession against right, Herbert's plea that God would "keep possession" seems to have lost much of the legal force it would have carried under the medieval law described by Maitland. It is possible, of course, that Herbert is exploiting a legal anachronism without concern for its contemporary currency. Indeed, the violence of the imagery in "Good Friday" can be read as evoking the violent repetitions of disseisin that necessitated the development of medieval seisin law in the first place. Christ drives out sin with the violent instruments of

his “bloody fight” and sin seems literally dis-*couraged* from the dangerous proposition of attempting re-entry against such an armed disseisor.

We need not read Herbert’s plea as an anachronism, however. There are three other possible interpretations that would have had currency in early seventeenth century law. The first is the possibility that Herbert is drawing on the logic of ejectment that we examined in relation to Donne’s “As Due by many Titles.” As the preferred, expedient avenue for contesting title, ejectment provides a mechanism through which God can claim title to the speaker against the competing claims of Satan. This reading is unsatisfactory, however, because Herbert’s poem, unlike Donne’s, appears disinterested in matters of title. In addition, reading the poem in terms of ejectment raises theological problems. The action of ejectment depended upon a lease from the putative title holder to a tenant who would serve as a proxy through whom the title holder could contest his title against the one in possession. For ejectment to work in “Good Friday” would require Christ to be the tenant of another, perhaps the Father. This, however, doesn’t fit in the context of the poem, in which possession kept *by Christ* is the decreed end, and in the context of the sequence of poems as a whole, in which Christ holds the status of an heir, not that of a tenant. In particular, the idea of Christ as a tenant for a term of years does not seem to fit with the picture of possession given in the next poem “Redemption,” which depicts Christ as a wealthy land owner.

A more promising context for the poem is the Statute of Limitations act of 1623/24. This act, passed by the Parliament on which Herbert himself sat, reversed the long tendency of English law to extend the rights of entry into perpetuity. The Statute of Limitations required all persons holding a right of entry to a plot of land to take

possession within twenty years of the statute or, subsequently, within twenty years of the accrual of any new right. To fail to enter within twenty years was to forfeit the right for oneself and one's heirs: "such persons not so entereing, and their heirs shalbe utterlie excluded and disabled from such Entrie after to be made" (21 Jac. I. c. 16). The statute thus strengthened the legal importance of "keeping possession." Though keeping possession could not generate right against someone with an older/superior claim, it could severely limit the ability of a title-holding disseisee to reclaim possession. Indeed, in light of the statute we can see how "Good Friday" does indeed interact with title and ejectment. In order for a plaintiff to try title through ejectment, he or she needed to possess right of entry. By limiting the time frame within which one could exercise right of entry, the Statute of Limitations also limited the period within which one could try title through ejectment. After twenty years, plaintiffs were forced to pursue title through the less convenient Writ of Right. "Keeping possession," then, was a way for disseisors to protect themselves against rival claimants. It could not generate absolute title, but it could obstruct the claims of those with title (Bordwell, "Ejectment Takes Over" 1092).

There was a quicker way for a disseisor to toll the entry of the disseisee, however. Both before and after the passage of the Statute of Limitations, a disseisor could toll the entry of the disseisee by dying possessed of a plot of land.<sup>50</sup> When he died in possession, he "cast a descent" onto his heir and took away the disseisee's right of entry. Though the law had, in Herbert's time, diminished its protection of the rights of the disseisor, it continued to protect the rights of the disseisor's heir. Coke explains the rationale for this law as protecting the *bona fide* ignorance of the heir: "[The] heire cannot sudenly by

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<sup>50</sup> Bordwell cites this as the one bulwark of the privilege of possession that survives the general trend towards the privileging of right and he attributes this to the influence of Littleton on the codification of law. ("Ejectment..." 1091).

entendment of law know the true state of his title. And for that many advantages follow the possession and tenant, the law taketh away the entrie of him that would not enter upon the ancestor, who is presumed to know his title, and driveth him to his action against the heire that may be ignorant thereof" (*The First Part of the Institutes* 237<sup>v</sup>). There is a hint of rebuke against the disseisee here. The law does not look kindly on the one who would not bring action against the disseisor but will bring it against his heir. Of more force than the moral rebuke, however, is the legal constraint. Having lost his entry (and therefore his right to claim title through an action of ejectment), the disseisee is forced to bring the cumbersome Writ of Right. As we have seen, this creates a significant obstacle for the recovery of a lost possession.

In light of this, perhaps Christ has already kept possession long enough in "Good Friday." Though the act of disseisin that occurs in the poem takes place in the poet's present, and though the poet pleads with Christ to keep possession into the future of his life on earth, there is another sense in which Christ has already died seized of the speaker's heart. The bloody fight by which Christ dispossesses sin carries the violent imagery of medieval disseisin, but the blood is Christ's rather than Sin's. Christ takes possession with his "whips," "nails," "wounds," and "woes." He takes possession, that is, in the act of dying. At the moment of possession, Christ dies and casts a descent to his heir. The inheritance, though, has more than one heir. Christ is his own heir; he has died in possession but also lives to keep possession. The speaker, too, is an heir. While the poem may be one of self-immolation, it is also one in which the usurped speaker receives himself back as his own inheritance.

The temporal duality of possession law, the duality of an inheritance that has been created through the death of the disseisor but also needs continual possession in the future, maps onto the temporal duality of liturgy which reiterates the events of sacred history in an ongoing present. In “Good Friday” the separation of Christ into the text of his passion and his personal presence mirrors the dual emphasis of Anglican liturgy as a celebration of Word and Sacrament. Herbert does give some priority to sacrament over Word, for it is the sacramental presence of Christ that ensures the preservation of the word from being “blotted” or “burned.” Nonetheless, both aspects together constitute Christ’s seisin of the poet. “Good Friday,” then, allows us to understand the appeal of land law for Herbert the liturgical poet. More so than criminal law, English inheritance law requires both the historical act of dying in seisin and the ongoing maintenance of seisin through present possession.

“Redemption” is a twin poem to “Good Friday,” not only because together they comprise the Crucifixion sequence of the Passion narrative in “The Church,” but also because, like “Good Friday,” “Redemption” tells the story of the cross in terms of Christ taking possession of an inheritance. And like “Good Friday,” this taking of possession reflects the inverted values of the Christian gospel. Where “Good Friday” describes a bloody disseisin in which the victor dies, “Redemption” portrays Christ claiming a piece of land, Golgotha, which no one else would want.

“Redemption” is more explicitly a story about land law. The speaker is an unhappy, unprosperous tenant of a rich landlord who boldly attempts to renegotiate the terms of his lease. The opening quatrain of the sonnet suggests that the speaker is a termor (a tenant who possesses his land under a lease for a term of years). As such, he

holds the property as chattel, not as real estate. He has no real interest in the property and is not considered to enjoy legal possession of it. Were he to be ejected from the land, his Lord would be the one disseised. In the context of the divine-human relationship, such an arrangement reflects the antagonism and competitive acquisition that we have examined above. Baker explains the rationale behind the lack of “real” status given to termors:

“The freehold tenant who made a lease for years did not mean to part with his seisin or fee, but merely handed over the possession of the land without any right” (299). In line with this rationale, the speaker in “Redemption” assumes that his lord is stingy and that he will need to “be bold” in order to suggest a favorable reworking of his lease.

Schoenfeldt observes that the poem situates the speaker’s relationship to God in terms of economic transactions, and indeed, we can extend this to say that it situates the divine-human relationship in terms of economic oppression (*Prayer and Power* 81).

The speaker figures this covenantal transfer in terms of a reduction in rent.

Readers have noted the boldness of the speaker in proposing the terms of the contract; they also have drawn our attention to the way Christ does not allow the speaker to control the terms of the argument. Christ’s prevenient response to the contract robs the speaker of his role as legal agent, reminding the speaker that the reduced contract is an act of grace, not one of legal negotiation. Dennis Burden has noted that Christ dies before he can sign the new lease agreement, therefore undermining the legal standing of the new covenant (or, in Burden’s argument, transferring it to the special contractual logic of atonement.)

What has not been noted is the fact that Christ dies seised of the land. Moreover, he appears here to die seised of land that he has purchased. Unlike the violent disseisin in “Good Friday,” Christ dies possessed of both seisin *and* right. He thereby generates a

clear inheritance for his heirs. Christ has again prevented and out-performed the speaker. While the speaker seeks a renewed lease as a tenant for a term of years, Christ is busy generating a freehold inheritance. That the renewed lease is not formalized in a written contract is therefore moot, or perhaps telling in that it indicates the elevated status of the speaker. He no longer needs the renewed term for years because, no longer a termor, he is an heir. Christ's declaration that the suit is granted assumes an ironic tone. The suit is granted, but it is also outdone to such an extent that the suit (and the speaker's boldness) seem trivial by comparison. While this twist is to the benefit of the suitor, it also frustrates his social expectations. The land Christ dies possessed of, the inheritance that he dies possessed of, is the inheritance of the cross. For the speaker to take possession of his inheritance requires him to forgo mansions for the life of suffering among thieves and murderers.

While it is clear that the speaker's Lord is Christ, the other pieces of the story in "Redemption" are more difficult to identify. The chief ambiguity revolves around the temporality of the poem. The poem ends with the death of Christ among "thieves and murderers," which, given the poem's placement between "Good Friday" and "Sepulchre" identifies it with the crucifixion. The confusion arises because the speaker is told that Christ has already paid for the land that he has gone to claim: "he was lately gone / About some land, which he had dearly bought / Long since on earth, to take possession" (6-8). Given that redemption entails the idea of purchase, one expects this purchase also to be a reference to the atonement. It is possible, of course, to imagine that Christ has left heaven to take possession of Israel. This would fit with the covenantal reading of John Tobin, who views the poem as reflecting the end of the old covenant, under which the speaker

has failed to thrive, and the inauguration of the new covenant of grace through the death of Christ (340-41). Burden has identified the Old Testament background for redemption as an aspect of land law. In Leviticus 25 God declares that all people should be allowed to redeem their ancestral plots of land. The reason is, however, not that families own particular lands, but rather that all land belongs to God. It cannot be alienated permanently by mere tenants who do not themselves own the land: “the land shall not be sold for ever for the land is mine” (Lev. 25: 23). In light of this, we can read Christ’s journey from his heavenly manor to death as a parable for his earthly life. Christ goes to take possession of Israel and pays with his blood as the price for redeeming the land in the Levitical sense. It is less clear how, in such a reading, we should understand the price that Christ has paid before the action of the poem. Though God frequently asserts that he has redeemed Israel from slavery in Egypt, it is difficult to see how that redemption cost God dearly. Isaiah argues that the cost for God is the lives of those in the surrounding nations: “but now thus saith the Lord that created thee, O Jacob, and he that formed thee, O Israel, Fear not: for I have redeemed thee. I have called thee by name; though art mine. [ . . . ] I gave Egypt for thy ransom, Ethiopia and Seba for thee [ . . . ] therefore will I give men for thee, and people for thy life” (Isaiah 43:1-4). If Christ has payed a dear price for Israel, it is in the costly blood of the surrounding nations. In evoking Isaiah, Herbert is starkly reminding his readers that inheritance is a zero-sum game. As in the enclosure debates, so in the taking of the promised land: if some are given land, others are dispossessed.

If “Redemption” is an historical story, however, it is also one that gets reiterated in the present life of the speaker. The liturgical frame of the poem demands that, even if

we read the story as the historical movement from the covenant of law to the “small-rented” covenant of grace, we must also hear this story recapitulated in the life of the speaker. Herbert’s insistence in “The Bunch of Grapes” that Israel’s story “pens and sets us down” also prompts us in this direction. Alongside the historical resonance of God purchasing Israel, then, the poem reminds the speaker that Christ has long since purchased him and the church at a dear price. But if Christ died long ago, how can he die again at the end of the poem? The answer is Eucharistic repetition. Where Protestant orthodoxy denies that the Eucharist be understood as a repetition of Christ’s sacrifice, it does not prevent its poetic/liturgical use as a symbolic reiteration of that death. “Redemption,” then, offers a response to the plea in “Good Friday” that Christ keep possession of the speaker. In the Eucharist, Christ dies seised of the speaker again and again. Time and again the violence of the penal law is transformed into the generative law of inheritance.

V.

This reading of “Redemption” as a parable of Eucharistic repetition helps us to understand the prominence of the sacrament within “The Church” as a whole. The Eucharist transforms the criminal, substitutionary logic of the cross into a generative logic of inheritance. Moreover, unlike baptism, the Eucharist more successfully brings the affective presence of salvation into the present. In the language of possession law, it allows Christ to maintain seisin in the present life of the Christian. We can see this advantage when we look at Herbert’s two poems about baptism, both of which echo the

inheritance-related aspects of baptism examined above. “Holy Baptism (1)” states that baptism has “taught the Book of the Life” the speaker’s name from childhood, emphasizing the notion of salvation as a birthright. “Holy Baptism (2)” more explicitly presents baptism as a seal of salvation that predates any action or decision made by the believer: “On my infancy / Thou didst lay hold, and antedate / My faith in me” (3-5). However, this antedating appears to be more of a weight than a platform for faith. “Holy Baptism (1)” claims that “Redemption measures all [our] time” through baptism. The poem reveals this, however, not as a spreading of salvation through the life of the believer, but rather as an erasure of the events of individual life. Baptism measures the time of the believer in order to “[spread] plaster equal to [his] crime” (10-11). “Future sins” are thus “discredited” by the speaker’s “prior acquaintance” with Baptism. Where “Holy Baptism (1)” frames baptism as a matter of erasing the believer’s subsequent life, “Holy Baptism (2)” looks to the sacrament to prevent the onset of adulthood: “O let me still / Write thee great God, and me a child” (6-7). The poem ends with a proto-Wordsworthian idealization of childhood: “The growth of flesh is but a blister; / Childhood is health” (14-15).

Together these baptism poems present a pessimistic view of Christian life. Baptism, it seems, does little to shape life beyond providing the promise of final salvation. Hooker shares this view and sees in baptism’s deficiencies the need for a second, recurring sacrament. In Book V of the *Laws* he writes:

If our bodies did not daily waste, food to restore them were a thing superfluous. And it may be that the grace of baptism would serve to eternal life, were it not that the state of our spiritual being is daily so much

hindered and impaired after baptism. [. . .] But as long as the days of our warfare last, during that time we are both subject to diminution and capable of augmentation in grace, the words [of Christ commanding communion] will remain forcible [. . .]. (348)

The diminution that Hooker identifies here seems, indeed, to be the nature of both the individual life and of salvation history for Herbert. Not only has the Church fled from country to country (as in “The Church Militant”), but God too has withdrawn. In “Decay” Christ inverts the other biblical sign of inheritance, the presence of the Spirit. Rather than being a hopeful sign of God’s presence, the indwelling presence of the Holy Spirit is, in fact, a sign of God’s diminishment. The speaker bemoans the loss of the “sweet” days when God openly visited the Old Testament Patriarchs, and he suggests that God has fled to the human heart as a fugitive:

But now thou dost thyself immure and close  
 In some one corner of a feeble heart:  
 Where both Sin and Satan, thy old foes,  
 Do pinch and straiten thee, and use much art  
 To gain thy thirds and little part. (11-15)

Where the speaker of “Good Friday” imagines Christ taking possession of the human heart by scaring off sin, here it is God who cowers in the small part of the heart that he possesses. Sin and Satan are potential disseisors here, closing in on the divine inheritance. Herbert uses “thirds” to evoke the inheritance guaranteed to widows and places the poem squarely within the domain of inheritance law. The poem reminds us that inheritances can wither, that legal adversaries seek to take what one possesses by right. For the purposes

of this argument, it emphasizes Hooker's point that the original sacramental gift of Baptism, the gift of faith bestowed on the believer by his parents, is insufficient. The original gift, be it that of Christ's historical death or the believer's baptism, must be reiterated.

Two Eucharistic poems in the middle of "The Church" speak of communion in terms of reiterated inheritance. "The Holy Communion" demystifies the sacrament in the first half of the poem. Herbert's speaker describes Christ physically taking possession of the speaker's flesh through the alimentary "way of nourishment and strength" (7). Because only the spiritual grace that accompanies the bread of communion can affect the human soul, the speaker stops short of ascribing salvific efficacy to the bread itself. The second half of the poem, however, flips this around. If the first half emphasizes the unbridgeable gap between spirit and flesh, body and soul, the second half views the Eucharist as effecting the reunion between spirit and flesh, heaven and earth. The poem represents this spatially as the recovery of the inheritance lost at the Fall:

For sure when Adam did not know  
                                   To sin, or sin to smother  
 He might to heav'n from Paradise go,  
                                   As from one room t'another.

Thou has restored us to this ease  
                                   By this thy heav'nly blood;  
 Which I can go to, when I please.  
                                   And leave the earth to their food. (33-40)

Again, land law provides Herbert with the language of salvation. Heaven and the Garden of Eden are both represented as part of the same manor. While the manor is presumably God's, the right of easement belongs to humans. This right of the speaker's ancestral father, lost at the Fall, is restored to the son through the "heavenly blood" of Communion. Unlike baptism, which saves by reverting the speaker's soul to a state of childhood, Communion brings flesh and spirit together in the adult life of Adam's heirs.

"The Bunch of Grapes" follows "Holy Communion" in discussing the Eucharist as an inheritance, but it does so in language that is more fraught, more enmeshed in the violent underbelly of inheritance law. Where "Holy Communion" expresses the ongoing ease of traffic between earth and heaven, "The Bunch of Grapes" wrestles with an inheritance that is deferred and even lost. Like "Decay" and the "Holy Baptism" poems, "The Bunch of Grapes" dwells on the recursive nature of sin and sadness in human life. The speaker begins the poem by lamenting his inability to hold onto joy. This is not simply a matter of emotional flux; it reflects, rather, the ineluctable pull of sin and shame away from blessedness. Joy and sadness do not compete on a level playing field; there is a gravitational pull away from happiness.

The poem hinges on the typological recapitulation of the story of Israel in the life of the speaker, hinting at a type of textual determinism. The events of the speaker's life are "set down" by the ancient text of the Pentateuch. The actual direction of agency is ambiguous. The poem suggests that the ancient text makes room in itself for future readers who actively seek to place themselves in it, but it also hints that the text itself bursts forward in time to engulf the life of the speaker: "God's works are wide, and let in future times; / His ancient justice overflows our crimes" (13-14). The meaning of justice

here is unclear. Is this the violent justice of the flood/the red sea or the merciful justice of the cross?

The speaker initially complains that he is only receiving the difficult aspects of his typological inheritance. The aspects of the Exodus story that he names are not all negative in themselves; the “guardian fires and clouds” of God’s presence are presumably good things (15). However, because they are aspects of the story that occur in the wilderness between deliverance and entry into the land, they belong to the sorrowful journey rather than realized inheritance in the promised land. Even before the Israelites entered the promised land, the speaker reasons, they enjoyed a taste of their inheritance. Where, he demands, is my taste? Why do I share in the difficult journey without the joyful anticipation? “But where’s the cluster? Where’s the taste / Of mine inheritance? Lord, if I must borrow, / Let me as well take up their joy as sorrow” (19-21). The speaker here identifies the “taste” of inheritance with joy—the desire for a taste is tantamount to a desire to feel the joy of salvation in the present.

