

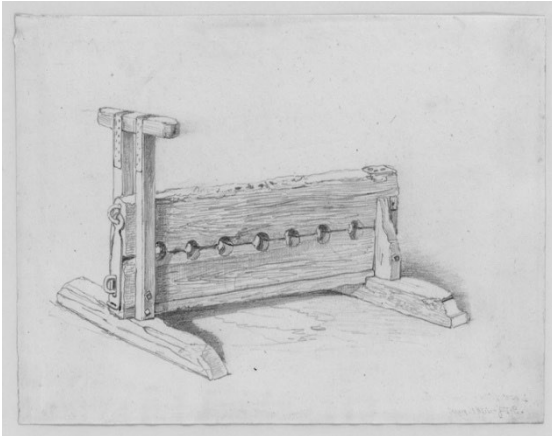
KING LEAR AND THE VIOLENCE OF THE LAW

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“Law depends on violence and uses it as a counterpunch to the allegedly more lethal and destructive violence situated just beyond law’s boundaries. But the violence on which law depends always threatens the values for which law stands.”

–Austin Sarat¹

I. INTRODUCTION



The stocks at Stratford upon Avon, John Thomas Blight, 1864 (Folger ART Vol. d75 no.19b). Photo by the author.

In the second act of *King Lear*, Kent sits confined in a set of public stocks for 142 lines, or approximately eleven minutes of stage time.² It is the only one of Shakespeare’s plays that stages a stocking,³ although stocks and pillories were ubiquitous throughout early modern London as instruments of public shame and pain.⁴ Kent is

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1. AUSTIN SARAT, LAW, VIOLENCE, AND THE POSSIBILITY OF JUSTICE 3 (2001).

2. WILLIAM SHAKESPEARE, KING LEAR act 2, sc. 2, ll. 1225–1405 (Folio).

3. See, e.g., *id.* at ll. 1212–17.

4. In fact, if these “Instruments of Justice” were neglected, or if a town’s “Pillory, Stocks, Cucking-stool, and Common-Pound [fall out of] ... of good reparations,” the township would be amerced a penalty: WILLIAM SHEPPARD, THE COURT-KEEPERS GUIDE: OR, A PLAIN AND FAMILIAR TREATISE, NEEDFUL AND USEFUL FOR THE HELP OF MANY THAT ARE EMPLOYED IN THE KEEPING OF LAW DAYES, OR COURTS BARON, ETC. 50–51 (London, James Flesher, for Mercy Meighen and Gabriel Bedel and Thomas Collins 1649) [hereinafter SHEPPARD, THE COURT-KEEPERS GUIDE]. Sheppard, a Sergeant-at-Law from the Middle Temple, published nineteen books on law in the mid-seventeenth century with most of the books being practical rather than theoretical. In this Essay,

stocked for an entire day and a night: a grossly disproportionate punishment for his offense, a public argument, which was considered a minor transgression in seventeenth-century England.⁵ Kent sits stocked on the stage while at least nine characters enter and exit, characters who alternatively mock, lament, empathize, or rant at his punishment.⁶ He reads a fragment of a letter out loud, then falls asleep awkwardly, his legs pinioned by the ankles.⁷ Edgar enters and ponders his own degradation as a falsely-accused son: a fugitive of the law, he vows to “take the basest and most poorest shape” of a “man / Brought near to beast.”⁸ Perhaps the background staging of Kent in the stocks quickened the audience’s imagination here, he is another person “brought near to beast,” shackled and abandoned in a public square overnight.⁹

And still the stocking continued. Around dawn, Lear and his company arrived, outraged at seeing Kent in the stocks demanding that Cornwall justify the stocking. Yet throughout all this staged activity, Kent sat restrained in a wooden holding device—subjected not to *extralegal* violence, but to the violence of the law.¹⁰ It was an absurdly long sentence, as this Article will demonstrate, although one that discretionary powers in Shakespeare’s England had the authority to inflict.¹¹ Thus, I will argue, the disproportionate length of Kent’s stocking, the visual staging of his humiliation, and Lear’s impotent outrage at seeing his servant in the stocks all point to a central theme: arbitrary and capricious power is often wielded disproportionately against vulnerable people.

I draw heavily on Sheppard’s *THE OFFICES AND DUTIES OF CONSTABLES, BORSHOLDERS, TYTHING-MEN . . . AND OTHER LAY-MINISTERS. WHEREUNTO ARE ADJOYNTED THE SEVERALL OFFICES OF CHURCH-MINISTERS AND CHURCH-WARDENS* (London, Richard Hodkinsonne with permission of the Assignes of John Moore, Esq. for William Cooke and Phillip Nevill 1641) [hereinafter SHEPPARD, *THE OFFICES AND DUTIES*] to illustrate the discretionary powers of the constables, or the lay-police force. *Offices and Duties* is a guide for lay-officers and serves as a compact guidebook outlining their basic obligations: “In the setting downe of which things also,” Sheppard writes in the opening “Epistle,” “you shall finde the effect of many of the penall Statutes now in force, and of most common use, tings needfull to be knowne of them that have not money to buy, or leisure to reade the books at large. All which, as I intend, so I hope it will prove to the weale publike, and common good of my Countrie . . .” *Id.* at a4r. Sheppard urges those in office to “have this Book alwayes in his pocket.” *Id.* at a4v. It was revised and reprinted in 1652 and 1657, each with a different “Epistle” but with essentially the same content. My thanks to the Newberry Library for allowing me to study Sheppard’s books.

5. See SHAKESPEARE, *supra* note 2, at act 2, sc. 2, ll. 1225–1229; *Attitudes to punishment – WJEC*, BBC, <https://www.bbc.co.uk/bitesize/guides/z8bd3k7/revision/1> (last visited Mar. 2, 2025).

6. SHAKESPEARE, *supra* note 2, at act 2, sc. 2, l. 1225–1405.

7. *Id.* at ll. 1237–51.

8. *Id.* at ll. 1258–60. Except where indicated, quotations are from the Folio (F) text. Textual variations from *THE HISTORY OF KING LEAR* in the same Norton edition are cited as the first quarto (Q).

9. *Id.* at l. 1260.

10. See *id.* at ll. 1377–95.

11. See generally *id.*

Far from illuminating the more noble aspects of law—such as upholding a duty of care or safeguarding personal and property boundaries—law as enacted in *King Lear* is almost solely an unprincipled means of imposing pain and displaying power. In fact, the characters who strive to protect others and uphold order are the most targeted: Kent is exiled for defending Cordelia, Gloucester is tortured for sheltering Lear, Cordelia is hanged for her loyalty to her father, and Kent is stocked for his loyalty to the old King. More specifically, then, I am suggesting that *King Lear* exposes how discretionary power and the law's violence undermine the very purposes of law to protect liberties and rights, to establish boundaries, and to maintain order. Of course, *King Lear* enacts many other forms of human suffering: families pitted against themselves, sibling rivalry, mental illness, homelessness, and existential dread. But I illuminate how much of the play's tragedy is evoked by the paradoxical truth about the law: that while the law purports to protect people from violence, it often enacts disproportionate violence in the process. Austin Sarat's epigraph above encapsulates this paradox: "the violence on which law depends always threatens the values for which law stands."¹²

In the following three sections, I, therefore, read *King Lear* through the lens of discretionary power and legal violence. First, I contextualize Kent's stocking within the historical perspective of early modern shame-and-pain punishments, demonstrating that the length and circumstances of Kent's stocking would have been disproportionate to a Renaissance audience. Then, I focus the scene as metonymic for the play's depiction of legal violence more broadly: a distinct form of violence that deepens to the play's pervasive mood of injustice, arbitrary and capricious power, chaos, and fatalism. Finally, I situate *King Lear* within the philosophical framework of the law's violence and point out the ways in which legal violence disrupts a society—the kind of social instability that the United States experiences when cell phone footage of police violence streams on social media and imprints itself on our consciences, or when photographs of prison conditions are leaked to the public press.

II. ENGLISH STOCKING HISTORY

The following court record samplings are but a few of the thousands that exist about stocking and pillory sentences from the thirteenth through the seventeenth centuries.¹³ Through the records, we can gain a sense of both how stocking was used to publicly shame

12. SARAT, *supra* note 1, at 3.

13. See Steven A. Hatfield, *Criminal Punishment in America: From the Colonial to the Modern Era*, 1 USAFA J. LEG. STUD. 139, 145–46 (1990) (explaining that, while stocks and pillory are seemingly used interchangeably in court records, stocks secure the victim's hands and feet while the pillory secures the head and hands, and this punishment was often followed by other woundings, such as ear and nose slitting).

people for misdemeanors, as well as the relative brevity of typical stockings:

Alice, wife of Robert de Caustone, appeared before . . . the Mayor[] and the Aldermen, and before them acknowledged that she had sold ale in a measure called a “quart,” that was not sealed; and also, that in the same measure there was put *picche* [pitch], one inch and a half in depth . . . And for the falsehood and deceit aforesaid, it was adjudged by the Mayor and Aldermen, that the said Alice should undergo the punishment of the pillory . . . And the same false measure was divided into two equal parts; one of which was tied to the pillory.¹⁴

Which John Rykone, being interrogated as to the matters aforesaid, openly, expressly, and of his own free will, confessed that he had caused to be made, and had forged, the said false bond, of his own falsity and deceit, in manner and form aforesaid. And to the end that others might beware of the like falsity and deceit, it was adjudged by the said Mayor and Aldermen, that the said John Rykone should be put upon the pillory for three days, there to remain for one hour each day, the said false obligation being in the meantime fastened and tied to his neck.¹⁵

Record that Anne Hall late of London spinster, on being found ‘Guilty’ of stealing a child, was sentenced to be whipped att a cartes tayle through the streetes to the place from whence she stole the childe, and there to sitt in the stockes with a paper on her head shewing her offence, and from thence to be broughte backe agayne to Newgate there to remayne until she put in sureties for her good behaviour.¹⁶

*William Broome . . . New Palace Yard, at Westminster, during the Space of Two whole Hours; viz. from Eleven of the Clock in the Forenoon until One of the Clock, with a Paper set upon the Pillory, containing, in capital Letters his Offence; viz. “For forging Warrants, and counterfeiting Hands to Bills of Exchange; whereby he, with others, hath procured Three thousand Pounds to be paid to them, out of the publick Treasuries in the City of London, and several Counties.”*¹⁷

14. HENRY T. RILEY, MEMORIALS OF LONDON AND LONDON LIFE IN THE 13TH, 14TH AND 15TH CENTURIES 319 (London, Longmans, Green, & Co. 1868).

15. *Id.* at 582.

16. 2 MIDDLESEX COUNTY RECORD SOCIETY, *Middlesex Sessions Rolls: 1611*, in MIDDLESEX COUNTY RECORDS 1603-25, 70-78 (Greater London Council ed., 1974) (1611).

17. 6 HOUSE OF COMMONS JOURNAL, in JOURNAL OF THE HOUSE OF COMMONS 1648-1651 390-91 (London, His Majesty’s Stationery Office 1802).

Alice Caustone was pilloried for dishonest trading.¹⁸ John Rykone stood in the pillory for one hour, on three subsequent days, for forging a false bond.¹⁹ Anne Hall was whipped, stocked, then sent to Newgate for stealing a child.²⁰ William Broome was pilloried for “[t]wo whole [h]ours” for forging warrants and defrauding the treasury of three thousand pounds.²¹ In these cases, the court records demonstrate that stocking was a form of public deterrence punishment for relatively serious offenses.