The speaker’s claim is an odd one because there is very little joy in the biblical account that he evokes. The Israelites who taste the grapes in Numbers 13 are more afraid of the giant Canaanites in the land than they are pleased with the giant grapes brought out by their spies. Before entering the land, Moses sends twelve spies into Canaan to scout out the promised land. They return with a giant cluster of grapes and other bounty of the land, but they also return with a fearful report about the fortified cities and giant size of the Canaanites. Of the spies, only Caleb (and later Joshua) urges the people to enter the land confidently – the rest proclaim the task to be impossible. Fearing the spies’ report, the people ask why God has brought them out of Egypt for their wives and children to be

the prey of the Canaanites; they weep in despair; and they propose to elect a new captain and return to Egypt. In response, God vows to wipe out the nation and raise up a new nation out of Moses' descendants: "I will smite them with the pestilence, and disinherit them, and will make of thee a greater nation and mightier than they" (Numbers 14.12). Moses successfully intercedes on behalf of the people, reminding God that the Egyptians will scoff if he fails to bring them into the land and appealing to God's merciful nature. God relents, but also vows that none of the present generation besides Caleb and Joshua will enter their inheritance. Rather, he promises that the children whom the Israelites claimed would be prey will eventually take possession of the land. He then sends the Israelites away from Canaan and back to the Red Sea.

Like "Redemption," "The Bunch of Grapes" uses non-linear temporality to theological ends. The poem begins with the end of the Numbers story: like the Israelites, the speaker has drawn near to Canaan only to be "[b]rought back to the Red Sea, the sea of shame" (7). Moreover, he professes that he once possessed joy and associates this joy with his earlier proximity to Canaan. A reader assumes at this point that if Israel did take any joy from the bunch of grapes, the speaker too has experienced this fleeting joy. But the present-tense insistence of the third stanza undermines the linearity of the narrative and suggests that all episodes from the biblical story are operative in each moment of the speaker's life. He has already drawn near to Canaan and retreated to the Red Sea, and yet he still demands his cluster of grapes as though he were still poised on the edge of the promised land. There is a hint of dramatic irony here. Like the Israelites who long for their former slavery in Egypt when they are unhappy in the wilderness, so the speaker demands the taste of an inheritance that, typologically, he has just rejected. His

“murmurings come not last,” but throughout. In all this, the speaker suggests a pessimistic determinism: he is “penned” by the biblical story, destined to repeat his grumbling retreat to the Red Sea over and over again.

This typological recapitulation of Israel’s failure is finally broken by the superior inheritance promised through Communion:

But can he want the grape, who hath the wine?

I have their fruit and more.

Blessed be God, who prospered *Noah’s* vine,

And make it bring forth grapes good store.

But much more him I must adore,

Who of the law’s sour juice sweet wine did make,

Ev’n God himself, being pressed for my sake. (22-28)

The first line plays on the ambiguity of “want.” It both rebukes the speaker for desiring something less than the wine of communion and rhetorically suggests that those who possess the sacrament cannot lack the joy symbolized by the grapes. The language of the stanza evokes standard Lutheran notions of the “sour” law being replaced by grace. It also evokes the traditional substitutionary readings of the atonement: where the law calls for violence against the speaker, “God himself” steps in and is “pressed” in the poet’s stead. This substitutionary atonement is fused with substitutionary inheritance, however: the act of physical violence is required to make the new covenant wine of communion. Less conventionally, Herbert treats the physical grapes of communion both literally and typologically. His claim to “have their fruit and more” suggests that the wine carries the fulfillment of Israel’s inheritance along with the added blessings of Christ.

The poem also lends itself to a Girardian reading in which the violence of the cross undermines the violent inheritance of mimetic rivalry. The evocation of Noah, the traditional first vintner, highlights the violence that lurks behind the entire poem. Noah's vine hardly seems a blessing to Noah himself. In Genesis 9 Noah gets drunk on his own wine and his son Ham "[sees] his father's nakedness and [tells] his brothers outside" which, according to many interpreters, means that Ham has raped his father and bragged to his brothers about it. This episode of drunkenness and possible rape results in the curse of Ham and his subjection by Noah to Shem: "When Noah awoke from his wine and found out what his youngest son had done to him, he said, "Cursed be Canaan /The lowest of slaves / will he be to his brothers" (Genesis 9:24). Moreover, this curse links Noah's wine with the Exodus story Herbert evoked in the first part of the poem. Noah's curse of Ham, the father of the Canaanites, underwrites the conquest and subjection of the Canaanites by Shem's descendants, the Israelites. The inheritance of the land (and the violence required to achieve it) are, in part, authorized by the negative legacy bequeathed by Noah to Ham. The curse of the grandfather is passed on to the sons. In this light, the "law's sour juice" connotes not only the impossible standards of the moral law, but also the violence of inheritance, ejection, and enclosure that Herbert has exploited elsewhere in *The Temple*. (The law, after all, is given to govern those who will eventually dispossess the Canaanites.) Christ redeems, then, by transforming the sour inheritance of mimetic rivalry and violence into the wine of self-giving. Christ offers himself, not as the substitutionary criminal, but as one whose act of selflessness breaks the cycle of rivalry. The Eucharist, in particular, effects this transformation by breaking the recursive typological temporality of the first three stanzas. The life of the believer need no longer

be spanned and penned by the Old Testament narrative; the believer need not endlessly repeat the retreat from Jordan to the Red Sea. Instead, the Eucharist offers a new (substitutionary) temporality through the repetition of Christ's self-giving.

## VI.

The dialectic between the blessing and violence of inheritance traced throughout this chapter culminates in "Judgement," the eschatological poem near the end of the "The Church." The placement of "Judgement" near the end (but not *at* the end) of the cycle reinforces the temporal differences between Herbert and Donne. Where Donne repeatedly makes it sound like death and judgment await just beyond the next line, Herbert defers death and judgment long enough that they surprise when they finally arrive. The speaker expresses this deferral of judgment in the legal language of possession in "Doomsday," the poem immediately preceding "Judgement." Calling the sleeping dead to rise, he hints that they have been called from the grave just before God's Right of Entry expires under the Statue of Limitations:

Come away,

O make no stay!

Let the graves make their confession,

Lest at length they plead possession:

Flesh's stubbornness may have

Read that lesson to the grave. (13-18)

The stubbornness of “Flesh,” which has plagued the speaker in “Decay,” acts here as a legal pedagogue, teaching the graves how they can strengthen their rights over the dead by maintaining seisin.

Like “Doomsday,” “Judgement” frames the final eschatological drama in the language of inheritance law. As he does elsewhere, Herbert mixes the violence of criminal law with the antagonism of inheritance law. The poem starts off in a Donnean cast, evoking the terror of the sinner before the Judgment seat of Christ:

Almighty Judge, how shall poor wretches brook

They dreadful look,

Able a heart of iron to appal,

When thou shalt call

For ev’ry man’s peculiar book? (1-5)

The courtroom drama imagined here is odd in that the defendants are not tried for any particular crime. Moreover, unlike Common Law criminal courts, there is no jury on hand. The imagined trial resembles, in this respect, a trial at equity before a single judge. It also resembles an equity trial in as much as it appears to be a judgment about the overall “justness” of a complete life rather than a judgment about a particular incident. This is not to state erroneously that equity cases weren’t about particular incidents; they were. But the methodology here seems more along the lines of equity judgments in that the result will be determined by a judge who has the freedom to decide what is fair after weighing the entirety of each person’s “book.”

On one level, this poem exacts a classic Protestant parable. The speaker explains that he has heard how other people will take the route of self-justification by showing

Christ “some leaves therein, / So void of sin, / That they in merit shall excell” (8-10). Such persons fail to recognize the core Protestant truth that no one can be justified by their own good works. A few clean pages cannot outweigh the severity of sin sure to be found on many other pages. The speaker, in contrast, plans to rely completely on the substitutionary death of Christ:

But I resolve, when thou shalt call for mine,

That to decline,

And thrust a Testament into thy hand:

Let that be scanned.

There thou shalt find my faults are thine. (11-15)

Aggressively thrusting a Testament into Christ’s hands, he appeals to Christ’s book rather than his own. He confidently asserts that “scanning that book” (again the notion that a life can be measured in poetic meter) will affirm that Christ has taken the speaker’s sins as his own.

Legally and theologically, this is one of Herbert’s most explicit poems about substitutionary atonement. And yet, without ceasing to be a poem about a criminal trial, it is also a case about an inheritance dispute. Punning on “Testament,” Herbert evokes both the book of Christ’s life (the New Testament) and a last will. The inheritance that was an unexpected gift in “Redemption” has now become a right that can be pressed in court. If we accept narrative continuity in “The Church,” this aggression is particularly striking. The speaker who “resolved to be bold” by seeking release from his rent in “Redemption” again shows his legal resolve. But if anything he is bolder now. Far from being humbled by the gift of an inheritance, he is willing to press his claim against the very one who

generated that claim. The aggressive “thrust” and the terse command to Christ, “Let that be scanned,” communicate defiance and impudence towards the divine judge.

This logic of inheritance law transforms guilt into monetary debt. Christ has assumed the speaker’s faults, his monetary de-faults. In his last will, that is, Christ has left funds for the payment of the speaker’s debts. It is unclear how Christ could actually assume financial culpability through the instrument of a will. But, as the sheer volume of Grotius’s *De Satisfaction* shows, it is equally unclear how Christ can be understood to have assumed penal culpability on behalf of sinners. Moreover, by drawing together notions of criminal guilt and monetary debt, Herbert has merely followed the constellation of sacrificial and monetary metaphors found in passages like Hebrews 9 (which Tobin suggests as an intertext with “Judgement”). The writer of Hebrews argues that Christ, in order to effect an inheritance for humanity, needed to die because wills cannot be effected without the death of the testator. He then follows this by arguing that the covenant with Israel inaugurated at Sinai likewise needed to be effected with the sacrificial blood of animals.<sup>51</sup> Legally, the logic is dubious since the animals are not leaving an inheritance to Israel in the way Christ leaves an inheritance to his followers. Rather, the aggregate sacrificial/inheritance metaphor does work that neither could do alone.

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<sup>51</sup> “And for this cause [Christ] is the mediator of the new testament, that by means of death, for the redemption of the transgressions that were under the first testament, they which are called might receive the promise of eternal inheritance. For where a testament is, there must also of necessity be the death of the testator. For a testament is of force after men are dead: otherwise it is of no strength at all while the testator liveth. Whereupon neither the first testament was dedicated without blood. For when Moses had spoken every precept to all the people according to the law, he took the blood of calves and of goats, with water, and scarlet wool, and hyssop, and sprinkled both the book, and all the people, Saying, This is the blood of the testament which God hath enjoined unto you. Moreover he sprinkled with blood both the tabernacle, and all the vessels of the ministry.” (Hebrews 9:15-21)

In particular, the inheritance framework seems crucial to the speaker's aggression. Even if a thinker like Grotius can elaborate an arcane Roman-legal justification for substitutionary punishment, there is no avenue in English law through which a guilty criminal could believe himself *entitled* to such substitution. But a plaintiff who has been denied his inheritance can certainly sue on those grounds. Inheritance is, in this respect, a closer cousin to Girardian sacrifice than penal substitution. Because penal substitution foregrounds the innocence of the substitute, it prevents the substitute from absorbing the guilt of those who are pardoned. A criminal who is pardoned under such a scheme must know that he has benefited from an act of mercy. But inheritance here allows Herbert to psychologically project obligation onto Christ. The tone suggests that Christ has not only assumed financial obligation as an act of mercy, but that he is *actually* morally responsible for the debt. In other words, the speaker sees Christ, not as his benefactor, but in a very real sense, as his debtor. Far from being the avenue for filial love that Donne imagined, inheritance here is the mechanism by which the speaker places God in his debt.

Inheritance serves as the mechanism by which the speaker subjects his almighty judge to the law. Even God is bound by the terms of the contract he has made. Where Donne recognizes the ultimate freedom of the sovereign judge when he pleads "Let this last will stand," Herbert emphasizes that God must fulfill his legal obligations. Here Herbert's argument is peculiarly English and prophetic of England's imminent history. God is not bound by the law of his own nature (as in Aquinas and Hooker), nor is he bound by the law of his own righteousness to demand satisfaction for sin. Rather, like the kings bound by Magna Carta and, as the Commons will soon argue, like the Stuart monarchs, God is subject to the sovereign laws of inheritance.

## Chapter 5

### “A Possession Happier Far”: The Epistemology and Ethics of Inheritance in Milton’s Long Poems

This chapter explores the role of inheritance and inheritance law in Milton’s three long poems. In it, I read *Paradise Regained* and *Samson Agonistes* as responses to the epistemological and ethical problems raised by Milton’s theology of inheritance in *Paradise Lost*. In *Paradise Lost*, Milton represents the entire sweep of history in terms of inheritance. In particular, he uses the language of possession law to describe the conflict between God’s family and Satan’s family. He also uses possession law to conceive of humanity’s relationship to God. While the large scale events of sacred history are described in terms of material possession, the final scenes of the poem undermine the idea that divine inheritance can be recognized through material possession. Rather, as Michael tells Adam, the true possession of Paradise is an inward matter.

The two later poems imagine the epistemological and ethical consequences of this assertion that inheritance is an inward matter. *Paradise Regained* and *Samson Agonistes* imagine election from the perspective of two supposed sons of God within history. Moreover, they imagine the ethical and interpretative problems these sons of God raise for their respective communities. Both poems, moreover, conceive of inspiration as an individual, spiritual matter. *Samson Agonistes*, in particular, explores the social impossibilities of a morality based upon inward inspiration. It also imagines the

devotional horror that results when the community attempts to read violent acts as acts of inspiration.

## I.

Milton is preoccupied in *Paradise Lost* with the relationship between patrimony and property. The drama of the epic revolves around the rivalry between three sets of heirs. Satan's rebellion in heaven is sparked by his jealousy at the advancement of his "elder" brother, the Son. Similarly, the drama in Eden is shaped by Satan's envy towards the "new" sons that God has created and by his desire to supplant Adam's line with his own. The story of history recounted in Books 11 and 12 also constitutes a battle between the offspring of Satan and the Seed of the Woman, but within history the battle is instantiated in the conflict between two branches of Adam's descendants, those who follow Cain in pursuing domination and those Sons of Seth who are devout. The narrative importance of these three filial rivalries reveals the extent to which Milton conceives of spiritual narrative in the terms of inheritance and land law.

Indeed, the seminal moment of conflict within Milton's narrative proceeds from jealousy over an inheritance. The event that infuriates Satan is the elevation of the Son to the status of heir in Book 5 of *Paradise Lost*. The declaration of the Son as heir is a belated act in *Paradise Lost*. Despite being the first-born of creation, he only becomes heir to God's throne when the Father declares it so. He is not, that is, heir according to some logic of heavenly primogeniture. Rather he is made heir by divine fiat:

Hear all ye Angels, Progeny of Light

Thrones, Dominations, Princedoms, Virtues, Powers,

Hear my Decree, which unrevok't shall stand.

This day I have begot whom I declare

My only Son, and on this holy Hill

Him have anointed, whom ye now behold

At my right hand; your Head I him appoint; (600-606)

While this is an act of political investment for the Son, for Satan it is an act of disinheritance. From Satan's perspective, the Son has no inherent superiority to the other angels, who presumably are God's creation and children. But when God anoints Christ as his *only* Son, he disavows any paternal relationship to his other rational creatures.

Satan's anger carries special force in *Paradise Lost* if we read it in light of Milton's own heterodox Christology. Where a Trinitarian could point to the coeternal, codivine nature of the Son as justification for his political elevation, Milton's theology offers no such reason. For Milton, the Son is a created being like all others, albeit the first and greatest of created beings.<sup>52</sup> This Arian Christology contributes to the drama of the inheritance plot, allowing Satan to experience genuine sibling rivalry. Where in Trinitarian theology the Son shares in the eternal being of the Father, in Milton, the Father is radically *other* from the Son and Satan alike. Ontologically, the Son is closer to Satan than to the Father: both are creatures, both God's children.

When Abdiel defends the Son's preeminence against Satan's objections, he not only relies upon the principle of primogeniture. He also argues that the role of the Son in

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<sup>52</sup> In *The Christian Doctrine* Milton writes, "[H]owever the generation of the Son may have taken place, it arose from no natural necessity, as is generally contended, but was no less owing to the decree and will of the Father than his priesthood or kingly power, or his resuscitation from the dead. Nor does this form any objection to his bearing the title of begotten [. . .] or God's *own Son* [. . .] For he is called the *own Son* of God merely because he had no other Father besides God" (933).

creating all the other angelic beings warrants his exaltation. Milton's Father is a one-time creator. He creates the Son and then commissions the Son to create all other things. Only Christ manifests the unmediated creativity of the Father.

Satan, however, rejects this notion that he is created by "secondary hands" as spurious novelty: "strange point and new!" (855) But rather than merely asserting his place as a co-equal or superior son deserving of the regency, he instead rejects his patrilineal relationship to God altogether. Abdiel's "strange" account of creation, according to Satan, is ultimately unreliable because all narrated accounts of creation are unverifiable:

Doctrine which we would know whence learnt: who saw  
 When this creation was? remember'st thou  
 Thy making, while the Maker gave thee being?  
 We know no time when we were not as now;  
 Know none before us, self-begot, self-rai'd  
 By our own quickening power, when fatal course  
 Had circl'd his full Orb, the birth narrative  
 Of this our native Heav'n, Ethereal sons. (5.856-63)

Just as God has disavowed having any sons besides Christ, Satan here denies that he owes his existence to God. He and his followers are not only equal to the Son. Possessed of radical existence within themselves apart from any external cause, they are also equal to the Father. This disavowal of the Father's paternity provides the structure for the conflict that ensues. While Satan never abandons his sibling rivalry with the Son, he also sets himself up as an alternative patriarch to the Father. Indeed, his rebellion allows him

to generate the only two beings who are not created by God, Sin and Death.<sup>53</sup> The subsequent plot of both *Paradise Lost* and *Paradise Regained* consists of competition between the sons and daughters of God and Satan respectively.

Satan's disavowal of the Father's paternity also frames his struggle with the Father as a matter of ancestral domain. While, on the one hand he claims that the angels exist because of their own "puissance," on the other, he also hints that this self-generating power owes something to the "native" country out of which they are "birthed mature." No longer sons of God, they are sons of heaven, "Ethereal sons" who equally possess the rights and liberties belonging to natives.

This argument, which locates political authority in the land rather than in the personal lineage of the monarch, echoes the logic of the "Ancient Constitution" by which Edward Coke and others asserted the authority of the citizen against the person of the monarch. Like Coke, who defends English liberties based on their existence from "time immemorial," Satan defends his own autonomy based on the fact that he has possessed it for as long as he can remember. Forgetfulness is an ally for both anti-monarchical arguments. Because the founding political act has been lost to history, Coke is able to argue that English custom and law are native to England and not derived from a primal act of royal authority. Similarly, because neither Satan nor his angels can remember the moment of their own creation, they deny that such a moment occurs. They deny that they owe their allegiance to the king and his son by denying that either played a role in creating their native powers and liberties.

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<sup>53</sup> The incestuous nature of this family, however, suggests Satan's inability to create anything external to himself. Where the Father creates a vast universe of beings who are radically other, Satan's creativity and patrimony may be nothing more than inward-looking solipsism.