While physically uncomfortable, the stocks derive most of their punitive force from the distinct “theatricality” that Sarah Covington argues “functioned as a projection of the state’s unified power,” amounting to “street performances,” both “comic and pathetic.”²² People in the stocks and the pillory became deliberate public spectacles. It was a degrading experience, not only because of the incapacitation, but also because the person’s fellow townspeople sometimes acted as spontaneous agents of the state who heckled, mocked, and even threw spoiled food, offal, dead cats, or bricks at the stocked or pilloried person.²³ The stocks were also commonplace. By law reaching back to 1405, towns were fined 100 shillings if they lacked stocks or pillories, or even if the “engines” were in poor repair.²⁴

And yet Kent’s stocking is noteworthy, even beyond it being the sole staging of stocks in any of Shakespeare’s plays: First, Kent is stocked for at least six times the average length of a pillory or stocking sentence in the period. A typical early modern stocking lasted about one to three hours, sometimes repeated on two or three subsequent days during the busiest hour of the market day.²⁵ Paul Griffiths’ exhaustive research of petty crime penalties in Norwich from 1540–1700 revealed that “six hours is the longest recorded stretch” for a stocking or pillory sentence.²⁶ So rarely was someone left in the

18. Riley, *supra* note 14, at 319.

19. *Id.* at 582.

20. See MIDDLESEX COUNTY RECORD SOCIETY, *supra* note 16, at 70–78.

21. HOUSE OF COMMONS JOURNAL, *supra* note 17, at 390–91.

22. SARAH COVINGTON, *Cutting, Branding, Whipping, Burning: The Performance of Judicial Wounding in Early Modern England*, in STAGING PAIN, 1580–1800: VIOLENCE AND TRAUMA IN BRITISH THEATER 93, 98–99 (James R. Allard & Matthew R. Martin eds., 2009).

23. See generally Seth Lerer, “Representyd Now in Yower Syght”: *The Culture of Spectatorship in Late-Fifteenth-Century England*, in BODIES AND DISCIPLINES: INTERSECTIONS OF LITERATURE AND HISTORY IN FIFTEENTH-CENTURY ENGLAND 29, 34 (1996).

24. 2 DANBY PICKERING, THE STATUTES AT LARGE, FROM THE FIFTEENTH YEAR OF KING EDWARD III. TO THE THIRTEENTH YEAR OF KING HEN. IV. INCLUSIVE 473 (Cambridge, Joseph Bentham, Printer to the University; for Charles Bathurst, at the Cross-Keys, opposite St. Dunstan’s Church in Fleet-Street, London 1762).

25. See Paul Griffiths, *Bodies and Souls in Norwich: Punishing Petty Crime, 1540–1700*, in PENAL PRACTICE AND CULTURE, 1500–1900 85, 91–93, 97 (Simon Devereaux & Paul Griffiths eds., 2004).

26. *Id.* at 97. Griffiths notes that the “longest noted spell for a woman was two hours” and qualifies his findings by pointing out that “[t]he amount of time spent sitting in the stocks is not often noted, though the little material that survives reveals patterns.” *Id.* I will point out the constables’ discretionary powers to stock people overnight later in the article. One other

stocks overnight that in 1559, John Hadles petitioned Queen Elizabeth, claiming he had been stocked overnight.²⁷ Thus, Cornwall's decree at "dawning" that Kent "shall . . . sit till noon," was already disproportionate, and Regan's "Till noon? *till night, my Lord, and all night too*" would have seemed a glut of punishment, as Kent and Gloucester themselves perceived it.²⁸ And yet as I will discuss below, stocking—unlike felony sentences such as the gallows or jail time—was one of the discretionary punishments that constables could mete out, "off the books," with limited oversight and limited court records.²⁹ No wonder it was subject to abuse. Shakespeare seems to mine the special terror of what we would call "abusive policing" in Kent's protracted stocking: terrible because its violence has been sanctioned by law.

A. Early Modern Shame-and-Pain Punishments

Shaming punishments, such as stocking, cutting or shaving hair, slitting the nose or ears, parading through market areas with signs proclaiming their offenses, "combined shame and pain in varying proportions" and were typically prerogative court sentences against those convicted of crimes that—while not deemed felonies—were

exception to six hours being the longest stocking stretch lies in a harvest-time statute regarding vagrants. In multiple policy manuals for both Justices of the Peace and constables, the law stipulates that any officer of the law "may and must in the time of Hay or Corn Harvest . . . and for the avoiding of the losse of Corn, Grain, and Hay, cause all such [vagrants who are not working] as he shall see meet to labour, to serve by the day for mowing, or otherwise getting in of the [crops]." SHEPPARD, *THE OFFICES AND DUTIES*, *supra* note 4, at 112. If they refuse to work, the officer may "put him in the Stocks by the space of two days and one night: And this if the officer shall neglect to doe, he shall forfeit 40s." *Id.* This statute is also repeated in WILLIAM LAMBARDE, *THE DVITIES OF CONSTABLES, BORSHOLDERS, TYTHINGMEN, AND SUCH OTHER LOWE MINISTER OF THE PEACE WHEREVNTO BE ALSO ADIONED THE SEUERALL OFFICES OF CHURCH-WARDENS, OF SURUEIORS FOR AMENDING THE HIGH WAIES, OF DISTRIBUTORS OF THE PROUISION FOR NOISOME FOULE AND UERMINE, OF THE COLLECTORS, OUERSEERS, AND GOVERNORS OF THE POORE, AND OF THE WARDENS AND COLLECTOR FOR THE HOUSES OF CORRECTION* 35–36 (London, Roger VVarde 1582); MICHAEL DALTON, *THE COUNTRY JUSTICE, CONTAINING THE PRACTICE OF THE JUSTICES OF THE PEACE OUT OF THEIR SESSIONS* 78 (London, Company of Stationers 1635). An earlier manual by ANTHONY FITZHERBERT, *IN THIS BOOKE IS CONTAINED THE OFFICE OF SHIRIFFES, BAYLIFFES OF LIBERTIES, ESCHEATOURS, CONSTABLES, AND CORONERS, AND SHEWETH WHAT EUERY[O]NE OF THE[M] MAY DO BY VERTUE OF THEYR OFFICES DRAWEN OUT OF BOOKES OF THE COMMON LAWE AND OF THE STATUTES* (London, London in Fleetestrete nere to Saynct Dunstons Church by Thomas Marshe 1538) stipulates that all "vagaboundes, idle people & suspecte persons liuvng suspiciously" can be set in the stocks overnight. As far as I have traced, we do not have any official records of these overnight stockings. But if they did exist, then Lear's servant is being treated as a vagabond or rogue.