Satan not only uses the rhetoric of native liberties to incite revolt. He also relies on the notion that liberty and political power require land. Immediately after hearing God's decree investing Christ with power, Satan instructs Beelzebub to gather their followers in the north "where we possess" (5.688). When he addresses these gathered followers, he ironically quotes the titles of honor by which God had addressed the angels:

Thrones, Dominations, Princedoms, Virtues, Powers,  
 If these magnific Titles yet remain  
 Not merely titular, since by Decree  
 Another now hath to himself ingross't  
 All Power, and us eclips't under the name  
 Of King anointed [. . .] (5.772-77)

Satan here implies that, though the angels are titular magnates of the heavenly realm, these titles have been rendered empty honorifics by the exaltation of Christ. Why are these titles now empty? Satan offers an answer rooted in the ancient liberties belonging to heavenly magnates. In so doing, he echoes the long English tradition of landholders who try to proscribe the power of the monarch to contradict custom with new law:

Will ye submit your necks, and choose to bend  
 The supple knee? ye will not, if I trust  
 To know ye right, or if ye know yourselves  
 Natives and Sons of Heav'n possest before  
 By none, and if not, equal all, yet free,  
 Equally free; for Orders and Degrees  
 Jar not with liberty, but well consist.

Who can in reason then or right assume  
 Monarchy over such as live by right  
 His equals, if in power and splendor less,  
 In freedom equal? or can introduce  
 Law and Edict on us who without law  
 Err not? much less for this to be our Lord,  
 And look for adoration to th' abuse  
 Of these Imperial Titles which assert  
 Our being ordained to govern, not to serve? (5.787-802)

The issue here is legislative power, dictatorial power in a literal sense of the power to say what must be done. But honor is equally at issue. Satan chafes at the prospect of displaying allegiance to Christ. His speech resonates within the feudal context of lordship and fealty that underlies English land law: to bend the supple knee to one's "Lord" is to acknowledge that one holds title and possession from that Lord.

Satan's reprise of this address in Book 10 makes the link between title and land even clearer. Upon returning successfully from Eden, Satan greets his followers with the news that their titles no longer ring hollow:

Thrones, Dominations, Princedoms, Virtues, Powers  
 For in *possession* such, not only of right  
 I call ye and declare ye now  
 [. . . . .]

Now *possess*

As lords, a spacious World, to our native Heaven

Little inferior, by my adventure hard

With peril great achieved. (10.460-69, italics added)

Satan continues to emphasize not only the power to rule that they have gained, but also the physical space they have “To range in, and to dwell” (10.491-92). Satan’s triumph is that he and his followers now possess what they feel entitled to by right: land. By joining right and possession, the fallen angels possess the two parts of a perfect title under English law.<sup>54</sup> Of course, from the viewpoint of God, the right that Satan asserts is spurious. As we will see when we turn to *Paradise Regained*, the contestation of this right frames the drama of the later poem.

The conflict between God and Satan is not only, however, about rebellious magnates challenging the authority of the monarch. It is also about Satan’s attempt to establish his own lineage as a rival to the divine family. In Book 5, God describes Satan’s challenge as a challenge to his political power and to the family’s ancient domain:

Son, thou in whom my glory I behold  
 In full resplendence, Heir of all my might  
 Nearly it now concerns us to be sure  
 Of our Omnipotence, and with what Arms  
 We mean to hold what anciently we claim  
 Of Deity or Empire [. . .] (5.719-24)

Though Satan fails to wrest away the ancient domain of heaven, he does establish an alternative possession for his children, Sin and Death. In Book 2, when he encounters Sin

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<sup>54</sup> Bordwell explains: “Seisin and right of property were the two primary elements that went to make up the perfect title, and the conjunction of these two in their various degrees is constantly emphasized in the authorities” (“Seisin and Disseisin” 605).

and Death at the gates of hell, he portrays himself as a parodic Christ figure: “I go / This uncouth errand sole, and one for all / Myself expose” (2.826-28). Just as Christ, in *Paradise Regained*, risks himself to recover Paradise, Satan here ventures himself to gain a habitation for his followers and his offspring. He promises to return and lead Sin and Death to where they “[s]hall dwell at ease, and up and down unseen / Wing silently the buxom Air” (2.841-43). Like the estates given by God to his children (Paradise and Canaan), the land Satan will win for his children will be bounteous: “there ye shall be fill’d / Immeasurably, all things shall be your prey” (2.843-44).

The repeated juxtaposition of political power and land-possession in *Paradise Lost* reminds us that the two are linked in English property law. Because all fees are derived from the king, all family estates are subdivisions of the king’s imperial possession. Indeed, the key phrase in purchase documents for a fee simple reminds the purchaser that he and his heirs “hold” their land of the king.<sup>55</sup> To own land in the Kingdom of England is to enter into tenurial service to the king.<sup>56</sup> In aspiring to possess land apart from God’s kingdom, Satan’s goal is to escape such service. His is a bid for material liberty, for possession without service.

This link between private property and tenurial service is further enhanced by Milton’s description of Adam’s proprietary relationship to Eden. Where the conflict between God and Satan requires Milton to speak of possession at the level of empire, Adam’s pre-lapsarian possession of Eden evokes the language of a more modest feudal

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<sup>55</sup> Coke’s translation of Littleton: “Therefore, if a man purchase lands of tenements in fee-simple, it behoves him to have these words in his purchase, To have and to hold to him and his heirs: for it is these words (his heires) that make the estate of inheritance” (1<sup>o</sup>)

<sup>56</sup> Coke explains that “to hold” is a constitutive part of tenancy: “[Tenant] signifies the tenure or service whereby the lands or tenements are holden. All lands and tenements in England in the hands of subjects are holden mediately or immediately of the king, and therefore the owner of the land is called a tenant because he holds of some superior lord by some service. But the king in this sense cannot be said to be a tenant because he has no superior but God Almighty” (1<sup>o</sup>).

tenure. Indeed, the difference in the respective attitudes of Adam and Satan towards their property illustrates the contrast between obedience and sin. As in Donne and Herbert, the relationship of the individual to God is analogous to the individual's relationship with property.

When Raphael visits Adam and Eve at the beginning of Book 5, Adam describes himself and Eve as "Two only, who yet by Sovran gift possess / This spacious ground" (5.366-67). While Eden's grounds are spacious, Adam's use of them is rather domestic. He invites Raphael to rest in "yonder shady Bow'r" and to enjoy the "choicest" fruits of the garden. Adam's conception of Paradise as a tenure derives, we learn in Book 8, from the language with which Christ has given it to him. The very first words of creator to creature imitate the bestowal of a royal gift to a newly made freeholder and his heirs. Adam narrates the encounter:

One came, methought, of shape Divine  
 And said, thy Mansion wants thee *Adam*, rise,  
 First Man, of Men innumerable ordain'd  
 First Father, call'd by thee I come thy Guide  
 To the Garden of bliss, thy seat prepared. (8.295-99)

Adam receives both a title and an estate in this passage. Christ gives him the title of "First Father" and brings him to the "Mansion" that will serve as his seat. The emphasis on Adam's "innumerable" sons emphasizes that the dominion given to Adam is meant to extend to his descendants. In the language of English property law, Adam and his sons are given an estate in fee simple which they will hold of the recently declared King. The garden itself is an "enclosed" cultivated space, one that Adam finds so delightful "that

what [he] saw / Of Earth before scarce pleasant seem'd" (8.304-06). Adam pays homage to Christ, falling at his feet in "adoration." In response to this act of homage, Christ reiterates the gift: "This Paradise I give thee, count it thine / To till and keep, and of the Fruit to eat" (8.319-20).

After explaining the one prohibition that Adam is to observe as a sign of "obedience" and "faith," Christ commands Adam to extend and replicate the enclosed, agricultural ("tilled") space of Eden through the rest of the world:

Not only these fair bounds, but all the Earth  
 To thee and to thy Race I give; as Lords  
 Possess it, and all things that therein live  
 Or live in Sea, or Air, Beast, Fish, and Fowl.  
 In sign whereof each Bird and Beast behold  
 After thir kinds; I bring them to receive  
 From thee thir Names, and pay thee fealty  
 With low subjection. (8.338-45)

Adam and his descendants are given dominion over the whole earth. However, their dominion comes at the cost of subjection. They are intended to rule as intermediate lords between the King and the lowlier tenants of the earth.<sup>57</sup> As Adam pays homage to and receives his possession from Christ, so the animals give "fealty" to Adam and receive their names and possession from him. In contrast to Satan, Adam tells Eve that the one condition of obedience is an "easy prohibition" to observe in exchange for "so many

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<sup>57</sup> CF. 11.339 and following where Michael tells Adam that Eden would have served as a capital for dominion that stretches through the earth.

signs of power and rule / Conferr'd upon us, and Dominion giv'n / Over all other  
Creatures that possess / Earth, Air, and Sea" (8.429-32).

The contrast between Adam and Satan is stark here. While both value possession, Adam is willing to "hold" as a servant of the King. Satan, by contrast, rejects the very obedience to a superior lord that conditions the fee. Theologically, the contrast is between the humble acceptance of divine grace and the arrogant desire for autonomy. Milton figures this key theological distinction as a matter of property relations. Satan's problem is not that he desires to possess an inheritance for himself and his heirs – this is the same good, after all, that Adam desires – but that he refuses to accept his place as an intermediary Lord. To sin is to refuse to hold property as a gift of the monarch.

## II.

Just as Milton figures the gift of the garden as the conveyance of an estate, he depicts the Fall in the language of dispossession. After the judgment scene in Book 10 comes the ejection of Adam and Eve from their estate in Book 11. This is not, as so many dispossessioners were in seventeenth century England, only a matter of political retribution.<sup>58</sup> Rather, Adam and Eve are dispossessed because they are no longer fit to dwell in Paradise. God describes this to Jesus as a matter of natural expulsion:

Those pure immortal Elements that know  
No gross, no unharmonious mixture foul,  
Eject him tainted now, and purge him off

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<sup>58</sup> See, for example, the statistic from Christopher Hill on page 205 below regarding ministers who were ejected from their livings after the Restoration.

As a distemper, gross air to air as gross (11.50-53)

The pure elements cannot actually eject Adam from his possession, however. Ejection requires an act of political force, one that Michael executes by sending his “Powers to seize / Possession of the Garden” (11.221). This show of force serves to protect the garden against reentry by Satan. In particular, God is concerned that Satan will attempt to enter the “vacant possession” and thereby stake claim to it.

The dispossession of Adam and Eve serves as the occasion for the prophetic vision of Book XI and the prophetic narrative of Book XII. Like the larger cosmic narrative of which it is a part, Michael’s history is a tale of inheritance. On one level, it is the story of the rivalry between the progeny of Eve and the progeny of Satan. The triumph of Eve’s Seed over Satan, Sin, and Death is the unequivocal climax of the history that Michael tells. Moreover, the Seed of the Woman is the character who gives meaning to all the other protagonists of the story. Abraham, Moses, Joshua, and David – the key figures in the Old Testament story of election – are all given typological glosses by Michael that highlight the ways they prepare the world for the promised seed.

On another level, Michael’s narrative is the story of the intra-family struggle among Adam’s heirs. While some of Adam’s children comprise the line of faith that culminates in Christ, others act as the image-bearers of Satan in the world. Adam looks on in horror as his descendants live out the murderous violence of history. This violence directly reflects his failure as a patriarch. Not only has he forfeited the family estate, but he has also bequeathed a lethal inheritance to his descendants. Though it will require Michael’s prophetic vision to bring home the severity of this negative legacy, Adam already recognizes his paternal failure in Book X:

in mee all

Posterity stands curst: Fair Patrimony  
 That I must leave ye, Sons; O were I able  
 To waste it all myself, and leave ye none!  
 So disinherited how would ye bless  
 Me now your Curse! Ah, why should all mankind  
 For one man's fault thus guiltless be condemn'd,  
 If guiltless? But from me what can proceed,  
 But all corrupt, both Mind and Will deprav'd.  
 Not to do only, but to will the same  
 With me? [. . .] (817-27)

Adam here recognizes the constraining force his inheritance will have on the freedom of his heirs. Adam's sons are, according to his calculation, condemned justly because they inevitably will what their father has willed. Adam conceives of his "Patrimony" as both a conviction (the judgment to death) and a condition (the corrupt will). Nonetheless, it is an inheritance that he feels compelled to bequeath. He cannot spend it on profligate living or alienate it to another family. In contrast to Adam, Eve suggests that they "waste" the inheritance on themselves by seeking death out before they procreate, thereby defeating the inheritance by terminating the line. But such waste would, paradoxically, also defeat the possibility of redemption: the seed that perpetuates sin and death in the world is the same seed that will defeat the line of Satan.

The corruption that Adam passes on to his progeny results immediately in sibling rivalry. Michael explicitly frames the original murder of Abel by Cain as the direct effect

of Adam's "crime." The first manifestation of inherited sin is thus cold-blooded fratricide:

*Adam*, now ope thine eyes, and first behold  
 Th' effects which thy original crime hath wrought  
 In some to spring from thee, who never touch'd  
 Th' excepted Tree, nor with the Snake conspir'd,  
 Nor sinn'd thy sin, yet from that sin derive  
 Corruption to bring forth more violent deeds. (11.423-28)

Michael emphasizes the way Cain and the other murderous descendants to follow have not themselves participated in Adam's offense. They have not freely chosen crime as Adam has. Whatever agency they have in the matter is subsumed under the "derivative" cause-and-effect that springs from Adam.

The sibling rivalry that commences with Cain and Abel persists throughout Michael's prophetic history. This history of rivalry reaches a symbolic apex with Nimrod, who, after the flood, disrupts a "long time" of tribal peace "under paternal rule" by elevating himself above his brethren. Nimrod recapitulates Satan's rebellion, rejecting patriarchy and seeking to establish his own "Dominion undeserv'd / Over his bretheren" (12.27-28). Moreover, like Satan he asserts a false, self-styled claim to the throne and desires to possess his domain apart from the higher authority of God:

A mighty Hunter thence he shall be styl'd  
 Before the Lord, as in despite of Heav'n,  
 Or from Heav'n claiming second Sovranty;  
 And from Rebellion shall derive his name, (12.33-36)

These lines criticize divine-right theories of kingship which elevate one man to the position of second sovereign. The cutting edge of the critique is that such claims to elevation are, at their core, not only a violence to the sovereign's human brethren, but also an act of rebellion against God. Even claims to hold dominion from God are actually rebellious assertions of authority "in despite" of divine authority. Adam explicitly frames Nimrod's rebellion in the language of feudal possession that is so fundamental to

*Paradise Lost:*

O execrable Son so to aspire  
 Above his Brethren, to himself assuming  
 Authority usurpt, from God not giv'n:  
 He gave us only over Beast, Fish, Fowl  
 Dominion absolute; that right we hold  
 By his donation; but Man over men  
 He made not Lord; such title to himself  
 Reserving, human left from human free. (12.64-71)

In particular, Adam's accusation that Nimrod is a "Usurper" who "encroaches" on both God and man, evokes the combination of power and physical place that comprise English notions of title.

Ironically, the "faithful" branch of Adam's family also consists of brothers murdering brothers over power and place. Immediately after Adam has excoriated Nimrod for his tyrannical aspirations, Michael explains to Adam that, given the corrupted reason Adam has bequeathed to his children, tyranny will sometimes serve as an instrument of divine punishment. Because Man allows his reason to be ruled by

“unworthy Powers,” God “Subjects him from without to violent Lords; / Who oft as undeservedly enthrall / His outward freedom” (12.93-95). The word “undeservedly” crucially suggests that, while the victims of such tyranny deserve the punishment, the tyrants themselves are not deserving of their superior political authority. As an example of this principle, Michael offers the fate of Noah’s son Ham, who “exposes his Father’s nakedness” in Genesis 9: “Witness th’ irreverent Son / [. . .] who for the shame / Done to his Father, heard this heavy curse, *Servant of Servants*, on his vicious Race” (12.101-04). This example threatens to explode the history of Abraham’s seed that Michael is about to tell. Because of his sin, Ham and his descendants, the Canaanites, are subjected to the rule of Shem and his Semitic descendants. In other words, Michael has offered the rule of the Israelites over the Canaanites as the example *par excellence* of tyranny.

Though Michael immediately disavows this link between Israel’s election and tyranny, claiming that God’s choice to work through the seed of Abraham is the final result of his withdrawal from a violent world, the story of Israel that Michael proceeds to narrate reveals that violence attends God’s choice of one lineage over another. The beginning of Israel’s movement to the promised land starts with the exchange of Egypt’s first born for Abraham’s children, and it ends with years of war against the Canaanites. Where Michael does not flinch from the violence of the Passover (it is, after all, an act of deliverance *from* tyranny), he moves quickly through the actual violence of Israel’s entry into Canaan. Where the vision of Cain murdering Abel is given in all its gory detail, the entry of Joshua is hurried over in a rush to the conclusion: “the rest / Were long to tell, how many Battles fought, / How many Kings destroy’d, and Kingdoms won” (260-62). Indeed, Michael’s conclusion is a typological displacement. Joshua prefigures his

namesake Jesus, “who shall quell / The adversary Serpent, and bring back / Through the world’s wilderness long wander’d man / Safe to eternal Paradise of rest” (311-14).

What are we to make of this sense that Israel is herself a tyrant? Perhaps the confession is made unawares. Perhaps, in other words, Milton has unwittingly given the game away, exposing the identity between the violence of election and the oppression of tyranny. But given the careful attention to biblical detail that marks *Paradise Lost*, this seems implausible. While Milton takes creative liberty in expanding and reworking the biblical text, he never ignores it. Similarly, given Milton’s elaborate explanation of tyranny in Book 12, he is unlikely to have overlooked the implications of his argument for Israel’s ejection of the Canaanites from the Promised Land.

We are meant, then, to hear the disjunction between Michael’s narrative and the biblical one at this point. After his typological narrative of possession in Christ, Michael describes a fictional period of peaceful possession that contrasts with the reality of Israel’s experience: “Meanwhile they in thir earthly *Canaan* plac’t / Long time shall dwell and prosper” (315-16). Only when “sins / National interrupt thir public peace” does God raise up enemies to punish them until they repent (316). By contrast, in the book of Judges, peace ends immediately after the death of Joshua. The Israelites fail to drive out the Canaanites that are left in the land at Joshua’s death. Instead, they mix with the Canaanites and worship their Gods, the result of which is that God ceases to fight for them and allows the Canaanites to defeat them.<sup>59</sup> In so mixing, they recapitulate the

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<sup>59</sup> “and there arose another generation after [Joshua], which knew not the Lord, nor yet the works which he had done for Israel. [. . .] And they forsook the Lord God of their fathers, which brought them out of the land of Egypt, and followed other gods, of the gods of the people that were round about them, and bowed themselves unto them, and provoked the Lord to anger. [. . .] And the anger of the Lord was hot against Israel, and he delivered them into the hands of spoilers that spoiled them, and he sold them into the hands of their enemies round about, so that they could not any longer stand before their enemies.” (Judges 2:10-14)

intertwining between children of faith and children of wickedness that precedes the flood: in Book 11, intermarriage between the sons of Seth and the daughters of Cain leads to a race of Giants and a period of warfare that Michael characterizes as one of “Oppression, and Sword-Law” (11.672). Things do not become more peaceful under Israel’s kings either. Indeed, the royal line consists of a series of tyrants interrupted by the rare good king.

The election of the children of Abraham, then, does not accomplish anything in terms of creating a more peaceful race of people. The Israelites do not disentangle themselves from the idolatrous culture that surrounds them. Moreover, they are unable to extricate themselves from the tyrannical politics that Nimrod has exemplified. And perhaps they are not meant to. Structurally, Israelite and Canaanite violence seem equal. God uses the Israelites to tyrannize the otherwise lawless Canaanites, and he in turn uses the Canaanites to punish the Israelites when they are disobedient. The election of Abraham’s heirs is not, perhaps, a justification for the oppression of the Canaanites at the hand of the elect.