27. Likewise in 1280, when Alan Panyt claimed that Hugh of Dennington (the King's bailiff) stocked him overnight. Hugh denied it. No remedy or resolution is noted. 'Original Documents: Edward I Parliaments, C49 69', in *Parliament Rolls of Medieval England*, ed., Chris Given-Wilson, Paul Brand, Seymour Phillips, Mark Ormrod, Geoffrey Martin, Anne Curry and Rosemary Horrox (Woodbridge, 2005), *British History Online* <http://www.british-history.ac.uk/no-series/parliament-rolls-medieval/c49-69>.

28. SHAKESPEARE, *supra* note 2, at act 2, sc.2, ll. 1213–14 (emphasis added).

29. See Sarah Higinbotham, *Early Modern Legal Violence: For the Common Good?*, FOLGER SHAKESPEARE LIBR.: THE COAL. (Oct. 26, 2017), <https://collation.folger.edu/2017/10/early-modern-legal-violence>.

still offenses that arguably weakened communities: women discovered abandoning their children, prostitution, every form of fraudulent trade, hunting violations, and domestic abuse.³⁰ If conduct was seen to impede honest citizens from interacting productively with other honest citizens, it was often subjected to the distinctly public shame of whipping, the stocks, or the pillory.

Shame penalties usually required offenders to wear placards to be worn announcing the crime, or else to be forced to bang pots or make verbal “proclamations” detailing their offense, or to wear overt visual representations of their crimes.³¹ Those who sold rotten bacon, for example, would have putrid bacon tied around their neck while standing in the stocks, with an additional placard that read “ffor puttying to sale of mesell and stynkng bacon.”³² Alice, in the first court record above, stood in the pillory holding her falsified ale quart measure as evidence against her, which had been thickened with pitch at the bottom to reduce the amount of ale she was selling.³³ Such placards and proclamations demonstrate that the penalties had a strongly deterrence-oriented function, especially when literacy was low.³⁴ By drawing the citizenry into the punishment, as witnesses and participants in the offender’s shame, the stocks functioned as a socially-normalizing punishment.³⁵

B. Justice of the Peace and Constables’ Handbooks

Much of the information we have about how the stocks and pillory functioned in early modern England comes from the courts’ archival records, scattered proceedings from London and English parishes that survived centuries of flooding, fire, and other damage.³⁶ Such records are sufficient to convey a partial understanding of crim-

30. See K.J. Kesselring, *Law Status, and the Lash: Judicial Whipping in Early Modern England*, 60 J. OF BRIT. STUD. 511, 513 (2021); see also James Sharpe, *Law Enforcement and the Local Community*, in THE OXFORD HANDBOOK OF ENGLISH LAW AND LITERATURE, 1500-1700 200, 221–235 (Lorna Hutson ed., 2017); see also Covington, *supra* note 22, at 93–99.

31. See Martin Ingram, *Bodies and Souls in Norwich: Punishing Petty Crime, 1540-1700*, in PENAL PRACTICE AND CULTURE, 1500-1900 36, 41–42 (Simon Devereaux & Paul Griffiths eds., 2004).

32. In many instances, the victims of crimes were further harmed by the punishments of their offenders. In one case, a man was flogged and pilloried for severely beating his young son. While locked in the pillory, “the boy was exhibited naked by him upon the said pillorye that the people may evidently see & behold the crueltye . . .” *Id.* at 42, 57 (arguing, therefore, that such blatant disregard of the victim’s needs demonstrates how shame-and-pain punishments seemed to be far more about deterrence and social control than about righting wrongs).

33. RILEY, *supra* note 14, at 319.

34. See Ingram, *supra* note 31, at 37, 58; Tyrel C. Eskelson, *States, Institutions, and Literacy Rates in Early-Modern Western Europe* 10 J. EDUC. & LEARNING 109 (2021).

35. See Ingram, *supra* note 31, at 48–49.

36. See James Masschaele, *The Public Space of the Marketplace in Medieval England* 77 SPECULUM 383, 400, 402–05, 407–10 (2002); see also Jay Tidmarsh, *The English Fire Courts and the American Right to Civil Jury Trial*, 83 UNIV. CHI. L. REV. 1893, 1905, 1907 (2016).

inal punishments. Another primary source for understanding how local crime was punished is the many existing handbooks published for Justices of the Peace. These local Justices of the Peace—volunteer citizens, untrained in law—relied on pocket manuals to administer parish justice deemed too minor for the quarter sessions.³⁷ In a heavily-annotated 1641 edition of *A Manuell, or A Justice of Peace his Vademecum* that I examined at the Folger Shakespeare Library, the stocks feature as one of the Justice's means to enact retribution, deterrence, or incapacitation:

“Such as swear” punished with a choice between “Twelve pence to be levied, &c. or to sit in the stocks three howers.”³⁸

“Servants and workman of Dyers” who “use any Logwood [a natural dye that was outlawed] to be “set on the Pillory, and fined twenty pound”³⁹

“[S]uch as shall get into their hands any [money . . . by colour of any false tokens” “upon conviction he is to be set upon the pillory, or have any other corporall pain except death.”⁴⁰

Several important patterns emerge from these handbooks. First, as mentioned above, when a duration for the stocks or pillory is stipulated, overwhelmingly it is between one and three hours, sometimes repeated over several days.⁴¹

Second, the stocks are often used when a fine cannot be paid (“twelve pence” “or to sit in the stocks”).⁴² So when possible, one could choose to pay the fine and avoid the public humiliation of the stocks. While James Sharpe notes that “it may be a little hyperbolic to talk of a ‘criminalization of the poor’ in this period, . . . something very like this process was taking place.”⁴³ The inverse is also true: such alternative sentences allow the wealthy to avoid criminalization; if one can pay the fine, one avoids public denunciation as a criminal.