To look at this from another angle, the special election of Abraham and his family does not free them from the lethal patrimony of Adam. Adam unwittingly reveals himself as the source of Israel’s violence when he celebrates the conquest of Canaan as though it were the fulfillment of God’s promise to Adam and Eve’s progeny:

O sent from Heav’n

Enlightener of my darkness, gracious things

Thou has reveal’d, those chiefly which concern

Just *Abraham* and his Seed: now first I find

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Mine eyes true op'ning, and my heart much eas'd  
 Erewhile perplext with thoughts what would become  
 Of mee and all Mankind; but now I see  
 His day, in whom all Nations shall be blest,  
 Favor unmerited by me, who sought  
 Forbidd'n knowledge by forbidd'n means. (270-279)

Adam understands the possession of the promised land as the restoration of what he has lost for his descendants. The land of Israel is a second act of grace, a second unmerited gift bestowed on Adam and “all Mankind.” Adam is confused, however, about why the Israelites are given so many laws through Moses. Laws, he reasons, exist to control sin and therefore many laws “argue so many sins” (283). Adam’s confusion stems from equating election and land-possession with salvation. Michael explains that external possession cannot undo the deep corruption that the Israelites will inherit from Adam: “Doubt not but that sin /Will reign among them as of thee begot; / And therefore was Law given them to evince / This natural pravity” (285-88). The law, in fact, will stir up sin, making the Israelites act more wickedly than they otherwise would. Landed Israel still carries Satan’s seed (Sin) within it. If anything, the elect are marked out by their exaggerated participation in the wickedness borne of sin.

If the Israelites are to excel in anything, it will be in their acute awareness of their own sinfulness. Michael “anticipates” Paul at this point, arguing that the law of Moses evokes sin so that the Israelites will “resign” their legal covenant with God for a covenant of “large” grace. This movement from a covenant of law to a covenant of grace is also a move from “servile fear / To filial” (12.300-06). It is, in other words, the mechanism of

adoption, the means by which the prodigal sons of Adam receive back their inheritance. This is why, typologically, Moses cannot bring the Israelites into Canaan. Joshua must achieve the entry because it is his namesake Jesus who will achieve humanity's re-entry into their ancient estate, the "eternal Paradise of rest" (314).

Milton here echoes Donne and Herbert in offering a theology that frames the atonement as an act of substitutionary inheritance. The inheritance won by Christ on the cross replaces the legacy of death and condemnation inherited from Adam. This defeat of Adam's patrimony is suggested throughout the final books of *Paradise Lost* by the prophetic name given to Christ. He is the Seed of the Woman, Eve's descendant who will bruise the Serpent on the head. Michael provides an explanation for this title when he foretells the virgin birth of Christ:

A Virgin is his Mother, but his Sire  
 The Power of the most High; he shall ascend  
 The Throne hereditary, and bound his Reign  
 With earth's wide bounds, his glory with the Heav'ns. (12.368-71)

Christ here assumes the throne of David and takes possession of the original land-grant that God gave to humans – beyond the borders of Canaan, his realm fills the earth. But he inherits the throne of David along matrilineal lines. For Israel to receive its true king, the patriarchal line of Adam must be supplanted by the seed of God. Adam's response to this explanation betrays anxiety about the defeat of his patrimony:

O Prophet of glad tidings, finisher  
 Of utmost hope! now clear I understand  
 Why our great expectation should be call'd

The seed of Woman: Virgin Mother, Hail,  
 High in the love of Heav'n, yet from my Loins  
 Thou shalt proceed, and from thy Womb the Son  
 Of God most High; So God with man unites. (12.375-382)

Adam, it seems, has wondered and worried about the Messiah's matrilineal title. He is relieved, at least, that Mary will proceed from his loins. His relief does not, however, mask for the reader the fact that his line has been, paradoxically, both preserved and subverted. This masculine anxiety about paternity may be humorously pathetic, but there is a serious theological point to it as well. Just as the mingling of the sons of Seth and the sons of Cain results in a culture of violence, so the combination of God's son with Adam's daughter leads to salvation. Adam recognizes that this combination spells certain doom for Satan: "Needs must the Serpent now his capital bruise / Expect with mortal pain" (12.383-84).

The account of Christ's passion also evokes the inheritance drama that has structured the entire poem. Adam eagerly asks Michael to describe the fight between Christ and Satan in all its gory detail. Michael, however, immediately disabuses Adam of his hope that the union between God and man will resort in a great show of force against Satan. Jesus, Michael asserts, does not come to destroy Satan, but rather the works of Satan in Adam and Adam's Seed. Moreover, he will do this by demonstrating obedience to the law of God, which requires a "penalty" for Adam's "transgression" (12.399). Despite this assertion that Adam's corrupted patrimony is the enemy from which Jesus rescues humanity, Michael nonetheless describes how the death of Christ wreaks havoc within Satan's lineage:

this act

    Shall bruise the head of *Satan*, crush his strength

    Defeating Sin and Death, his two main arms,

    And fix far deeper in his head thir stings

    Than temporal death shall bruise the Victor's heel (12.429-33)

Though Michael has insisted that the encounter between Satan and Christ is not physically violent, the imagery is graphic. Christ crushes Satan's children Sin and Death and then turns them on their father. The defeat of Satan is thus an act of fratricide; Satan ends with two generations of his line thrust deep into his head.

Michael's claim that Christ will give Satan a "far deeper" wound is physically graphic. But it also serves as a symbol of the key move that Milton makes with regards to divine inheritance and election. The wound that Christ gives to Satan can go deeper than the wounds of the crucifixion because Christ wounds Satan's spirit. He wounds him, that is, in a way that is both beyond and beneath physicality.

Similarly, where the rest of the poem has emphasized the delightful physicality of Eden, the conclusion of Book 12 frames the possession of paradise as an internal, spiritual matter. In this respect, Michael's history, which depicts Adam's descendants spreading through the plain, is misleading. Michael informs Adam that Eden might have served as the capital from which humanity's empire would extend its physical dominion. But at the end of the vision, Michael reveals that the true inheritance is not in physical dominion at all. The spread of Abraham's children through the earth comes, not through their physical possession, but through their belief in the Christian gospel. The move away

from materiality is emphasized by the move from the physicality of sex to the interpersonal language of faith:

for from that day  
 Not only to the Sons of *Abraham's* Loins  
 Salvation shall be Preacht, but to the Sons  
 Of *Abraham's* Faith wherever through the world;  
 So in his seed all Nations shall be blest. (12.446-50)

This paternal legacy of faith is an invisible matter, however. Indeed, just as the sons of Seth intermarry with the daughters of Nimrod, so the sons of Abraham's faith will be inextricably mixed with false sons. Michael warns of the papal and Episcopal "wolves" who will succeed the apostles and use Christianity to further their aims of "lucre and ambition" (12.508-11). And like the Israelites before them, these false leaders of the elect will use coercive, secular power to back up their claims to "[p]laces and titles" (12.515-16).

Michael contrasts the visible power of the church-state alliance with the inward possession of the Holy Spirit. Like Donne and Herbert, Milton here draws on the possession of the Holy Spirit as the mark of divine inheritance. But unlike those two poets, he explicitly divorces the possession of the Spirit from external political authority. In particular, he differs from Herbert who frames the work of the Spirit within the public, visible cycles of liturgy. For Milton, the Spirit is given to assure believers of their inheritance in the face of persecution by the political and clerical enemies of the truth. Michael promises the gift of the Spirit, "the promise of the Father," after Adam intuits that Jesus' followers will receive violent treatment. The subsequent history of election is

a battle between those who possess this inward gift and those who make an outward pretense of possessing the gift. Ecclesiastical power will appropriate the “Spirit of God, promis’d alike and giv’n / To all Believers” and “from that pretense / Spiritual Laws by carnal power shall force / On every conscience” (12.519-22). Such spiritual and legislative authority usurps the true authority that belongs to the Spirit-filled individual. It is this usurpation that causes violence within Christian history: “Who against Faith and Conscience can be heard / Infallible? yet many will presume: / Whence heavy persecution shall arise” (12.529-31). Just as before the coming of Christ, the faithful will be at war with the majority, but the faithful will no longer be identified with any external possession. Truth will “retire” and “so shall the World go on” until the final judgment of the apocalypse (12.535-37).

On one level, truth’s retirement from history only occurs after the apostolic age in Michael’s narrative. On another level, however, truth retreats before history even begins. The end of the poem asserts that the inward inheritance of faith has been the true inheritance of the elect all along. After Adam praises God for the salvation that he will accomplish through the Seed of the Woman, Michael tells Adam to cultivate this knowledge into faith, virtue, and love. This combination of faith and virtue will give Adam an estate better than the mansion he has lost: “then wilt thou not be loath / To leave this Paradise, but shalt possess / A paradise within thee, happier far” (12.585-7). The *Felix Culpa* is finally figured here as landed estate. At the start of history it links Adam with the Spirit-filled believers who will follow the age of Christ. Like the later Christians, he possesses an inward inheritance. This, like the example of Shem being a tyrant, undermines the idea of a visible, elect nation of saints. Though Israel will possess the

promised land, her external kingdom is likened to the tyranny of the ecclesiastical establishment. Similarly, that Adam's inward possession is a "happier" one suggests that external possession was never the true legacy given to the elect. Rather, in a mirror-image of Satan's inward, portable hell, it is a paradise that can be carried within as the first man wanders on his earthly way.

### III.

The analysis above suggests that, for Milton, possessing land is fundamental to human personality. The first interaction between the creator and the first human is a grant of land in fee simple from the heavenly Lord to his earthly tenant. From the beginning, Adam and his descendants are called to extend their possession throughout the earth and serve as intermediate Lords between God and his other tenants, the animals. After this original vocation is marred by sin, conflict over possession becomes the site of human violence, the site, that is, where the sin inherited from Adam rears its head. Salvation introjects possession, substituting the spiritual legacy of faith and virtue for the material inheritance of land. But this inward possession is, ultimately, not sufficient. Faith and virtue serve as a substitute only until the apocalypse, when Abraham's true children will finally possess a renewed earth. Material possession is not replaced, but it is deferred indefinitely.

This side of the new heavens and the new earth, though, the human will to possess manifests sin and violence. Milton's vision of history as a struggle for possession between brothers and nations recalls the violent "possessive mimesis" of Rene Girard

examined in the chapter on Herbert. Girard argues that all culture attempts to mask and disavow the violence that results from competition over objects. Similarly, Milton asserts that there is no history without competition over titles and land. Milton's assertion that Israel is complicit in tyrannical violence especially resonates with Girard's view of culture. While the elect people of God may argue that they are punishing wicked nations, they are actually recapitulating the violence of brother against brother that has shaped history since Cain. Moreover, if both Milton and Girard see violence as the result of humans fighting over possession, they also suggest that renouncing possession is the path to salvation. For Girard, Christ saves by submitting to violence and demonstrating the inherent injustice of political and religious coercion. Similarly, for Milton, Christ defeats sin and death by submitting to political and religious violence, and Christ's true followers pursue the inward possession of faith rather than the external possession of "places and titles."

The contrast between Milton and Girard, however, is more striking than the similarities. Where Girard's anthropological imagination places the drive to possess in the mists of pre-history, Milton's cosmic poem pushes the same drive back to creation and, even further, beyond time into eternity. Creation itself is an act of God dispossessing the ancient lords of misrule, Chaos and Night. When Satan encounters Chaos and Night in Book 2 he tries to win sympathy by appealing to Chaos' sense of injury over the domain he has lost to the new universe:

What readiest path leads where your gloomy bounds  
 Confine with Heav'n; or is some other place  
 From your Dominion won, th' Ethereal King

Possesses lately, thither to arrive

I travel this profound, direct my course. (2.976-980)

Of course Satan's attempt to stir up a rivalry between Chaos and God is itself suspect. (Indeed he promises to win for Chaos the same possession he has just promised to Sin and Death). However, Adam corroborates this rivalry when he explains to Eve why the stars shine at night when no one is awake to enjoy them. The stars, he explains, travel their course "[Lest] total darkness should by Night regain / Her old possession, and extinguish life / In Nature and all things" (4.665-67). Milton has made the creation and continuing existence of the universe into an ongoing, elemental struggle for possession. Not only humans, but also Chaos, Satan, and even God are hard-wired to possess from the beginning. Indeed, God's language to the Son about defending what they "anciently claim" suggests a possession that reaches back before even Chaos and Night exist. To possess is part of God's eternal being.

That God himself is always already maintaining possession complicates our understanding of the Fall in *Paradise Lost*. The same language of possession that represents the presence of sin after the Fall also, paradoxically, undermines the significance of the Fall in the poem. The conflict over possession that occurs between humans after the Fall also occurs before it. Just as the Israelites and Canaanites wage war over the promised land, God and Satan compete for possession of heaven and Satan tempts Adam and Eve over possession in the garden. Beyond being just an aspect of fallen humanity, the drive to possess appears to be fundamental to earthly and heavenly personhood. God, Satan, and Adam alike need to possess. And potential conflict between persons seems to be a natural tendency both before and after the Fall. Indeed, in their

struggle for possession, humans might be seen to merely be fulfilling their role as God's image-bearers in the world.

That the need for possession is endemic to divine, angelic, and human persons alike provides a different angle of entry into that most vexing problem for Milton's theodicy: the origin of evil itself. In his recent book *Milton and the Idea of the Fall*, William Poole places Milton's account of evil in *Paradise Lost* in an Augustinian tradition that posits a psychological fall that precedes the external fall. Eve, according to Augustine, sins in her will before she succumbs to Satan's temptation. Moreover, Augustine denies that one can posit "efficient causality" for this turn to an evil will. Causality for evil is unknowable, and knowledge of it should not be sought. Similarly, Augustine tells readers they should not ask why God did not give Adam the ability to withstand temptation: "Obviously he is able. So why didn't he? Because he didn't want to. And why he didn't want to is his business. For we ought not to know more than it is proper to know" (qtd. in Poole 29). Augustine recognizes here that the origins of evil are unexplainable within the non-dualistic universe posited by orthodox Christianity. (While Milton is heterodox about other things, he is not a dualist.) Or, at least, they are unexplainable without making God ultimately responsible for the fall-in-the-will. As Poole paraphrases Augustine, God could have made Adam better (30). Presumably he could have made the fallen angels better as well.

Poole argues that Milton represents the obscurity of evil's origin within the will through the circularity of his language. The "trope of turning" is the "linguistic index" of the psychological "fall in the will" (149). This circularity represents the epistemological impossibility of tracing a linear causality for evil: "So man is free but also frail, though

just how frail is locked away in linguistic loops” (159). Circularity also represents, however, the inward turn away from God that constitutes sin for both Augustine and Milton. To Sin, for Augustine, is to turn to the self, an unstable proposition given that the self is created *ex nihilo*. Milton, follows Augustine here by using several “self” prefixes to characterize Satan and the devils: Satan argues that they are “self-raised” while God calls them “‘self-tempted, self-deprav’d’ and ‘Self-lost’” (150-51).

Milton not only inherits the Augustinian problem of why God didn’t endow his free creatures with the wisdom or character they needed to resist temptation. He also, ironically, is prevented by his non-Augustinian, heterodox theory of matter from availing himself of an Augustinian solution. Augustine traces human weakness and the problem of “self-grounding” to the fact that humans are created “metaphysically *ex nihilo* and materially *ab limo*, from clay” (191). Poole summarizes the argument thus: “The swerve in the will to which man is subject is therefore specifically because his origin is utterly undivine” (191). However, Milton’s emanationist ontology of creation, his belief that the matter of the universe has its ultimate origin in God rather than nothing, prevents him from adapting Augustine’s strategy. If clay has its *material* origin in God, then Adam’s being created *ab limo* (from clay) does not explain his weakness. Indeed, it materially implicates God in Adam’s fall.

Poole’s observations complicate the entire salvation history that we examined above. Original sin, we saw, is seminally passed on through Adam’s body and the bodies of his descendants. Salvation comes through the incarnation of the Son, when Adam’s paternity is supplanted by God’s paternity. But if Adam, the material father of humanity, is responsible for his descendants’ sins, why is God not also responsible for the sins of

creatures who emanate from his own material being? Or, to turn it around, would not the divine origins of the human body ensure the righteousness of humanity?

The sum of all this is that God appears both volitionally and materially responsible for sin. Poole suggests that Milton, perhaps unintentionally, represents this problem through Chaos and Night, who, unlike Satan, are morally ambiguous. They are “monsters [. . .] allowed in at the borders” of the poem to demonstrate the epistemological impossibility of original evil (157). In particular, Chaos and Night as the overseers of God’s “dark materials,” the raw matter of creation, represent the conundrum for Milton’s emanationism: the fact of material disorder emanating from God himself.<sup>60</sup>

Recognizing the fundamental role of possession in personality can bring some clarity to the aporia Poole describes. If the will to possess is constitutive of personality, then we do not need to look for a hidden psychological fall away from God. The conflict between God and his creatures over possession is not, perhaps, owing to some original defect of obscure origin. Rather it may be a natural consequence of a universe with multiple persons. If persons need a possession, if, that is, they require a field of action within which they can exercise their will, then they will necessarily seek it. And, if they are made in the image of God, then their desire for possession will not be naturally satiated with a modest domain: like the Father, their desire to possess may be inexhaustible. Indeed, the scope of God-given possessions suggests that this inexhaustible desire for possession is part of the divine plan: Chaos’ realm is vast, Satan possesses the

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<sup>60</sup> Poole writes: “[. . .] the Platonist inheritance of Western philosophy has always had trouble with the notion of sin as a real thing that blackens both the mind and the world. Milton merely exacerbates this tension by tracing all matter back to God. Perhaps Milton’s mysterious Chaos and Ancient Night might provide, or indeed be, the ghostly answers, though just out of grasp, shapeless and alien” (192).

large domains of heaven's North,<sup>61</sup> and Adam and his descendants are given the whole earth as their holdings. It seems that, without some kind of internal check, desires of different persons will necessarily conflict at some point.

Possession, then, provides a lens through which we might begin to see competition as the necessary risk that God must incur in order to create other persons. How creatures hold their possession in relation to one another and to God becomes the knife's edge upon which angels and humans balance between righteousness and sin, between virtue and violence. How one possesses, that is, is all important, all determining.

I am not arguing that possession erases the age-old problem for theodicy posed by sin, or even that it answers the problem within the world of Milton's poem. One still wonders why God does not give all angels the wisdom of Abdiel, why he does not give Satan, Adam and Eve the insight to see that they cannot maintain their blessed inheritance apart from the lord who had granted it them. But it does help us think about why such wisdom would be needed. Rather than being an unaccountable negative force or lack within the creatures of a good God, sin may be what happens when the God-derived impulse toward possession is exercised without reference to the claims of other persons, human and divine.

This may, also, help us to think freshly about the relationship between law and theology that I have traced through this dissertation. Free-will is spatialized in *Paradise Lost*. Free-will, that is, expresses itself through property. If this close link between the will and property allows us to think about why even Milton's God might want to maintain his dominion, it might shed light on the prominence of property and inheritance

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<sup>61</sup> Despite Satan's attempt to make it so, God's address to the angels ("Thrones, Dominations, Princedoms, Virtues, Powers") is not meant as an ironic insult. While there is hierarchy in heaven, there are not, it would seem, any peasants. It is a social structure of lords from top to bottom.

in English law. If the will is expressed through property, then perhaps we can better explain how property and inheritance law constitute a protection of ancient liberties.

#### IV.

The narrative and temporal scope of *Paradise Lost* provides a certain comfort about the messiness of election in history. Michael's prophetic vision of history in Books 11 and 12 describes the violence between the sons of faith and the sons of rebellion that marks history from beginning to end. It also reveals that there is a lack of definition between these two lineages in history: the elect and the reprobate are always commingled, and rebellious sons like Nimrod and the Pope will posture as true sons of heaven. The confusion and despair that such history might cause is mitigated by the fact that Adam receives this history from a removed, lofty perch in Paradise. Adam has the benefit of viewing the entire sweep of history in one (admittedly lengthy) revelation. Moreover, he has the comfort of an angelic interpreter who can explain the meaning of each scene and demonstrate how even the most horrific violence is contained and redeemed by the larger arc of salvation history. This type of recuperation is a luxury for those who are outside history and who are elevated above the violence of the plain.

With the 1671 volume containing *Paradise Regained* and *Samson Agonistes*, Milton imagines what the messiness of election looks like from within history. Both the short-epic form of *Paradise Regained* and the dramatic form of *Samson Agonistes* lend themselves to such a project. Where the long epic form of *Paradise Lost* is suited to the long view of history, both the short-epic and the drama imagine a discrete event. Though

*Paradise Regained* allows characters to briefly narrate back events and even contains a few theological glosses from God himself, the plot is largely confined to the events surrounding Jesus' baptism and temptation.<sup>62</sup> Even more than *Paradise Regained*, *Samson Agonistes* provides a real-time dramatization of the final events of Samson's life. Because there are no act or scene breaks, the events dramatized take just as long to happen as it takes to read the play. This situating of characters (and the reader) within history highlights the epistemological difficulties of election. How is it that individuals can discover their own status as heirs of God without the benefit of angelic interpreters and prophetic visions from the top of Paradise?

This need to come to grips with election from within history had particular resonance for Milton and his fellow revolutionaries. For them, the failure of the revolution was not merely about the loss of power and physical well-being, though it certainly was that: twenty percent of beneficed ministers lost their livings after 1660 and lay dissenters experienced occasional persecution for almost thirty years (*The Experience of Defeat* 17). The Restoration also required revolutionaries to reevaluate their theology of election. In the words of Christopher Hill, "[t]he experience of defeat meant recognizing the collapse of the system of ideas which had previously sustained action" (*The Experience of Defeat* 17). Like Milton's Samson, a resigned Sir Henry Vane felt that his active, physical role in providential history was over. In his view, God had decided "to take the business into His own hands, and to put forth the power of His wrath by heavenly instruments, forasmuch as earthly ones [...] have proved ineffectual" (qtd. in Worden 131). Many felt betrayed by God and wondered how the providential promise of the 1640's could fail to be realized. Baptist John Whitehead pleaded with God, "Shorten

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<sup>62</sup> cf. Lewalski on the form of the biblical short-epic and its temporal orientation.

the days of trouble [lest] thy little ones ... faint and their adversaries triumph and say 'Where is now the God in whom they trusted?'" Similarly, Lodowick Muggleton confessed that "God did seem more cruel than men" (qtd. in Hill 308).

Of course, many others viewed the Restoration as the recovery of a divine inheritance by the true Son, Charles. Indeed, William Bartholomew, the Vicar of Campden preached a 1660 sermon that frames Charles's return in the language of property possession that is so central to Milton's conception of inheritance in *Paradise Lost*. Bartholomew's text is from Luke 11, in which Jesus also likens his dispossessing of Satan to the ejection of a "Strong Man" from his palace.<sup>63</sup> Like Milton, Bartholomew draws on the feudal language of the common law to describe how the saying might apply to any repentant sinner: "*Jesiu Christ*, shall be pleased in mercy to visit any such miserable Vassal. Then he ejects Satan, pulls down the reign of sin, takes possession of that poor captivated heart for his own *habitation*, restores to *God* his Creature that was lost, and to Man the Graces whereof he was despoiled" (3). But while Bartholomew uses similar metaphors as Milton to theological ends, his application of them to history is starkly different: Bartholomew ends his sermon by asserting that Charles II is the Christ figure who has liberated England from the possession of the demonic "strong man" Cromwell.

The disparate theological interpretations given to the Restoration highlight the epistemological and ethical dilemmas posed by Milton's theology of election. These dilemmas are particularly acute if the possession of a divine inheritance is an internal rather than an external matter. If there are no physical signs of election, if the children of

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<sup>63</sup> "When a strong man armed keepeth his palace, his goods are in peace: But when a stronger than he shall come upon him, and overcome him, he taketh from him all his armour wherein he trusted, and divideth his spoils." (Luke 11.21-22)

God are marked out by the Spirit rather than by the possession of land, then discerning one's own filial relationship to God is impossible. Moreover, interpreting the claims of others in the community who claim to be true sons of God creates vexing ethical and legal problems. If one cannot discount the claims of Nimrod and the Pope based on external signs, how is one to treat those claims? How can one determine who speaks in the filial authority of the Spirit and whose claims to inspiration are false pretense?

## V.

Milton opens *Paradise Regained* with a promise to complete the story begun by *Paradise Lost*:

I who erewhile the happy Garden sung,  
 By one man's disobedience lost, now sing  
 Recover'd Paradise, to all mankind,  
 By one man's firm obedience tried  
 Through all temptation, and the Tempter foil'd  
 In all his wiles, defeated and repuls't  
 And *Eden* rais'd in the waste Wilderness. (1-7)

Milton not only promises to tell the story of how Jesus regains that which was lost. He also continues one of the main conceits of *Paradise Lost* by figuring the story of fall and redemption in the language of property rights. As in *Paradise Lost*, the garden is not so much an idyllic utopia as it is a private garden.

Milton also evokes the legal framework of *Paradise Lost* by using the term “recovery” to describe Jesus’ saving action. In his 1670 law-dictionary *Nomo-lexicon*, Thomas Blount defines two kinds of recovery, “a true Recovery, and a feigned” (III). The “true” recovery involves the actual recovery of a lost object: “The true one is an actual or real Recovery of any thing, or the value therof by Verdict and Judgment” (III). That one can recover the value of something is appropriate to *Paradise Regained*, for the “Eden rais’d” in the wilderness is not the same “happy Garden” that has been lost. That recovery comes through verdict and judgment is also fitting. Mankind recovers paradise through Jesus’ obedience which is “fully tried / Through all temptation.” Jesus receives a favorable verdict at the end of this trial of obedience, emerging “By proof th’undoubted Son of God” (1.11). While one might object here that the proofs and trial are of a spiritual and theological nature, that Satan is a “Tempter” and not an advocate does not lessen the sense that Milton is framing the narrative as a legal trial. To the contrary, the frequent evocations of the Book of Job in *Paradise Regained* suggest that Milton’s Satan is reprising his role in the biblical book as the prosecutorial adversary in God’s heavenly court (1.33).

That Jesus emerges from his trials as the “undoubted son” links the recovery with a declaration of filial status. Jesus is not merely recovering a piece of property; he is recovering it as the true heir, the true son that Adam failed to be. This coupling of possession with the declaration of Jesus’ title particularly evokes inheritance law because, at the common law, it was the coupling of seisin and right which constituted a “perfect title.” Legal historian Percy Bordwell explains :

Seisin and right of property were the two primary elements that went to make up the perfect title, and the conjunction of these two in their various degrees is constantly emphasized in the authorities. These might be separated in many ways, as by death, disseisin, a tortious feoffment, and until they were reunited the legal powers of the one who had the right of property but not the seisin were very limited. (“Seisin and Disseisin” 605)

Jesus, by recovering as the “undoubted son” thus restores humanity’s interest in Paradise to the strongest possible position vis-à-vis English property law. He also undermines and defeats the parody of true title that Satan claims for himself and his followers in Book 10 of *Paradise Lost*.

The figuration of these trials as a martial duel further supports the idea that Milton is evoking an inheritance trial. As we have seen, trial by battle was the original mode for trying a Writ of Right, which was the ultimate action for contesting title under the common law (Maitland 21). The Writ of Right is the strongest legal tool for establishing which of two competing families possesses a superior claim to land. While there were several ways that a litigant at the common law might seek to recover land, the way one could both recover the land *and* establish title was through a Writ of Right. Not only did the Writ of Right adjudicate between competing titles, it did so with “awful finality” (Simpson 39). Maitland explains: “As between the parties to it, this action is conclusive. The vanquished party and his heirs are ‘abjudged’ from the land for ever” (Pollock and Maitland 75).<sup>64</sup>

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<sup>64</sup> Though reforms by Henry II provided an alternative, non-violent means of trial through the Grand Assize, trial by battle nonetheless technically remained an option during the life of Milton (Maitland 21). I will have more to say about the Grand Assize below, but it is interesting here to note that only the tenant in possession could avoid battle by appealing to the Grand Assize. The person seeking to recover land through

The language surrounding the duel between Satan and Jesus reinforces the fitness of the Writ of Right as a hermeneutic lens for reading Jesus' recovery of Paradise. The duel serves, not only to confirm Jesus' status as heir but also to demonstrate that God's patrilineal line is superior to Satan's. The image of Jesus and Satan fighting a duel first appears in Milton's invocation of the Holy Spirit as his muse:

Thou Spirit who led'st this glorious Eremite  
 Into the Desert, his Victorious Field  
 Against the Spiritual Foe, and brought'st him thence  
 By proof th'undoubted Son of God, inspire  
 As thou art wont, my prompted Song, else mute. (1.8-12)

God picks up this language of martial proof when he boasts to Gabriel that the subsequent trial will constitute the triumph of his line over Satan's competing lineage.<sup>65</sup> Where Jesus will emerge from the trial with a surer knowledge that he is God's son, God's chief concern is to demonstrate the strength of his own paternity to Satan. After reminding Gabriel how the "power of the highest" overshadowed Mary and conceived Jesus, God says of his Son:

this man born and now upgrown,  
 To show him worthy of his birth divine  
 And high prediction, henceforth I expose

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a Writ of Right would necessarily risk the issue being decided by what Glanville calls "the doubtful issue of battle" (qtd. in Maitland 21). Applying this rule to the trial Milton is evoking at the beginning of *Paradise Regained*, Satan, the tenant of Paradise, would have the option to avoid trial by battle while Jesus would not. That Satan chooses the violence of a martial-duel rather than the more rational inquiry into title available to him, suggests both his preference for violence and an awareness of the inferiority of his claims to title. This reading, perhaps, pushes the legal logic beyond the limits of what is warranted by Milton's evocation of the Writ of Right. Yet even (or especially) if this is the case, it also demonstrates the structural fitness between legal and theological accounts of right and inheritance. Even if one pursues the legal logic beyond the limits of prudent reading, the shoe still appears to fit.

<sup>65</sup> In a telling phrase, the angels who hear the boast burst into song about Jesus' "great duel" (1.174).

To Satan;

[.....]

[Satan] now shall know I can produce a man

Of female Seed, far abler to resist

All his solicitations, and at length

All his vast force, and drive him back to Hell,

Winning by Conquest what the first man lost

By fallacy surpris'd. (1.140-155)

Redemption for mankind, the recovery of what Adam lost, is subsumed here under God's desire to show up Satan, to demonstrate that he can produce a Son more virtuous than Adam and even than Job. Moreover, he declares that the Son will conquer Satan's progeny Sin and Death, "the two grand foes" (159). God's long speech ends with a final assertion that the Son will demonstrate his glory to angels now and mankind later. Ultimately, he is concerned that all "may discern / From what consummate virtue I have chose / This perfect Man, by merit call'd my Son, / To earn Salvation for the Sons of men" (164-67).

Christ's double nature is important here, however. He is proved the undoubted Son of God, but he is also the true heir of Eve, the promised Seed of the Woman. Indeed, the phrase "Son of God" carries this double meaning. Jesus is the heavenly Son from *Paradise Lost*, but he is also the true human son of God, the human who demonstrates the virtue that Adam was supposed to possess. It is in this role as the true human that he recovers Paradise for humanity. He is the heir of Adam as Adam was meant to be. As such, he can claim an interest in Adam's original possession of Paradise. Moreover, he

can demonstrate a superior title to Satan based on the fact that Adam's possession of Paradise preceded Satan's.<sup>66</sup>

If the opening sections of *Paradise Regained* establish the temptation scene as a trial by battle, they also make a point of emphasizing the non-physical nature of the duel. The chorus of angels sings that the Son's great duel is "not of arms" but is rather a battle between the Son's "wisdom" and Satan's "hellish wiles" (1.174-75). Similarly, God boasts that the Son will defeat Satan by resisting all of the adversary's "solicitations."

This move from physical battle to one of rhetoric, hellish wiles, and solicitation actually parallels the history of the Writ of Right and of English contestation of title more generally. From the time of Henry II, tenants sued under a Writ of Right could choose to have the issue settled by a Grand Assize. In place of a duel, the issue would then be decided by twelve to sixteen knights from the neighborhood who would testify as to who had the greater claim. In addition, because the Writ of Right entailed the possibility of trial by battle (and because its outcome was final and its process exceedingly tedious), claimants often sought to recover their land through possessory actions that contested the right to possession without settling the matter of title.

By the seventeenth century, even questions of title were rarely tried under the old Writ of Right. Rather freeholders who wanted to contest title did so through the legal fiction of Ejectment. Ejectment was originally a remedy provided for lower-level tenants (termors) who were dispossessed of their land. However, freeholders began to use this action because it was quicker and avoided the possibility of violence. In order to allow

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<sup>66</sup> On the principle that an older possession creates a superior title, Simpson writes: "Once the law has accepted the doctrine that any seisin counts as a good root of title, it must clearly devise some guiding principle which enables one to say how conflicting claims to seisin are to be resolved. The simple rule is that [. . .] the person who can base his title upon the earliest seisin is best entitled to recover seisin." (38)

freeholders to try title under an action designed for termors, the courts allowed for an elaborate fiction in which the make-believe tenant of one freeholder was ejected by the make-believe tenant of another freeholder. Technically, the court would decide which make believe tenant had the right to possess the land, but this required that the court decide which landlord had the greater title. Thus, the common law courts developed a way to try title apart from the Writ of Right. However, in so doing the courts maintained the language of violence; the make believe tenant John Doe needed be “ejected” by the make believe tenant in order for the action to proceed (Maitland 46-48).<sup>67</sup>

The fiction of Common Recovery, the “feigned recovery” described by Blount, is another legal fiction that uses fictional violence in order to strengthen the title of a freeholder. Freeholders used the collusive Common Recovery to break entails and gain fee simple over their property so that they could alienate according to their own wishes rather than the wishes of an ancestor or of the lord who originally granted the land to the family. In its mature form, a tenant, A, who possessed an estate in fee tail (i.e. who possessed an entailed estate) would arrange for a person, B, to bring a fictional real action against him. In reality, B does not have any legal interest in the land. Rather he is a prospective buyer of the land who has already arranged to pay A for the land. In response to the action brought against him, A will appeal to a third party C, who is alleged to be the warrantor guaranteeing A’s title but is in fact a poor, landless person. C will acknowledge his duty to vouch the title, but then fail to appear in court. The court will thus give judgment for B, who will “recover” the land in fee simple. For failing to vouch A’s title, C will be required to give A’s heirs-in-tail lands of equal value to the estate that

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<sup>67</sup> For a lengthy explanation of the history of Ejectment and its gradual ascendancy as the means for trying title, see Bordwell, “Ejectment Takes Over.”

has been lost. But because C is landless, A's heirs will receive nothing. Through this device, A is able to alienate his entailed estate in fee simple and disinherit his heirs (Baker 280-83).

The fiction of Common Recovery not only illustrates the move from real to fictional violence in English law. It also provides another lens for thinking about Jesus' recovery of Paradise in the poem. Recovery is a double-edged sword. In its straightforward sense it is about simply gaining possession, but as a fiction, it creates a freer inheritance by defeating the binding, unwanted legacy of an entail. This reflects the double-action of substitutionary inheritance at work in *Paradise Regained*. In order for Jesus to regain a full, free inheritance for humanity he has to defeat the unwanted, binding legacy of sin and death passed on from Adam. Of course this requires disinheriting the heir of the entail, but this is a gift, not a curse. Indeed, this disinheritance is the fulfillment of Adam's wish in *Paradise Lost* that his patrimony be defeated.

*Paradise Regained*, then, completes the movement from physical possession to inward possession that Michael has narrated in the last books of *Paradise Lost*. As in Michael's vision, this allows Milton to move the spiritual battlefield from the violence of history to the interior life of the believer. And as in Michael's vision, this move inward is more than just a disillusioned withdrawal. Rather, the violence of history itself is part of what must be overcome. Atonement is not merely a matter of rescuing believers from violence, but rather of defeating that violence. In the language of Common Recovery, tribal and political violence is the part of Adam's bloody fee tail that must be cut off. The Father makes this clear when he indicates that the resistance to Satan's temptation

foreshadows the means by which Christ will win his final conquest. Paradoxically, Christ will actively win his final victory through the passive means of non-violent endurance:

There he shall lay down the rudiments  
 Of his great warfare, ere I send him forth  
 To conquer Sin and Death the two grand foes,  
 By Humiliation and strong Sufferance:  
 His weakness shall o'ercome Satanic strength  
 And all the world, and mass of sinful flesh; (1.157-62)

The means of conquest is the weakness of humiliation; it is the triumph of the will suffering in non-violent resistance. By weakness Christ will overcome the culture of violence in which to be strong is to be blessed. The Father emphasizes, not the recovery of Adam's estate, but rather the defeat of his fallen inheritance. The world and sinful flesh, the physical manifestations of the Fall, are grammatically linked with Satanic strength as the object of "overcome." It is as though the violence of Satan is the defining characteristic of humanity "in the flesh," to use Paul's phrase. Jesus is not a sacrificial victim or a penal substitute. He is, rather, the one who defeats human violence by submitting to it.

This theology of atonement through weakness and humiliation allows us to understand why the temptation of the kingdoms plays such a central role in *Paradise Regained*. Satan tempts Jesus to play by the rules of human political engagement. He validates Jesus' divine vocation to ascend to the throne of his Father David, but suggests that he must achieve this good by his own military initiative. The throne that is his birthright is now ruled by the "powerful hands" of the Roman emperor Tiberius, who

“will not part / Easily from possession won with arms” (3.155-56). From a real-political perspective, Satan’s advice to divide and conquer the Romans and Parthians makes sense.

In the face of such powerful opposition, Jesus must act prudently, and with force:

thy Kingdom though foretold  
 By Prophet or by Angel, unless thou  
 Endeavor, as thy Father *David* did,  
 Thou never shalt obtain; prediction still  
 In all things, and all men, supposes means,  
 Without means us’d, what it predicts revokes.  
 But say thou wert possess’d of David’s Throne  
 By free consent of all, none opposite  
*Samaritan* or *Jew*; how couldst thou hope  
 Long to enjoy it quiet and secure,  
 Between two such enclosing enemies  
*Roman* and *Parthian*? (3.351-61)

Both of Satan’s main points are politically sound. Even divinely appointed kings need to act in order for prophecies about them to be realized, and presumably a military king like David would not have ignored the two great empires on his flanks. One can read Jesus’ rejection of Satan’s counsel, though as a choice to follow the faithful David rather than the unfaithful David. Jesus chooses to trust God with the military affairs of his kingdom as David did when he was successful. Satan himself makes clear that the choice is between two tenurial lords. He offers to give Jesus the kingdoms of the world on condition that Jesus worship him as “superior Lord” and “hold” all lands of him (4.167-

68). Jesus needs, then, to refuse to possess the kingdoms of the world apart from the authority of the Father. He needs, in the logic of feudal possession that is so prevalent in *Paradise Lost*, to hold the throne of David as a gift from God and not as a gift of Satan.