Third, while the Justice of the Peace records and handbooks inform an official understanding of how the stocks were used in early modern England, they also reveal that the stocks and pillory functioned as loosely-regulated instruments for lower lay officers of the law.⁴⁴ Parish constables—the untrained, locally-appointed, unpaid men who policed their parishes, serving one-year terms—could use

37. See Larry M. Boyer, *The Justice of the Peace in England and America from 1506 to 1706: A Bibliographic History*, 34 Q. J. LIBR. CONGR. 315, 316 (1977).

38. A MANUELL, OR A JUSTICE OF PEACE HIS VADE-MECUM 11 (London, Printed by Roger Daniel, Printer to the University of Cambridge 1641).

39. *Id.* at 26.

40. *Id.* at 47.

41. Griffiths, *supra* note 25, at 97.

42. A MANUELL, OR A JUSTICE OF PEACE HIS VADE-MECUM, *supra* note 38, at 11.

43. James Sharpe, *supra* note 30, at 221, 229.

44. See Boyer, *supra* note 37, at 316.

the stocks as informal, off-the-books, immediate punishments, without going through the Justice of the Peace.⁴⁵

Studying these constables' handbooks (such as the one pictured here) demonstrates how stocks were used as impromptu, public holding cells at the will of the arresting officer. Imagine if contemporary police officers could, instead of taking people to jail for due process, simply handcuff the person to a bicycle rack on a public street and leave them there for a period of time. Just such a scenario reveals itself in the early modern constable handbooks.

English barristers like William Sheppard (1595–1674), Michael Dalton (1564–1644), and William Lambarde (1536–1601) wrote or edited dozens of versions of these handbooks, and the handbooks went through many editions.⁴⁶ The books were small enough to carry on one's person, and as evident from the marginalia, were an important and oft-used resource for constables.⁴⁷

William Sheppard's 1641 constable manual indicates that the stocks could be used, even without consulting with the High Constable or the Justice of the Peace, "if any person licensed shall . . . sell lesse then one full Ale-quart of the best Beer, or Ale for 1d. and of the small, 2 quarts for 1d. . . . shall forfeit 20s." If he can't pay, "he is by warrant from a Justice of Peace to be made to sit in the stocks foure hours."⁴⁸ Many violations of the Sabbath are outlined (from operating an alehouse, drinking ale, executing a writ, or travelling with a "Boat, Wherry, Lyter, Barge, Horse, Coach, or Sedan") all of which carry a fine from ten shillings to five pounds, and if that cannot be paid, to be set six hours in the Stocks or Cage.⁴⁹ Here again, if the offender cannot pay the fine, they will sit in the stocks.⁵⁰ The manuals also prescribe that the stocks could be used as an impromptu cooling-off period for people "in fury going about to breake the Peace, as by using hot words, or the like, by which an Affray is like to grow," but only after the constable has attempted to break the fight in two attempts, and only if the officer is present and witnesses physical violence.⁵¹

And if the Affraiors shall still proceed [after two warnings],
and goe from words to blowes, the Officer and his Assistants
may by force apprehend the Affraiors, and cause them to

45. See *Enforcing Law and Order – WJEC*, BBC, <https://www.bbc.co.uk/bitesize/guides/z9f4srd/revision/2> (last visited Mar. 21, 2025).

46. See Joan Kent, *The English Village Constable, 1580–1642: The Nature and Dilemmas of the Office*, 20 J. OF BRITISH STUD. 26, 27 n. 1, 39 n. 36 (1981).

47. See Higinbotham, *supra* note 29.

48. See SHEPPARD, THE OFFICES AND DUTIES, *supra* note 4, at 130–31.

49. *Id.* at ch. 2, sec. 3.

50. *Id.*

51. *Id.* at 72.

render themselves, and put them in the Stocks, or in some other Prison, or place until the heate be past.⁵²

This last example seems particularly relevant to *King Lear*: Kent's and Oswald's quarrel was escalating, Kent had drawn his sword, and Oswald had called hue and cry.⁵³ "Weapons? Arms?"⁵⁴ Gloucester asks, "What's the matter?"⁵⁵ Cornwall enters and demands "Keepe peace upon your lives. . . [.]"⁵⁶ Given the lengthy section in the constables' manual on how to *address* public fighting, Shakespeare's audience would likely have seen similar developments, perhaps with constables interceding.

Perhaps, because such intercession depended on an appraisal of the constables' authority, as a long section concerning "Breach of the Peace" notes:

The authority and duty of all these Officers . . . by the Common Law, consisteth much about the Peace of the Kingdom: and herein in three things. First, in foreseeing, that nothing be done that tendeth either directly, or by means to the breach of the Peace. Secondly, in quieting or pacifying those that are occupied in breach of the Peace: And thirdly, in punishing such as have already broken the Peace . . .⁵⁷

The manual then stipulates that "fighting" is a "Breach of the Peace" and that "for the better preventing of the Breach of the Peace, and that nothing be done against it, any one of those officers may, *ex officio*, and of his owne Authority, by night or day, arrest suspected persons."⁵⁸ In the revised 1651 edition of the same manual, the constable is informed that they may "put the Afrayors apart into the Stocks" "until the heate be past."⁵⁹ All the editions emphasize that the officer cannot correct an "affrayer" if he wasn't present to see the fight.⁶⁰

Two variables, however, sanction the use of violence instead of a straightforward arrest. The first is resistance: "if the Affraiors shall resist, and refuse to obey the Officer in this case, he may beat or

52. *Id.* at 73.

53. See Shakespeare, *supra* note 2, act 2, sc. 2, ll. 1103–16; "[H]ue and cry," by statute reaching back to the thirteenth century, obligated any citizen who witnesses a crime to shout for assistance so the offender can be apprehended Statute of Winchester 1285, 13 Edw. c. 4 (Eng.).