More profoundly, Jesus also refuses the way of strength and domination that marks out both Satanic and human notions of authority. He rejects the pure military calculus that led to disaster when David proudly decided to number his troops with a census (3.407-11). The choice here is not between Satan's way of doing violence and God's way of doing violence. It is rather a radical choice between participation in the violence of politics and non-participation. In this light, the example of David numbering his troops is not merely an example of unfaithful militarism, but also a reminder of the way God's election of Israel does not exempt the sons of Abraham from complicity in the violence of history. This reading makes sense in light of Michael's assertion that the sons of Shem were tyrants. It also best accommodates both the theology of victory through weakness that the Father explains in Book 1 and the Son's own commitment to win as many as he can through persuasion rather than coercion.

In a more vexed example of his refusal to use military might, Jesus rejects the temptation to rescue the lost tribes of Israel who were scattered after the northern kingdom was conquered by Assyria. Because the lost tribes still dwell in the land ruled by the Parthians, Satan reasons that conquering Parthia will allow Jesus to restore them to their place in Israel. Indeed, because the ten lost tribes were part of David's kingdom, Jesus *must* rescue them to establish himself as David's "true successor" (3.373). In denying Satan's offer of Parthia, Jesus leaves the fate of lost Israel in God's hands: "Yet he at length, time to himself best known, / Rememb'ring *Abraham*, by some wond'rous

call / May bring them back repentant and sincere” (3.433-35). Yet is this faithful hope, or indifference? Compared with the passion of Paul, who proclaims that he would sacrifice his own salvation for the salvation of the Jews who were not converting to Christianity, Jesus comes off as strikingly unperturbed about the fate of his lost people: “To his due time and providence I leave them” (3.440).<sup>68</sup> He hardly seems to be the same person who pleaded with God on behalf of Adam and Eve in Book 11 of *Paradise Lost*.

The logic of Jesus’ refusal clearly relies on the status of the grantee. The return of the lost tribes would be a good thing, but only if it is performed by God. But Jesus’ emotional coolness toward the lost tribes and his genuine uncertainty about their future suggests the instability of election. The lost tribes are Abraham’s children, and yet God may cut them out of their inheritance without evoking any sadness from their supposed Savior. Moreover, the lost tribes lose the benefit of the Son’s advocacy and intercession, an advocacy which, paradoxically, appears to be offered to people of every nation. Again we see the movement from external to internal inheritance that we have traced throughout this study: inheritance remains the paradigm through which Milton imagines salvation, but this does not occur at the visible units of family or nation. The hope of an elect nation is not entirely abandoned, but it is deferred indefinitely.

## VI.

The move from the external possession of lands and kingdoms to the inward possession of faith and the Spirit undermines epistemological certainty about election for

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<sup>68</sup> “[. . .] I have great heaviness and continual sorrow in my heart. For I could wish that myself were accursed from Christ for my brethren, my kinsmen according to the flesh [. . .]” (Romans 9.2-3)

individuals. If one cannot rely upon family or national affiliation as the basis of divine favor, how does the individual believer apprehend their status as a son or daughter of God? Despite his uniqueness, this problem confronts even Jesus. In this respect, rejecting the temptation to political domination also requires that Jesus resist a deeper temptation. Namely, it requires him to forgo his public acknowledgment as the Son of God, a public acknowledgment that political domination would surely elicit. The power of this temptation stems from the fact that Jesus, the royal Son of God and Son of David, has lived so much of his life in unacknowledged obscurity. Indeed, at the beginning of this life, he does not even know his own identity.

In this respect, the plot of *Paradise Regained* resembles romance more than epic. The supposed son of a poor carpenter in a remote fishing district, the boy Jesus demonstrates a precocious gift for the Jewish law when he wins the admiration of all the teachers at the temple (1.210-14). Moreover, he harbors grand political aspirations beyond his station:

victorious deeds

Flam'd in my heart, heroic acts; one while

To rescue *Israel* from the *Roman* yoke,

Then to subdue and quell o'er all the earth

Brute violence and proud Tyrannic pow'r,

Till truth were freed, and equity restor'd: (1.215-20)

Noticing the ambition of his thoughts, Jesus' mother tells him a strange, incredible story that is similar to the tale Prospero tells Miranda: despite our apparently low estate, you

are actually the child of royalty.<sup>69</sup> Indeed, Mary tells him, your sire is not just any king, but rather the eternal king of heaven. Angels announced your birth and exotic Wise Men came to honor you with rich gifts as the “King of Israel born” (1.254). So you need not squelch your ambitions. Pursue them. “By matchless Deeds express thy matchless Sire” (1.233).<sup>70</sup>

This romance plot depends for its effectiveness upon Jesus’ own ignorance about his identity and vocation. Though the reader knows that he is also the Son of God through whom all the world has been created, Jesus has given up this knowledge by becoming man. Theologically, the incarnation requires *kenosis*, an emptying out of divine powers in order to assume a genuine humanity.<sup>71</sup> Jesus has to be told who he is. He also needs to interpret what his identity means for his political vocation. After Mary tells him the story of his birth, he “revolves” the scriptures for confirmation of his identity: “[I searched] what was writ / Concerning the Messiah, to our Scribes / Known partly, and soon found of whom they spake / I am” (1.260-63). But this study also leads him to learn the nature of his vocation: beyond his own desire to renounce violence for persuasion, Jesus learns that he must submit to “many a hard assay even to the death” in order to gain his kingdom (264). Self-knowledge, then, comes to Jesus through the personal narrative told by his mother and the prophetic/legal tradition of his nation. To put it another way, Jesus discovers himself in relation to his community’s textual history.

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<sup>69</sup> In having an unknown/undervalued identity, Jesus also resembles Shakespeare’s Marina, Polydore, Cadwal, and Perdita. He also resembles Red Cross Knight from Book 1 of Spenser’s *Faerie Queene*, who only learns his true identity as St. George near the end of his narrative.

<sup>70</sup> The similarities between Satan’s erotic temptation in Book 2, and Spenser’s Bower of Bliss and the voyeuristic scenes of Sidney’s *Arcadia* further justify the idea that Jesus is, among other things, a romance hero.

<sup>71</sup> For a full discussion of *kenosis* and its relationship to Milton’s Arian theology, see Lewalski *Milton’s Brief Epic*, Chapter 6. For the biblical concept, see Philippians 2:5-8. For a complete study of Arianism in Milton, see Bauman.

After his baptism, Jesus also receives guidance from the indwelling Holy Spirit. As we have seen in Donne, Herbert, and *Paradise Lost*, the presence of the Holy Spirit is a mark of divine inheritance. However this inner sign of Jesus' sonship does not simplify the epistemological problems attending election. Where Jesus had previously derived his sense of vocation by interpreting the Law and the Prophets, he now receives spiritual guidance that bypasses the rational altogether. Milton emphasizes the a-rational nature of his guidance by portraying it in physical terms. Jesus describes the experience of being led by the spirit:

And now by some strong motion I am led  
 Into this Wilderness, to what intent  
 I learn not yet; perhaps I need not know;  
 For what concerns my knowledge God reveals. (1.290-93)

Jesus here is asked to follow the internal motion of the Holy Spirit without being offered any rationale. Jesus' followers too, it seems, will receive such a-rational guidance as part of their spiritual inheritance in Christ. Explaining that the age of the Spirit is replacing the age of oracles, Jesus declares to Satan that God "sends his Spirit of Truth henceforth to dwell/ In pious Hearts, an inward Oracle/ To all truth requisite for men to know" (463-65). Like Christ, those who possess the Spirit will be given the truth that they need to know. Presumably they also, like Christ, may be led by motions for which no reasons are given.

Jesus' epistemological limitations make him accessible in a way that neither the Son nor the Father are in *Paradise Lost*. In particular, they provide the poem with an affective dimension that it would not otherwise have. Jesus is a son who has lost his

father. Moreover, he is a son whose parentage is unacknowledged by all but his mother. In the eyes of the public, he is a carpenter's son at best and a bastard born under dubious circumstances at worst. Moreover, his true, heavenly father remains distant and hidden. While this distance might be understood theologically as a necessary aspect of Jesus' *kenosis*, readers privy to the Father's boasts might wonder if it also reflects an emotional distance between Father and Son. The Father's pride is, after all, primarily rooted in the way Jesus will demonstrate the Father's own creative power. Jesus is valuable to the Father because his merit will show-up Satan. Similarly, the boasts of the Father seem emotionally removed from the Son and the pain that he will undergo. The angelic response to the Father's boast is telling: "The Father knows the Son; therefore secure / Ventures his filial Virtue, though untried" (1.173-77). Atonement, according to the angels, actually costs God nothing. His venture of the son is secure, which is another way of saying that it is not a venture at all. Omniscience, after all, cannot gamble. Moreover, filial affection is absent; the Father's knowledge of the Son consists of knowing the Son's virtue, his ability to withstand temptation. This is a long way from the God of the synoptic gospels, who responds to the death of Jesus with a blackened sky and an earthquake. And it is even father from the Gospel of John's God, who so loved the world that he *gave* his only Son (John 3.16). For Milton's God, filial love is a foreign emotion.

Satan plays on Jesus' longing for the acknowledgement of an absent father throughout his temptations. Indeed, underlying the specific temptations, Satan repeatedly tempts Jesus to publicly broadcast and confirm his sonship. He reminds Jesus of his humble, obscure origins and his poor earthly father: "Thou art unknown, unfriended, low of birth, / A Carpenter thy Father known, thyself / Bred up in poverty and straits at

home” (2.413-15). He twice discusses the “pretenders” who have publicly claimed the Davidic throne that is rightly his.<sup>72</sup> Flattering Jesus’ for his moral fortitude, he asks “These Godlike Virtues wherefore dost thou hide?” (3.21) Even when the temptation is not explicitly about Jesus’ identity, Satan indicates that Jesus’ patrimony is the real question at issue. When he offers bread to Jesus he makes eating a privilege of Jesus’ status: “What doubt’st thou Son of God? sit down and eat” (2.377). And when he offers Jesus the Roman empire, Satan emphasizes that the Roman emperor is without a son and therefore easy to supplant. This is partly Machiavellian political advice, but it also reminds Jesus once again that he is a prince without a father. The temptation to power is thus a subtler temptation to claim a more concrete patrimony by assuming the role of the Roman emperor’s heir.

The traces of doubt about Jesus’ patrimony that Satan has woven through his temptations come to a head in Book 4. He reminds Jesus that establishing inheritance is an interpretive act, that the meaning of the Father’s declaration at Jesus’ baptism is not self-evident:

I among the rest

[. . . . .]

Heard thee pronounc’d the Son of God belov’d.

Thenceforth I thought thee worth my nearer view

And narrower Scrutiny, that I might learn

In what degree or meaning thou art call’d

The Son of God, which bears no single sense;

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<sup>72</sup> Satan reminds Jesus that the current King of Judea is an Edomite who has been “plac’d on *Judah’s* Throne / (Thy Throne)” (2.423-25), and he also recalls the Levite family of Maccabaeus, who “David’s Throne usurp’d” (3.165-70).

The Son of God I also am, or was,  
 And if I was, I am; relation stands;  
 All men are Sons of God; yet thee I thought  
 In some respect far higher so declar'd. (4.511-21)

Satan's point has real force here. If the title of son can be construed in several ways; even after the baptism, how can Jesus be sure that he is special? All men are sons of God, after all. Satan is of course tempting Jesus, but he is also presenting a real conundrum. It is a conundrum that Satan sincerely feels. He has in fact come to learn what the baptismal declaration means because he wants to know his foe. Addressing the demons he says: "Who this is we must learn, for man he seems / In all his lineaments, though in his face / The glimpses of his Father's glory shine" (1.91-93). But this confusion cannot be chalked up to the willful ignorance of the devil. Satan's lines might as well be uttered by the centuries of Christian thinkers who have argued about the nature of Jesus' sonship. The dilemma posed to Satan (Who is this man who looks like a man and talks like a man, but also peculiarly shines with the glory of God?) is the same dilemma posed to Christian interpreters. Indeed, as the Arian Christology of *The Christian Doctrine* indicates, it is an interpretative problem in which Milton was actively engaged.

Satan's temptation also reminds Jesus that he himself has come to understand his identity through an act of interpretation. Jesus hears the voice at his baptism, but the meaning he ascribes to the declaration comes from his prior study of the scriptures. By introducing the uncertainty inherent in interpretation, Satan hopes one last time to undermine Jesus' confidence in his patrimony. Immediately following this, he brings Jesus to the top of the temple and invites him to test out his hypothesis:

I to thy Father's house

Have brought thee, and highest place, highest is best

Now show thy Progeny; if not to stand,

Cast thyself down; safely if Son of God:

For it is written, He will give command

Concerning thee to his Angels, in thir hands

They shall up lift thee, lest at any time

Thou chance to dash thy foot against a stone. (4.552-59)

Satan here overlays Jesus' desire for public attestation with his desire to have his self-understanding confirmed. Indeed, the test of sonship is also a test of interpretation. Satan invites Jesus to take a literal leap of faith that Psalm 91 is Messianic, that it is literal, and that it applies even in situations of foolhardy, self-imposed danger.

The structure of romance teaches us to expect a moment of public vindication and reunification with the father. On one level, this moment seems to have arrived at the very beginning of the poem when Jesus is baptized. The Spirit of God descends like a dove on Jesus, and a heavenly voice pronounces him the beloved son. But this moment of filial affirmation is related by Milton's narrator in indirect discourse and with all the coldness that we might expect from the Father himself. At the end of the temptation Jesus is surrounded by angels who sing his praises as the "True Image of the Father" and the "heir of both worlds" (4.596, 633). But the appearance of the father itself is deferred, as is the public realization of the kingdom. The angels declare that he has regained a Paradise for humanity that Satan can never enter. They also promise that he will continue to "chase" Satan and his legions from their "possession foul" (4.627-29). Yet rather than

inviting Christ to enter the kingdom he has won, they offer a much darker invitation:

“Hail Son of the most High, heir of both worlds, / Queller of Satan, on they glorious work  
/ Now enter, and begin to save mankind” (4.633-34). Entry, a key component of property law, is here dematerialized. Instead of land, Christ enters a vocation. Where a victorious litigant would be expected to enter his recovered property, Jesus is invited to embark on his work of salvation. He is invited, that is, to defer enjoyment of Paradise and embark on the hard, lonely road towards his cross, a road that leads to public scorn and seeming abandonment by the Father. The scene of public acknowledgment by the Father is deferred beyond the end of the poem, and Jesus returns home to his Mother’s house, “private” and “unobserv’d.”

Jesus’ choice to pursue his kingdom through suffering rather than coercion constitutes a terrible interpretive risk. If his reading of the prophets is correct, then he will win salvation for God’s “chosen sons” and a kingdom for himself. But if he is incorrect, he will have refused to deliver his people from Roman tyranny. Moreover, he will personally suffer a cruel, pointless and lonely death. Not surprisingly, Satan points out the interpretive risk. He claims to read in the stars that, having refused his aid, Jesus will undergo “scorns, reproaches, injuries, / Violence and stripes, and lastly cruel death” (4.386-88). He then proceeds to destabilize the meaning of the “kingdom” that the stars also “portend”:

A Kingdom they portend thee, but what Kingdom,  
Real or Allegoric I discern not,  
Nor when, eternal sure, as without end,  
Without beginning; for no date prefixt

Directs me in the Starry Rubric set. (4.389-93)

Just as Satan offers alternative meanings of “son” to undermine Jesus’ self-understanding, he here contests Jesus’ understanding of the kingdom by offering alternative critical lenses. Perhaps, he argues, we should read your promised kingdom allegorically. God is certainly promising you something, but perhaps it is not an actual kingdom but rather something immaterial. Perhaps it is an allegory for the incredible self-possession you will demonstrate in the face of suffering. (This particular allegory is obviously a conjecture. But it is tempting to think that Satan would like Jesus to imitate his own kingdom-boast: “The mind is its own place, and in it self / Can make a Heav’n of Hell, a Hell of Heav’n” (1.254-55).)

Satan also suggests an alternative reading for “eternal.” Just as something eternal has no end, he argues, it also has no beginning. The beginning of the kingdom, then, may be endlessly deferred, always in a state of not-beginning. Or, like all eternal things, perhaps the kingdom already exists. In which case it is certainly an allegory for something else that you already possess. Either way, you should not look for a change in your status. You should not expect an actual kingdom to break into history and bring salvation to your people.

For Milton and his first readers, Satan’s warning may have rung disturbingly true. In the large scope of Christian history, nearly seventeen-hundred years would have passed without the kingdom of Christ ever beginning in its promised fullness. Moreover, within the immediate past, the political failures of the Republic may have seemed to reinforce the notion that the kingdom of God is either not an *actual* kingdom or it is an actual kingdom endlessly deferred. In the face of political failure, people who believe

they are the sons of God can only follow Jesus in the immense risk of faith. They can only follow their understanding of vocation and believe that their hope will be vindicated. But, like Jesus, they may find that this vindication never has a “beginning” within the public realms of politics and history.

## VII.

Though *Paradise Regained* is largely concerned with Jesus’ struggle to live as the divine Son within history, the poem also represents the epistemological challenges that confront members of Jesus’ community. After hearing Jesus proclaimed the Son of God at his baptism, the soon-to-be disciples Andrew and Peter wonder what Jesus’ identity means for their hopes of political liberation. They agonize that, immediately after Jesus is declared to be God’s beloved Son, he disappears into the wilderness rather than achieving the deliverance they have been waiting for. Similarly, Mary struggles with the dark promise that Jesus’ vocation would cause her great pain. She waits at home with only the obscure light of prophecy and braces herself for an unknown trauma. Even Satan is troubled by the obscurity of prophecy. In part, the temptation is a fact-finding mission for Satan. He needs to learn more about Jesus so that he can better relate the baptismal declaration to the troubling (for him) prophecy about the Seed of the Woman.

While these problems for the wider community are perhaps a secondary concern in *Paradise Regained*, they are central to *Samson Agonistes*. This centrality is linked to the fact that *Samson Agonistes* portrays a far more troubling “son” of God. Like Jesus, Samson is a specially chosen vehicle for God’s purposes in history whose birth is

attended by angelic visitations and prophecy. Like Jesus, too, he is guided by internal thoughts and impulses that are opaque to others. But, Jesus' kenotic assumption of human limitations notwithstanding, Samson is a far more human character who is driven by his own lust and overcome by his own weakness. Moreover, he is more embroiled in the violence of history than Jesus. Where Jesus refuses coercive power as a means to the Davidic throne, Samson's explicit vocation is to wreak violent vengeance on the Philistines. As such, he embodies the gruesome, tyrannical struggle for the Promised Land that Michael prophesies in Book 12 of *Paradise Lost*. Moreover, as a member of the "lost" tribe of Dan, Samson represents the conditional election of the lost tribes that Milton also evokes in *Paradise Regained*. He reminds us that, while God may use his fallible children to violent ends, he may also abandon them to violent oppression.

Read in light of the movement from external to internal that we have traced in *Paradise Lost* and *Paradise Regained*, Samson's fallibility and violent vocation raise urgent interpretive questions. Absent the coercive evidence of the sword, how are communities to interpret claims of divine authority and inspiration? In particular, in light of Jesus' rejection of violence, how is one to understand claims that violence is divinely inspired? More generally, if the elect are inhabited by the Spirit of God, if, that is, everyone may be receiving a-rational, internal guidance, how is one to know who the sons of God truly are? How can one form an ethical community based around individual inspiration?

## VIII.

The Samson we meet at the beginning of *Samson Agonistes* is a character confronting the reality of being abandoned by God. Once God's instrument of deliverance for Israel against the Philistines, Samson has been betrayed by his wife and enslaved and mutilated by his enemies. His agony is that of a failed revolutionary, but even more, his personal pain derives from a shattered sense of identity. Exalted from birth as a divinely chosen liberator, he is now a captive doing menial labor for his enemies. Deeper than he feels the betrayal of his wife, Samson acutely feels the pain of being misled and betrayed by God: "Why was my breeding order'd and prescrib'd / As of a person separate to God, Design'd for great exploits; if I must die / Betray'd, Captiv'd, and both my Eyes put out [?]" (30-33) Accordingly, Samson displays the hopelessness of a melancholic overcome by "humors black" (600): "Sleep hath forsook and giv'n me o'er / To death's benumbing Opium as my only cure. / Thence faintings, swoonings of despair, / And sense of Heavn's desertion" (102-05).

Just as in *Paradise Regained* Jesus is forced to work out his vocation within human epistemological limits, Samson inhabits a world suddenly cut off from the transcendent. Benjamin's description of the baroque Trauerspiel is apt: "the cloud moves, darkly or radiantly, down towards the earth [. . .] in a world which was denied direct access to a beyond" (79). This spiritual disorientation is paralleled and underscored in the poem by the physical disorientation of blindness. Denied even the transcendence of purely spiritual agony, Samson's confusion is also an embodied condition. Divine and physical illumination are simultaneously withheld. However, as the Chorus explains to Samson, blindness not only prevents physical light from entering the body, it also keeps the soul trapped within:

Thou art become (O worst imprisonment!)  
 The dungeon of thyself; thy Soul  
 (Which Men enjoying sight oft without cause complain)  
 Imprison'd now indeed,  
 In real darkness of the body dwells,  
 Shut up from outward light  
 To incorporate with gloomy night[.] (155-61)

This passage curiously resists any body/soul duality, blurring the distinction between physical and spiritual. The common complaint that the body is the prison of the soul is literally true for Samson. The soul needs physical light. Denied that light, it becomes “incorporate,” or embodied, as physical darkness. The divine blessing itself is marked in and guaranteed by the physical body, a fact that Samson complains reveals the inadequacy and impermanence of that blessing: “God, when he gave me strength, to show withal / How slight the gift was, hung it in my Hair” (59-60). This emphasis on the body is characteristic of *Samson Agonistes*. Throughout the poem, Milton represents what it is like to interpret personal and providential history as an embodied person. In so doing, he dramatizes the epistemological limits that prevent certain knowledge about God’s actions in human history (cf. Mohamed 334-36). Moreover, he uses the bodily emphasis of the poem to recreate a phenomenology of abandonment.

Through the physical language of the poem, Milton draws the reader into Samson’s physical experience of confusion and partial knowledge. This link between Samson’s experience and the reader’s is emphasized by the generic nature of the play as a

read rather than a performed drama.<sup>73</sup> The reader does not receive the visual cues of performed drama (or, for that matter, the narratory details of epic poetry). Like Samson, we must rely on the Chorus to tell us when characters enter and leave the scene:

But who is this, what thing of Sea or Land?

Female of sex it seems,

That so bedeckt, ornate, and gay,

Comes this way sailing

[ . . . ]

An Amber scent of odorous perfume

Her harbinger, a damsel train behind; (710-13, 720-21)

This passage shows the non-transcendent epistemology of the play. The Chorus, like all of the characters, must gather and interpret physical data to understand the surrounding world. There is no omniscient viewpoint in the play. More importantly, the passage reveals that the reader is phenomenologically and epistemologically handicapped. Things occur on stage without our knowledge; Delila appears and is seen within the play *before* we hear about it. In a very real sense, Samson's limits are our limits. We orient ourselves by the very same words that he does.

By underscoring the bodily limits of knowledge, Milton emphasizes how difficult the task of theodicy can be in the face of disaster: the ways of God can be difficult to justify for men who are trapped in time and lack omniscient historical/narrative perspective. In keeping with the non-transcendent ethos of the poem, the only cogent theodicy Samson can offer works by placing responsibility on human shoulders. In *Paradise Lost*, Milton holds human choice responsible for the Fall, but he also surrounds

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<sup>73</sup> In his introduction to the play, Milton states that he never intended *Samson* to be performed (550).

the Fall narrative with the larger narrative of salvation history. From the poem's invocation, "Man's first disobedience" is coupled with the promise of "one greater Man" who will "[r]estore us, and regain the blissful Seat" (I.1, I.4-5). *Samson* offers no such consolatory frame. The characters and the reader are both left wondering how the apparent failure of God's promise fits into a larger scheme.<sup>74</sup> Samson stops himself just short of questioning God and wonders whether providence might not be effected through his failure: "what if all foretold / Had been fulfill'd but through mine own default, / Whom have I to complain of but myself?" (44-46) In contrast, Samson's father, Manoa, accuses God of toying with humans: "Why are his gifts desirable, to tempt / Our earnest Prayers, then giv'n with solemn hand / As Graces, draw a Scorpion's tail behind? / For this did th' Angel twice descend?" (358-61)

## IX.

The apparent ceiling on the universe -- the absence of transcendence that marks so much of *Samson* -- does open up in the final section of the play. But this opening of a space for the divine is ambiguous. Announcing his decision to attend the idolatrous Philistine celebration, Samson relates the most charismatic moment of the play:

Be of good courage, I begin to feel  
Some rousing motions in me which dispose  
To something extraordinary my thoughts.  
I with this Messenger will go along,

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<sup>74</sup> Admittedly, a theologically literate reader could supply the frame himself, perhaps by viewing Samson as a type of Christ (cf. Krouse 68-71). Nonetheless, the absence of an explicit theological frame makes reading *Samson* a very different experience from reading *Paradise Lost*.

Nothing to do, be sure, that may dishonor  
 Our Law, or stain my vow of *Nazarite*.  
 If there be aught of presage in the mind,  
 This day will be remarkable in my life  
 By some great act, or of my days the last. (1381-89)

This passage is a key one for answering what Alan Rudrum and John Knott have both called the key interpretive question of the play, namely, whether Samson's final act is divinely inspired or "self-motivated" (Rudrum 253). Certainly, this appears to be a moment of inspiration: Samson, who has recently despaired of life, feels "rousing motions" that make him believe his trip to the temple of Dagon may result in a final "great act." But rousing motions are not flaming angels or burning bushes. Inspiration, if inspiration this is, has come in the form a vaguely defined internal sense, something a modern reader might ascribe to adrenaline or a "gut feeling." Moreover, Samson's term "rousing motions," which Khan glosses as "[rendering] [. . .] passion as action" (274), not only registers the movement of Samson's feeling, but also places it in the material realm to which motion properly belongs. The passage thus allows for both spiritual and material readings of this moment, as well as for readings that want to combine the two. It is, to borrow one of Kahn's key ideas, irreducibly equivocal.

For Kahn, the ambiguity of the "rousing motions" allows *Samson* to become a tragedy about human decision. She argues that Samson "fulfills the covenant by means of an ongoing activity of interpretation" (265) in which he learns to read ambiguous circumstances and act in the absence of certain knowledge. Central to her argument is the notion of exception, a Renaissance concept that denotes circumstances in which the *salus*

*populi*, or good of the people, requires the abrogation of positive and/or moral law (255). In the case of Samson's final action, he decides that God's plan involves attending the unlawful Philistine celebration in order to exact revenge: "Yet that he may dispense with me or thee / Present in Temples at Idolatrous Rites / For some important cause, thou needst not doubt" (1377-79). Kahn argues that Milton intends to leave us in the dark about whether Samson is inspired or not, about "whether Samson's political act is one of divine authority or merely human violence." Consequently, the poem "dramatizes the lack of sure coincidence between politics and theology, human action and divine authority" (277). Kahn argues that acts of interpretation required by this darkness are liberating. The play is, for her, not about the glorification or condemnation of violence, but rather about the necessity of interpretation that accompanies all exceptional acts of political resistance. The exception makes political action possible.

While Kahn is persuasive about the ambiguity attending Samson's final action, her emphasis on the empowering ability of the legal exception overlooks the tendency of the exception to wreak confusion and discord within society. The exception fractures the ethical community by rendering the meaning of one member's actions unintelligible to the rest. The exception also undermines the ethical community between God and humans by making divine actions opaque and rendering theodicy absurd. The exception is, in *Samson*, a site of ethical and theological terror.

The unintelligibility of Samson's actions is reflected by the various Renaissance interpreters who wrestle with Milton's biblical prototype. These interpreters struggle with the implications of a hero whose action repeatedly violates Christian ethical norms. Samson violates divine law by marrying a Philistine woman from Timnah; he consorts

with Delila the Philistine prostitute; he (possibly) commits suicide; and he prays before his suicide that God would help him gain personal revenge against his captors (Judges 14-16). While Renaissance readers generally agreed that Samson's dalliance with Delila was sin, they had to work harder to make sense of the marriage to the Philistine woman, which is explicitly directed by God, and the prayer for suicidal revenge, which God appears to answer in the affirmative.

Some interpreters offered rationalistic approaches to the problem, finding logic behind Samson's action and modeling the casuistic approach to ethical exceptions that Kahn identifies in Milton's Samson. For example, in his treatise *The Law of Warre and Peace*, Grotius justifies Samson's exceptional actions by claiming they are required by exceptional circumstances. He offers Samson's slaughter as an example of just preemptive violence: "He defends his doing by the same reason, saying, he had served them, as they would have served him" (322). He also claims that Samson kills himself under the lone exception to the prohibition against suicide, which allows that someone may kill himself when he sees that his further life will bring dishonor to God. (In this reading, Samson kills himself so that God will not be further mocked by the Philistines at the feast) (306-07).<sup>75</sup> In Grotius's analysis, Samson acts in exception to moral law as circumstances require. He thus provides a legal and moral precedent that others can follow.

Most readers, however, emphasize that Samson is a moral exception who receives special authorization from God to act contrary to the law. Curiously, some of these readers try to provide casuistic explanations for why God himself would choose to have

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<sup>75</sup> Grotius's analysis is so concerned with historical precedents, and so apparently detached from the logic of the Samson narrative itself, that he justifies the Hebrews handing Samson over the Philistines as an example of one state returning an "evildoer" to the state in which he has committed his crime.

Samson violate the law. Richard Rogers and fellow divine Arthur Jackson both explain that God has Samson marry a Philistine because Samson is a private rather than a public person. Since Samson will not be leading Israel into war, but rather will be acting alone, God has Samson marry a Philistine so that “some private personal wrong” will provide Samson a legitimate occasion for personal vengeance (Jackson 166, Rogers 662). Jackson also considers the possibility that Samson’s prayer for personal vengeance in death puts him at odds with the injunction in Romans 12 to leave vengeance for God. However, he concludes that Samson (who is evidently no longer a private person) acted rightly: “because he was a publick person raised of God, to punish those that wronged his people; and besides, what he did now, it is likely, he did it by the speciall instinct of God’s spirit” (179). Here Jackson offers a rational defense for Samson’s action, but he also suggests a trump card. The Spirit of God needs no rational excuse to authorize exceptional action. Readers like Jackson who find a charismatic basis for Samson’s actions are quick to point out that his warrants for exceptional action are unique; they cannot provide a moral precedent for further action. In the words of Thomas Bilson, “these things were not ordinarie, so can you drive them to no conclusion for your purpose; nor lay them forth for imitation to any” (332). However, that Jackson bothers to offer a justification when he could appeal directly to inspiration suggests his discomfort with the reasonless freedom of the exception.

Milton himself represents the uniqueness of charismatic exceptions to the law in *Samson*. In a passage that foreshadows the “rousing motions” of the ending, Samson describes his experience of a call to violate the law: “I knew / From intimate impulse, and therefore urg’d / The Marriage on; that by occasion hence / I might begin *Israel’s*

Deliverance” (222-25). As in the final scene, the impulse appears at once spiritual and bodily. Yet Samson is confident that the impulse “was of God” (225). For Samson the disaster of his relationship with Delila demonstrates that the divine exception cannot be applied to other situations. He states, “I thought it lawful from my former act, / And the same end; still watching to oppress / Israel’s oppressors” (231-33). Though the Chorus cryptically asserts that Samson was “never remiss” in “seeking just occasion” to fight the Philistines, the difference between the two decisions strongly suggests that the precedent of the first exception does not authorize the second. In the absence of impulse, Samson turns to the rational application of past experience, and the result is disaster.<sup>76</sup>

The charismatic spiritualism that Milton represents here implies that rational ethics are an insufficient basis for moral reasoning. Moral law is normative in most cases, but genuine spiritual stirrings can authorize individuals to act immorally. Indeed, a charismatic basis for ethics may be the ideal Christian norm for Milton. In a section of *The Christian Doctrine* titled “Of the Gospel and Christian Liberty,” he argues that Christians should be entirely free from adherence to the literal law. He claims that there is “no transgression in disregarding the letter of the law, provided that under the direction of the Spirit the end of the institution be attained in the love of God and our neighbour” (1011). Reversing a Pauline formulation he also states: “if ye be under the law, ye are not led of the Spirit” (1010). The Quaker George Fox makes a similarly drastic statement in his argument for female clergy: “if there was not Scripture, Christ is sufficient” (qtd. in Rudrum 250-51). These radical statements go beyond rare exceptionalism. The believer is always led by the Spirit, always ready to depart from the law when the Spirit reveals a

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<sup>76</sup> Mohamed, Rudrum and Kahn all offer similar readings of this difference. Rudrum in particular makes the valuable observation that Samson’s “intentions” are unchanged from one marriage to another (253). The absence of impulse appears to make all the difference.

better path to love. If we take Samson as an example of this principle, the dark possibility arises that the better path to love can include slaughter and suicide.

Indeed, from the perspective of the legal and ethical community, Milton's perspective has terrifying and debilitating results. If the ways of God include individual spiritual inspiration, the community is forced into an impossible interpretive situation. "[N]o man," writes Hobbes, "can infallibly know by naturall reason, that another has had a supernaturall revelation of Gods will" (198). Indeed, the critical debate over the nature of Samson's inspiration seems to confirm Hobbes point. Samson may be confident about the "rousing motions" he feels, but readers cannot be sure what it means. Roundhead politician Edmund Ludlow expresses this truth with a more positive attitude than Hobbes when he refuses to judge an assassin who had murdered a Catholic priest: "I dare not judge the person, not knowing what extraordinary call he had" (qtd. in Worden 132-33). This is the final outworking of the move from the external possession of Paradise to the internal possession of the Spirit that I have been tracing through this chapter. The community loses the ability to call a murderer morally wrong and legally culpable. This raises the jurisprudential problem of how a community that recognizes such extraordinary calls can morally punish outlaws. It also fractures ethical relationships by driving an epistemological wedge between each individual in the community. Actions no longer carry a shared ethical meaning. Instead, each agent is left to judge herself in what, given the ambiguity of inspiration for even the actor, might well devolve into moral solipsism.

Milton is at odds with himself here. Or, to be more specific, read against *Paradise Regained*, Milton's affirmation of charismatic spiritualism in *The Christian Doctrine* creates a conundrum. While Samson does act from an individualistic, a-rational impulse

that cannot be regulated by the community, Jesus in *Paradise Regained* acts from more complex sources of guidance. Like Samson, he is led into the desert through the unintelligible “strong motion” of the Holy Spirit. But, as his scripturally based responses to Satan’s temptations illustrate, his direct spiritual guidance is followed within the context of the Jewish Biblical tradition. There is a interpretive to-and-fro in Jesus’ interpretative process that is lacking in Samson’s. Indeed, Jesus repeatedly resists the temptation to act on his exceptional status, submitting to the scriptural tradition of his community. In *Paradise Regained* the one who can most legitimately claim exceptional status refuses to do so.

## X.

Milton’s charismatic spiritualism also reveals that God is not bound by his own laws. Milton’s Chorus argues against those who call God unjust for “contradicting” his “own edicts” (300-01):

As if they would confine th’ interminable,  
 And tie him to his own prescript,  
 Who made our Laws to bind us, not himself,  
 And hath full right to exempt  
 Whom so it pleases him by choice  
 From National obstruction, without taint (307-12)

Richard Rogers reflects more concisely that “the Lord may dispense with his owne law” (658). One might find justice in the claims of God’s critics here. By contradicting his

own edicts, God appears to undermine the ability of his law to provide a consistent moral framework for human life. But the Chorus emphasizes God's right to choose as he sees fit. As the creator of laws, God can decide to abrogate them at any time. He is not unlike a Hobbesian sovereign whose personal will transcends his law. The God that Milton describes here is radically unpredictable. His laws cannot safely predict how he will act. What, then, shapes divine choice? Are the actions of God anything more than expressions of arbitrary will and power?

The Chorus's insistence on God's "choice" is crucial, underlying the fact that the language of theodicy and exception are only meaningful if one believes that a good God makes truly free choices. If, on the one hand, God is determined to act in one particular way according to the perfection of his nature, then the language of exception is meaningless. God may break his positive laws, but he is constrained to do so by the higher law of his nature. (This position on divine freedom was occupied in the seventeenth century by the Cambridge Platonists, whose view is represented by Lady Anne Conway: "This indifference of Will hath no place in God, by reason it is an Imperfection; who though he be the most free Agent, yet he is also above all the most necessary Agent; so that it is impossible that he should not do" (qtd. in Fallon 433).) On the other hand, if God's actions are merely expressions of power without reference to other values or laws of his nature (this, Fallon argues, was Hobbes's position), then the questions of exception and theodicy are similarly meaningless.

Stephen Fallon has demonstrated how Milton holds a Thomistic position on divine freedom that sits between the doctrines of the Cambridge Platonists and Hobbes. Aquinas argues that God's actions are consistent with his goodness. But he also argues

that God is not compelled to act by his goodness. Because God's goodness is perfect as it is, he does not need to create in order to be good. Moreover, because there are several possible worlds that God could have created, God's choice to create this world is genuinely free and therefore, according to Fallon, meaningful as gratuitous gift (445). Fallon sees Milton's agreement with this position in God's statement in *Paradise Lost* that he is "free / To act or not" (7.168-73) and in the following statement from *The Christian Doctrine*: "Nor is it admitted that the actions of God are in themselves necessary, but only that he has a necessary existence; for Scripture itself testifies that his decrees, and therefore his actions, of what kind soever they be, are perfectly free" (913). For Fallon, Milton's free and good God preserves the possibility of meaningful relationship between grateful creatures and the God who did not have to create them.

This grateful response of creature to Creator is not such a straightforward matter, however, when the free choices of a good God do not appear to be good. The freedom of God can create affective horror as well as gratitude. In her analysis of the sixteenth-century play *Jephthah*, Debora Shuger describes how the play's characters "question the intelligibility and goodness of God" and expose "the tragic heteronomy of ethical consciousness and divine will" (143). Similarly, the ethical exceptionalism of the Samson story becomes deeply troubling in light of God's free will. If God freely chooses one good action from many possible actions, why does he choose to exact violent revenge on the Philistines? Why does he lead Samson to marry the Philistine woman knowing that she will betray him and incite him to slaughter? How can God's goodness be meaningful if these are the choices he makes?