54. SHAKESPEARE, *supra* note 2, at act 2, sc. 2, l. 1122.

55. *Id.*

56. *Id.* at l. 1123.

57. SHEPPARD, *supra* note 4, at ch. 8, sec. 2.

58. *Id.* at 67–68.

59. *Id.* at 64.

60. See *id.* at 76.

wound them, and justify the doing thereof.”⁶¹ Similar statutes granting “use of force” when a suspect is resisting arrest exist for almost every modern police officer, with my own home state of Georgia classifying “resisting arrest” as a separate crime, an action that not only warrants police violence, but is also punishable by not less than one or more than five years in prison.⁶² How credible, though, are officers’ claims of resistance and reasonable force? When are they fabricated or exaggerated in order to justify actions against a suspect? These are perennial questions, ones to which perhaps even Shakespeare alludes in the scene between Kent and Cornwall.

In addition to when “Affraiors shall resist,” the second variable concerns the constable’s own convenience:

Because the officer doth want strength enough to cary him to the Gaol or to the Justice, or because he doth feare a Rescue will be made upon him, or the like, in these cases, the officer may put the party in the Stocks and keep him there for a reasonable time, viz. until the morning, if it be at night, or until he can be conveniently provided for strength and aide to cary him to the prison.⁶³

As with “resisting arrest,” this variable is also rather ambiguous, and all the odds lie in favor of the arresting officer, who could claim he “doth want strength” or that he did “feare a Rescue” as rationale for stocking a suspect. I cannot help but note the utterly vague phrase, “*or the like*” as justification for stocking. And what is a “reasonable time”?

The early modern constable manuals, while by no means records of how people were actually punished, nonetheless provide a sketch of how officers of the law used the stocks.⁶⁴ By any reading of the early modern legal manuals, Kent’s stocking sentence would have been egregious to Shakespeare’s audience, an example of how discretionary power can be wielded arbitrarily against vulnerable people.

As I studied stocking throughout court records, law, and legal manuals, I came to see how Kent embodies some of the public-shaming instruments’ principles—discretionary power and disproportionate punishments. The early modern stocks emerged as one of the liminal areas between how the law is written and how it is enacted. In the next section, I read the scene more closely with the backdrop

61. *Id.* at 73.

62. GA. CODE ANN. § 16-10-24 (2010) (“Obstructing or hindering law enforcement officers.”).

63. SHEPPARD, THE OFFICES AND DUTIES, *supra* note 4, at 171.

64. Higinbotham, *supra* note 29.

of how Shakespeare's audience likely would have viewed such a prolonged stocking punishment, given the evidence from such handbooks.

III. KENT IN THE STOCKS: "WORSE THAN MURDER"

When Lear enters the stage after Kent has slept overnight in the stocks, the King is asking about why Kent did not return: "'Tis strange," Lear says to the Fool and a Gentleman, "that they should so depart from hence / And not send back my messenger,"⁶⁵ Lear's pondering of this "strange" lack of basic civility frames the moment when Lear first sees Kent in the stocks, who greets Lear with "Hail to thee, noble master."⁶⁶ Shakespeare encodes Lear's immediate response with a combination of mocking, indignation, and an immediate awareness of the public disgrace: "Ha? Mak'st thou this shame thy pastime?"⁶⁷ Lear's dual shock and shame are indicated by the initial "Ha?" as an inarticulate expression of surprise,⁶⁸ followed by asking Kent if it has been his own personal agency that had landed him in the instrument.⁶⁹

Kent flatly denies that he is at fault.⁷⁰ What follows creates, I think, a nuanced interlacing of both comedy and terror. The scene is rushing toward catastrophe, and Kent is a sympathetic character—a noble person, as the audience knows, who has sacrificed his social capital on behalf of the impetuous kind—and who has just slept in the stocks all night. But not only is the Fool interjecting with some mocking and sexualized banter,⁷¹ the structure of the conversation between Kent and Lear is also strangely absurd. As I indicated above, the stocks in early modern culture were in fact both comic and pathetic. And, except for *King Lear*, most of Shakespeare's references to stocks are in fact comic.⁷² Stocking is briefly referenced or described off stage in *The Comedy of Errors*, *The Taming of the Shrew*, *The Two Gentlemen of Verona*, *The Merry Wives of Windsor*, and *The Winter's*

65. WILLIAM SHAKESPEARE, *KING LEAR*, act 2, sc. 2, l. 1274–75 (First Quarto) (Michael Best ed., Internet Shakespeare ed. n.d.) (1608). The Folio indicates that Lear is speaking to an unknown "Gentleman," and "messenger" is plural. SHAKESPEARE, *supra* note 2, at act 2, sc. 2, l. 1274–75.

66. SHAKESPEARE, *supra* note 2, at ll. 1274, 1279.

67. *Id.* at l. 1280.

68. *Ha*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/ha>. (last visited Feb. 23, 2025).

69. *See id.*, *supra* note 2, at act. 2, sc. 2, ll. 1286–88 ("What's he, that hath so much thy place mistooke to set thee heere?").

70. *Id.* at l. 1281 ("No, my lord.").

71. *See id.* at ll. 1283–85 ("He wears cruel garters. Horses are tied by the heads, dogs and bears by the neck, monkeys by the loins, and men by the legs. When a man's over-lusty at les, then he wears wooden netherstocks.").

72. Sincere thanks to Georgia State University Professor Emeritus Jim Hirsh for his painstaking and humorous consultation on Shakespeare and the stocks.