Francis Quarles, a Carolingian poet underscores the ethical problem of the Samson story by explicitly foregrounding the human cost of divine retribution in his *The Historie of Samson*. The terror in his voice is clear as he reflects on the exception God makes in commanding the Nazarite Samson to touch blood: “May a *Nazarite*, then, / Embrue and paddle in the bloods of men? / [. . .] / May these revenge their wrongs, by blood?” (Meditation 13.5-11) Quarles asks his reader to sympathize with the victims of God’s judgment, transforming the Philistine other into a mirror of the Christian self:

Dost thou not tremble? Does thy troubled care

Not tingle? nor thy spirits faint to heare

The voice of those, whose dying shriekes proclame

Their tortures, that are broyling in the flame? (Meditation 15.1-4)

Quarles reflects not only on the violence God’s free actions, but also on the cosmic absurdity that results from the divine exception (the cosmic absurdity that the Cambridge Platonists were seeking to avoid): “But stay! Is God like Man? Or can he border /Upon confusion, that’s the God of order?” (Meditation 13.31-32) The otherness of God is what allows him to abrogate his laws by giving his servant a literal license to kill. Yet it is also the otherness of God that makes his free choice to alter his law so disturbing. God is not like man, and so he should not be subject to the confusion and inconsistency of man. He is the God of order, the God upon whom the coherence of creation depends. For him to inconsistently and arbitrarily decide to kill renders the universe a frighteningly absurd place. Quarles does not answer the question he raises here. He does not try to assure his reader that God’s universe is a sane place after all. Instead, he argues that it is actually God’s terrifying inconsistency that creates the possibility of mercy. His response is to ask

for both gratitude and fear: “Great God of mercy; O, how apt are wee / To robbe thee of thy due, that art so free / To give unaskt! Teach me, O God, to know / What portion I deserve, and tremble too” (Meditation 13.47-50). The poet seeks to offer gratitude for the meaningful, gratuitous gift of mercy, but he also recognizes that, before a free and omnipotent God, he must also tremble. A truly free God who judges and forgives according to a will beyond the scrutiny of reason is terrifying even when he is merciful.

Quarles’ meditation on violence, mercy, and the exception can usefully inflect our understanding of Milton’s own reflections in *Samson Agonistes*. While Milton is not so explicit in his interrogation of God’s violent freedom, he does similarly register the human cost of Samson’s final action. Milton represents the Philistines in a nuanced way that makes their ultimate destruction sit uneasily with the reader. The Philistines in Milton’s play are not all villains. When Manoa visits them to seek Samson’s release he encounters three types of people. The first are nationalistic and spiteful, the second are motivated by the pursuit of private gain, and the third are “[m]ore generous far and civil, who confesse’d / They had enough reveng’d” (1466-67). Like Quarles, Milton relates the sound of their death cries in pathetic rather than vindictive language: “Noise call you it or universal groan / As if the whole inhabitation perish’d? / Blood, death, and deathful deeds are in that noise, / Ruin, destruction at the utmost point” (1511-14). Manoa represents the play’s ambivalent attitude toward the death of the Philistines: “Sad, but thou knowst to *Israelites* not saddest” (1560).

I thus agree with Victoria Kahn that the play is intentionally ambiguous about its ending. However, to her assertion that this ambiguity is rooted in the epistemological limits of human reason, I would add that ambivalence also results from the terror of the

human encounter with a wholly free God. In Milton's play, the inability of human reason to comprehend providence owes as much to the transcendence of God as it does to human limitations.

The end of *Samson Agonistes* thus represents the terror of those who are not among the inspired. At the end of the play, the reader joins the Chorus and Manoa in a state of figurative blindness. The climactic events of the story take place off stage, and the reader only knows what comes to Manoa and the Chorus through cataclysmic sounds and the narration of the messenger. While Samson may be intimately called to participate in God's actions, the reader and the rest of the community must wait and believe that "all is best" while they live through the unpredictable course of providential history.

## Chapter 6

### Afterword

When, in the introduction of this dissertation, I asserted that we must read legal “subjectification” against a transcendent horizon in the Early Modern period, I bracketed the question of the role of ideal justice within our own historical moment. But there is a way in which the terrifying ending of *Samson Agonistes* illuminates our own secular democratic aporias. Throughout the process of writing this dissertation I have been thinking about the Early Modern intersection of law and theology in relation to Charles Taylor’s essay “Modes of Secularism.” In it, he outlines the two models that have historically underwritten theories of secularity. The first is what he calls the “common ground” approach. As the model that Taylor sees operative in the early United States, the “common ground” approach refused to favor any particular Christian denomination while grounding a public ethic on the Christian principles shared across sectarian divides. This approach, Taylor argues, is untenable in our own society, which possesses no “common ground,” Christian or otherwise, upon which to base a shared ethic.

The second approach, which Taylor calls the “independent ethic” approach, attempts to ground a public ethic in human rationality operating free of religious traditions altogether. Taylor argues that this approach is also undermined by the increasing diversity of contemporary society. In particular, “the secular” as an independent ethic has become a site of mistrust and conflict between atheists and

religious adherents. Taylor argues that “what the unbelieving ‘secularist’ sees as a necessary policing of the boundary of a common independent public sphere, will often be perceived by the religious as a gratuitous extrusion of religion in the name of a rival metaphysical belief” (36). The independent ethic also breaks down, Taylor argues, when it is imported to non-Western societies, who view it as “the imposition of one metaphysical view over other, and an alien one at that” (37). Indeed, he argues, non-Westerners view it as the imposition of Christianity by another name.

As an alternative approach to secularity, Taylor proposes an “overlapping consensus” view of secular society. The crucial difference in this model is that, while it posits a shared “ethical core” upon which democratic society can be based, it acknowledges that various persons “sign on” to the shared project for different reasons. Taylor exemplifies this by describing alternative rationales behind a commonly shared right-to-life:

This can be grounded in an Enlightenment-inspired doctrine of the dignity of human beings as rational agents. But it can also be underpinned by a religious perspective in which humans are seen as made in the image and likeness of God. Or [ . . . ] a Buddhist may draw strong reasons to uphold rights of this kind from a certain reading of the ethical demand of non-violence. We could continue the list indefinitely. (49)

This approach has the virtue of affirming the various worldviews that can underwrite a shared political ethic. It also squarely acknowledges the problem that there is no shared body of knowledge to which we can look for answers when we disagree. “There is no canonical body of thought, or corpus of doctrine against which to make the decision”

(50). The way forward is not, therefore, to appeal to an authoritative tradition or a notion of independent rationality. It is, instead, to do the hard work of persuasion and compromise.

One advantage of Taylor's model is that it levels the playing-field between the worldviews of secular citizens. People need not participate for some particular reason. They just need, in Taylor's language, to "sign on." In particular, Taylor usefully points to the "metaphysical" qualities shared by religious and non-religious conceptions of justice. This idea of metaphysical secularity has recently been echoed by the participants at a 2008 meeting of the Religion, Law, and the Public Sphere workshop series who repeatedly referred to human rights as a "secular faith." Similarly, Gregg Crane has defended the necessity of an idea of "higher law," while acknowledging the "leap of faith that constitutes the *primum mobile* of all such conceptions" (9). There are, of course, positivists who deny any external ground for law other than political power. But for many, non-religious and religious alike, law aspires to a faith-demanding ideal of justice.

Even in a secular age, then, it makes sense to read legal aporias against a transcendent backdrop. In *Literary Criticisms of Law*, law professors Guyora Binder and Robert Weisberg argue for a cultural criticism of the law which, drawing on the New Historicism, understands legal processes as a form of social self-fashioning: "Thus conceived, the cultural criticism of law is part of the work—at once political and aesthetic—of choosing which kind of culture we hope to have and what kind of identities we hope to foster" (539). On the one hand, this is a useful description of law and criticism as they coexist within the secular culture Taylor describes. Absent any shared external frame of reference, we are compelled to work out "what kind of culture we hope

to have.” On the other hand, this description strikes me as overly cheerful because it brackets out the agonizing gap between political reality and the external ideals of justice held by so many. Many are motivated not only by what kind of culture we want to be, but also what kind of culture we should be. Cultural criticism of the law must look, then, to the various transcendent horizons against which citizens measure our culture if it is to attend accurately to the imaginative and affective conditions constructed by the law.

One of these affective conditions, I submit, is the terror represented by *Samson*. Like Milton’s Samson, we are required to make legal and political decisions that we hope give expression to higher ideals. But our decisions are inherently risky because they are made in the epistemological darkness of our own embodied condition. Moreover, we belong to a political community in which the reasoning and the motivations of other actors are as opaque to us as Samson’s are to readers of the play. We are embarked on a political project with people whom we may not be able to persuade and whose own worldview we may find impossibly perplexing. Recognizing the terror this situation creates is not pessimistic or skeptical. Rather, it emphasizes the enormous stakes involved in our social, political and legal conversations. In so doing it underscores the importance and worthiness of the task.



# THE FIRST PART of the Institutes of the LAWES of England.

CHAP. I. Fee simple. Sect. 1.



The true portraiture of Judge Littleton the famous English Lawyer

**E**nant en fee simple est celui que ad fees ou tenements a tener a luy et a les heires a tous iours. Et est appelle Latin, Feodum simplex, quia feodum idem est quod hereditas, & simplex idem est quod legitimum vel purum, & sic feodum simplex idem est quod hereditas legitima, vel hereditas pura. Car si hōe voille purchaser terres ou tenements en fee simple, il contient de a-uer ceuz parols en son purchase, Auer et tener a luy et a les hēs: Car ceuz parols (les heires) font testate denheritance. Car sy hōe

**E**nant in Fee simple is hec which hath Lands or Tenements to hold to him and his heires for ever. And it is called in Latine, *Feodum simplex*, for *Feodum* is the same that Inheritance is, and *Simplex* is as much to say, as lawfull or pure. And so *Feodum simplex* signifies a lawfull or pure Inheritance. For if a man would purchase lands or tenements in fee simple, he behooveth him to haue these words in his purchase, To haue and to hold to him and to his Heyres; for these words (his Heyres) make the Estate of the Inheritance. For if a man pur-

**E**nant. In the fine Te-nens, is derived of the verbe Tenere, and hath in the late fine significations. The first is for the estate of the Land as when the Tenant in a piece of land, quod non tenet, & this is as much as to say, That he hath no title of the freehold of the Land in question. And in this sense both our authors take it in this place wherefore he saith Tenant in fee simple to be which he hath title to hold to him & his heires. The second is the Tenure of the service whereby the lands & tenements were holden, and in this sense it is said in the title of right, que dicitur tenere de re p. liberum tenementum, &c. And in this signification he is called a Tenant or holder, because all the lands & tenements in England in the hands of subjects, are holden immediately or immediately

Vile Scd. 25.

2.H.7.11. 18.E. 1.15.  
24.H.5.46. 44.H.13.  
24.E.39.

2

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Figure 2.1 Coke Image 1



## OF PROPORTION. LIB. II. 71

away and so often returne agayne, as their tunes are neuer lost, nor out of the eare, one couple supplying another so nye and so suddenly, and this is the most vulgar proportion of distance or situation, such as vsed *Chaucer* in his *Canterbury tales*, and *Gower* in all his workes.

Second distance is, when ye passe ouer one verse, and ioyne the first and the third, and so continue on till an other like distance fall in, and this is also vsuall and common, as

Third distance is, when your rime falleth vpon the first and fourth verse ouerleaping two, this maner is not so common but pleasant and allowable inough.

In which case the two verses ye leaue out are ready to receiue their concord by the same distaunce or any other ye like better. The fourth distaunce is by ouerskipping three verses and lighting vpon the fift, this maner is rare and more artificiall then popular, vnlesse it be in some speciall case, as when the meetres be so little and short as they make no shew of any great delay before they returne, ye shall haue example of both.

And these ten litle meeters make but one *Exanmeter* at length.

There be larger distances also, as when the first concord falleth vpon the sixt verse, & is very pleasant if they be ioyned with other distances not so large, as

There be also, of the seuenth, eight, tenth, and twelfth distance, but then they may not go thicke, but two or three such distāces serue to proportiō a whole song, and all betweene mult be of other lesse distances, and these wide distaunces serue for coupling of staues, or for to declare high and passionate or graue matter, and also for art: *Petrarch* hath giuen vs examples hereof in his *Canzon*, and we by lines of sundry lengths & and distances as followeth,

And all that can be obiected against this wide distance is to say that the eare by loosing his concord is not satisfied. So is in deede the rude and popular eare but not the learned, and therefore the

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Figure 3.1 Puttenham Image 1 (1589 Version)

## 72 OF PROPORTION LIB. II.

Poet must know to whose care he maketh his rime, and accomodate himselfe thereto, and not giue such musicke to the rude and barbarous, as he would to the learned and delicate care.

There is another sort of proportion vsed by *Petrarche* called the *Seizino*, not riming as other songs do, but by chusing fixe wordes out of which all the whole dittie is made, euery of those fixe commencing and ending his verse by course, which restraint to make the dittie sensible will try the makers cunning, as thus.

Besides all this there is in *Situation* of the concords two other points, one that it go by plaine and cleere compasse not intangled: another by enterweauing one with another by knots, or as it were by band, which is more or lesse busie and curious, all as the maker will double or redouble his rime or concords, and set his distances farre or nigh, of all which I will giue you ocular examples, as thus.

Concord in

Plaine compasse  Entertangle. 

And first in a *Quadreine* there are but two proportions,   for foure verses in this last sort coupled,  are but two *Disticks*, and not a staffe *quadreine* or of foure.

The staffe of fise hath seuen proportions as,

      

whereof some of them be harsher and vnpleasaunter to the eare then other some be.

The *Sixaine* or staffe of fixe hath ten proportions, whereof some be vsuall, some not vsuall, and not so sweet one as another.

        

The staffe of seuen verses hath seuen proportions, whereof one onely is the vsuall of our vulgar, and kept by our old Poets *Chaucer* and other in their historicall reports and other ditties: as in the last part of them that follow next.

      

The

Figure 3.2 Puttenham Image 2 (1589 Version)

## Appendix 1

### Notes on Historic Christian Theories of Atonement

Christian theories of the atonement are theological attempts to make sense of one of the central Christian claims, namely that the death of Christ made peace between God and his human creation. More specifically, the penal oriented “satisfaction theories” that concern us here attempt to offer some explanation of what Robert Mackintosh calls the “moral necessity of atonement.” That is, they not only try to explain how the death of Jesus could atone for the sins of the world, but also why atonement is necessary at all. In this respect, satisfaction theories conflict with moral-influence theories of the atonement, which argue that Christ’s death does not pay for or expiate human sins, but rather that it saves by encouraging humans to emulate Christ in self-sacrificial love. Debora Shuger explains that for Socinus, a sixteenth century proponent of moral-influence theory, “Christ did not die for our sins, nor did his death procure divine forgiveness. Rather, the Crucifixion demonstrates God’s power and love, while Christ’s patient and faithful suffering on the cross provides a good exemplum, designed to inspire people to act virtuously and hence deserve forgiveness” (58). For Socinus, God does not need to receive some payment in order to forgive – he is free to forgive as he sees fit. Mackintosh describes the weakness of this type of theory, arguing that, because “they are unable to indicate any necessity for Christ’s dying [ . . . ] they appear to be suicidal theories. [ . . . ] [They] fail to observe that the ‘subjective’ impressiveness of suffering and dying ‘for others’ disappears if death and if suffering were needless”(17). In other words, Christ’s death is emptied of its content as a moral exemplum if he did not need to suffer and die.

In contrast, satisfaction theories use concepts from the law to account for the necessity of Christ's death.<sup>77</sup> Anselm argues that sin was an affront to God in his position as Lord of the universe. Drawing on concepts from feudal law, he argues that sinners owed an outstanding debt to him as an "injured party or creditor." Because sinners cannot pay God back and because Christ, being sinless, did not owe anything to God, he was able to pay the debt on behalf of humanity (Shuger 57). Colin Gunton argues that, contrary to the unattractive face of the theory in which Christ is paying back a debt to an anthropomorphic, offended God, the theory is actually concerned to preserve the moral order of the universe. God is required to punish sin because to leave it unpunished would undermine the order and beauty of the universe (Gunton 95). Socinus attacked Anselm's by then influential theory in the sixteenth century, arguing that feudal lords were free to forgive offenses against them without receiving some form of compensation. Lords, he argued, were free to be merciful. In response, the famous early seventeenth century jurist Hugo Grotius argued that God was not to be understood as a private feudal lord, but rather as the overseer of a public system of law. Like Anselm, who utilizes the concepts of the feudalism that surrounded him, Grotius here follows the common Renaissance practice of using Roman law to explore other intellectual territory. Grotius claims that, as a public figure, God cannot forgive criminal offenses without sacrificing the justice of the whole realm:

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<sup>77</sup> Two older types of theories deserve mention here. One of the oldest theories, sometimes called "Christus Victor," argues that Christ does battle with the forces of evil that have ensnared humankind since the Fall. By taking on death/Satan and coming out the winner, Christ achieves salvation. Colin Gunton calls this the "classic" theory (Gunton, Chapter 2). Another ancient theory, the ransom theory, holds that Satan held rights over humankind but that God tricked Satan into accepting the death of Christ as a substitute payment. Because death could not hold Christ, who was then raised, Satan loses his claim and is shown to have made a foolish bargain. It is in reaction to the perceived weaknesses of the ransom theory that Anselm develops his satisfaction theory (Gunton 87-88).

Laws of property and debt are based on a relation of a thing to a person; criminal law, however, on the relation of one thing to another, namely the adequation of the punishment to the offense in a way agreeable to public order and the common good. Hence it is simply untrue . . . that the state commit no injustice if it pardons an offender . . . Part of the justice of a ruler is to preserve even positive laws and ones he has promulgated. (qtd. in Shuger 59)

If God cannot forgive without violating justice, how can there be any atonement? Grotius answers this problem by borrowing another concept from Roman law, that of the *minatory exemplum*. According to this, Christ serves as a substitute who demonstrates that the law takes crime seriously. God can thus “relax” the “universal sentence of death” hanging over sinful humanity without undermining the justice of the cosmos (Shuger 57-65).

While Christian thinkers used the law as a tool to debate the meaning of Christ’s death, these legal theories were not always mutually exclusive of other types of theories. Gunton, a late-twentieth century Christian theologian, argues that the theories are best understood as metaphors that explain parts of a deeper truth, and he shows, for example, how Anselm used the language of the *Christus Victor* theory to supplement his satisfaction theory. However, Mackintosh criticizes the Reformation period that immediately preceded Donne for taking satisfaction theories too literally: “Symbolically [the theory of penal satisfaction] must correspond to great truths. But it comes forward not as a symbol but as fact, as gnosis” (160). By offering a satisfaction theory as an account of things as they are, thinkers of the Reformation period, according to Mackintosh, emphasize the justice of God over all else. The relationship between God

and humanity becomes a primarily juridical one: “And yet, in logic, this is what [satisfaction theory] comes to; that God is essentially just – according to the principles of penal law – and accidentally or contingently loving, gracious, redemptive. Catholicism had hinted at this; the older Protestantism embarked upon definitions which could have no other outcome than the naked assertion itself” (152). Indeed, the Lutheran version of “forensic justification” split off the legal verdict in favor of the sinner from the larger process of spiritual regeneration. In this, Melancthon (Luther’s successor) breaks with the Augustinian tradition, which saw justification as the process by which the sinner was both forgiven and regenerated (McGrath 84). By splitting up justification (the judicial declaration of forgiveness) and sanctification (the process of becoming holy), Melancthon isolates and foregrounds the judicial scene. The relationship to Christ and the Father occurs in the courtroom, separated off from the ongoing relationship to the Holy Spirit, who is generally seen as the agent of sanctification.

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