Tale.⁷³ The references are all slight and in jest. For example, the servant Launce sings about the suffering he endured as a result of his dog Crab's misbehavior: "I have sat in the stocks for puddings he has stol'n / I have stood in the pillory for geese he hath kill'd."⁷⁴ Richard II and Volumnia, Coriolanus's mother, both offer more serious reflections about stocking's shame, and a cowardly, intolerable character is stocked off stage in *All's Well That End's Well*.⁷⁵ In Shakespeare's other references to the stocks, very little or no sympathy is evoked and the punishment is not enacted on stage.⁷⁶

A. Stocking Citizens, from Comic to Tragic

Kent's stocking is different. With Kent, Shakespeare appropriates the often-comic prop of the stocks but bends the register toward pity and tragedy, deliberately accumulating the tension instead of resolving it. And yet comic elements of the stocking abound: it is Kent's magnificent insult tirade⁷⁷—excerpted now on posters, coffee cups, and t-shirts—that catalyzes the punishment; the Fool interjects random, sexualized banter at Kent,⁷⁸ and then there is the almost absurdist exchange between Lear and Kent:

Lear. What's he that hath so much thy place mistook

To set thee here?

Kent. It is both he and she,

Your son and daughter.

Lear. No.

Kent. Yes.

Lear. No, I say.

Kent. I say yea.

73. See generally WILLIAM SHAKESPEARE, *THE COMEDY OF ERRORS*; WILLIAM SHAKESPEARE, *THE TAMING OF THE SHREW*; WILLIAM SHAKESPEARE, *TWO GENTLEMEN OF VERONA*; WILLIAM SHAKESPEARE, *THE MERRY WIVES OF WINDSOR*; WILLIAM SHAKESPEARE, *THE WINTER'S TALE*.

74. WILLIAM SHAKESPEARE, *TWO GENTLEMEN OF VERONA*, *supra* note 73, at act 4, sc. 4, ll. 31–34.

75. See WILLIAM SHAKESPEARE, *RICHARD II*, act 5, sc. 5, ll. 26–30; WILLIAM SHAKESPEARE, *CORIOLANUS*, act 5, sc. 3, ll. 182–85; WILLIAM SHAKESPEARE, *ALL'S WELL THAT ENDS WELL*, act 4, sc. 3, ll. 104–05.

76. See, e.g., SHAKESPEARE, *THE COMEDY OF ERRORS*, *supra* note 73, at act 3, sc. 1, ll. 91–92; SHAKESPEARE, *THE TAMING OF THE SHREW*, *supra* note 73, at act 1, sc. 1, ll. 1–6.

77. SHAKESPEARE, *supra* note 2, at act 2, sc. 2, ll. 1145–69.

78. See *id.* at ll. 1322–38.

Lear. By Jupiter, I swear no.

Kent. By Juno, I swear ay.

Lear. They durst not do't,

They could not, would not do't. 'Tis worse than murder

To do upon respect such violent outrage.⁷⁹

Until Lear's concluding lines, the scene resists a purely tragic interpretation. Tragedy relies on the accumulation of tension. Laughter diffuses tension. Though we lack definitive historical accounts of how early modern citizens responded to their fellow citizens being mocked and pelted in the stocks, it does not seem unreasonable that Shakespeare is echoing the same tension that people felt in the town squares when they confronted people in the stocks, that of both mocking comedy and empathetic tragedy.

This stichomythic exchange conveys that Lear will not accept what is so obviously visible on the stage, so familiar to Shakespeare's audience: an overt demonstration of the new regime's authority, displayed and confirmed through an act of legal violence. Lear's last few lines sober the scene: "They durst not do't" he says, "They could not, would not do't."⁸⁰ Regan and Cornwall would not have the audacity to shame the King's messenger; they *could* not do it; they *would* not do it. Lear seems to be expressing that Regan and Cornwall couldn't violate such sacred moral norms and limits, i.e., that they "*would* not do't," he also may be questioning their authority to impose such a punishment: they "could not . . . do't."⁸¹ And yet it's authority that he himself handed them.

Kent's incapacitated body confuses and stuns Lear. An exchange that begins with an inarticulate expression of surprise, "Ha?" ends with a seeming exaggeration: "'Tis worse than murder / To do upon respect such violent outrage."⁸² *Worse than murder?* Is such a claim more of the scene's comic threading? It could be played or read that way, but the students I teach inside prison read it differently.

B. Perspective from Inside Prison

"Does Lear overstate the case when he says that Kent's stocking is 'worse than murder'?" I asked the incarcerated students in a prison classroom where I was teaching *King Lear*. "How is an overnight stretch in the stocks 'worse' than killing a person?" I have taught in the prison for the last fourteen years and the men are as astute

79. *Id.* at ll. 1286–99.

80. SHAKESPEARE, *supra* note 2, at act 2, sc. 2, ll. 1297–98.

81. My thanks to Sara Saylor for bringing this distinction to my attention. *Id.* at l. 1298 (emphasis added).

82. *Id.* at ll. 1280, 1298–99.

Shakespeare readers as any I have encountered. I anticipated that the men might say that Lear is exaggerating, a precursor to his decline into mad ranting for the remainder of the play. Or perhaps that the king is speaking from his wounded pride. Even within a classroom space of shame and pain—an overcrowded state prison with men serving long sentences—I was operating on an implicit assumption that Lear’s “worse than murder” comparison cannot be taken seriously: shame and pain constitute lesser penalties than someone’s life being ended by another. Stocking is not “worse than murder.”

But one of the men in class, Declaration, spoke up:

Yeah, well, Lear’s sort of right. It’s worse because *you can get away with it*. Regan and Cornwall will not be held accountable for what they did to Kent, even though it was clearly “disproportionate sentencing.” But murder—that’s *illegal*. You can seek redress for it. You can get “justice.” The only thing worse than murder is being able to hurt people and not being held accountable.⁸³

Dec was met with nods of understanding from the rest of the men, who, like him, have experienced the law’s violence first-hand. Universally, the incarcerated men upheld Lear’s “worse than murder” perspective as fact, not exaggeration.

On this point, both Lear and the incarcerated students contradict Sir Edward Coke, the most celebrated jurist of the early modern period, who codified murder “[o]f all felonies” as “the most heinous.” Defining murder as it would be cited for the next several hundred years: “Murder is when a man of sound memory, and of the age of discretion, unlawfully killeth within any country of the realm any reasonable creature *in rerum natura* under the king’s peace, with malice forethought.”⁸⁴ Coke defines murder as “unlawful” killing. But state-issued punishment, such as Regan and Cornwall stocking Kent, is not “unlawful,” it is legally sanctioned, even legally celebrated. “Tough on crime” politicians and judges win elections.⁸⁵ Legal violence is *lawful* and even politically expedient.

When Lear sees Kent in the stocks, he seems to experience a painful moment of awareness because Lear understands the wider

83. Andrew (Declaration) Foster, in “English Literature,” Phillips State Prison, Buford, GA, 10 October 2016. This quotation is to the best of my memory and has been collaborated by several of the other men in the class, including Declaration himself, while writing this article. My single quotation marks indicate Declaration’s inflection of quoted terms such as “disproportionate sentencing.”

84. SIR EDWARD COKE, *THE THIRD PART OF THE INSTITUTES OF THE LAWS OF ENGLAND* 47 (Garland Publ’g, Inc., 1979) (1628). See generally Paul M. Shupack, *Natural Justice and King Lear*, 9 *CARDOZO STUD. IN L. & LITERATURE* 67, 75–78 (1997) (using Coke as background for *Lear*).

85. See Abdallah Fayyad, *Tough-on-crime laws are winning at the ballot box*, VOX (Nov. 6, 2024, 10:00 AM), <https://www.vox.com/policy/383079/california-prop-36-tough-on-crime-colorado-prop-128>.

implications that the stocks represent: they are an instrument of the state to impose social control and merely the first steps in what Lear perhaps foresees as a rising arc of legal violence.

While my purpose here has been to look carefully at Kent's stocking in terms of legal violence, Shakespeare frames the relationship between Lear and his political heirs more broadly in terms shame-centered punishments. Goneril told her servant that she and her sister will "not be overrul'd" by their father, despite the realization that he "still would manage those authorities / That he hath given away."⁸⁶ "Those authorities" are conspicuously encoded with imagery of the state's infliction of pain on its subjects. In a parallel to how parents might rule over their children as the state rules subjects, the Fool tells Lear that he "madest thy daughters thy mothers," and thus gave them the right of degrading and painful punishment: "[Lear] gavest them the rod and putttest down thine own breeches."⁸⁷ The Fool encapsulates the tragedy now evidenced by Kent in the stocks: Lear is now subject to his daughters' law, and their law will be authenticated and reinforced through public displays of humiliation and pain.⁸⁸ Lear, in fact, conceives of his error in judgment in terms of legal torture, specifically of being "racked," or stretched on a wooden frame until one's muscles, cartilage, ligaments, and bones are separated.⁸⁹ Lear describes his reaction to Cordelia's seeming defiance "like an engine, [that] wrench'd my frame of nature / From the fix'd place," illustrating that in the play's first scene the law's violence is on Lear's mind and in his imagination.⁹⁰

When Cornwall first calls for the stocks to be brought forth, he must repeat his demand three times before a servant actually brings him the instrument: "Fetch forth the stocks! You stubborn ancient knave . . . we'll teach you."⁹¹ Then seven lines later, "Fetch forth the stocks! As I have life and honor, / There shall he sit till noon."⁹² And again, another seven lines later, "Come, bring away the stocks!"⁹³ Does Cornwall's repetition expose the tenuous command of his new power? Or could it indicate that his servants are as stunned by the punishment as Gloucester and Kent? Either way, the tricolon encodes this legal penalty with some instability. And in a syntactic parallel, just as Cornwall calls for the stocks three times, Lear also thrice repeats his demand to know who is responsible for stocking Kent: "Who put my man i'th' stocks?," then "Who stock'd my servant?," and

86. SHAKESPEARE, *supra* note 65, at act 1, sc. 3, ll. 522.1–522.2.

87. SHAKESPEARE, *supra* note 2, at act 1, sc. 4, ll. 685–86.

88. On this point, see ÉMILE DURKHEIM, *THE DIVISION OF LABOR IN SOCIETY* 70–110 (George Simpson trans., The Macmillan Co. 4th ed. 1960) (1893); see also John Braithwaite, *Crime in a Convict Republic*, 64 *MOD. L. REV.* 11, 12 (2001).

89. See Tim Turner, *Othello on the Rack*, 15 *J. FOR EARLY MOD. CULTURAL STUD.* 102, 115 (2015) (comparing torture references in *Othello*, with torture references in *Lear*).

90. SHAKESPEARE, *supra* note 2, at act 1, sc. 3, ll. 781–82.

91. *Id.* at act 2, sc. 2, ll. 1203–05.

92. *Id.* at ll. 1212–13.

93. *Id.* at l. 1219.

finally “How came my man i’ th’ stocks?”⁹⁴ In these corresponding moments, Shakespeare bookends Kent’s long stocking with uncertainty and doubt, with the old king and his successor likewise having to repeat themselves—one to enact disproportionate legal violence and the other to get answers about it.

What is more, in the preceding act, Kent also attempts to moderate Lear’s punishment against Cordelia three times, and three times Lear threatens his subject with the violence of the law. First Lear brands himself as the mythological symbol of Britain, the dragon: “Come not between the dragon and his wrath,” he warns when Kent accuses him of faulty evidence weighing.⁹⁵ Lear’s phrasing reveals that the “dragon and his wrath”—like the monarch and their right to punish—are indivisible. The second time Kent objects to Lear’s sentence against Cordelia, Lear frames himself as an archer exerting compressive force on an English longbow: “the bow is bent and drawn, make from the shaft.”⁹⁶ Finally, when Kent attempts “come betwixt [Lear’s] sentence and [his] power,” the king draws his sword.⁹⁷ The dragon, the longbow, and the sword can function here as the head of state’s unqualified right to impose physical pain in furtherance of justice. Threatening legal violence keeps order, if only the personal order of a king who is in the process of surrendering his kingdom. But *King Lear* conveys a wholly opposed truth, one in which legal violence destabilizes, rather than stabilizes, a kingdom. As Sarat writes: “In all legal orders, law’s violence threatens to undo law... to destabilize it by forcing choices between its normative aspirations and the need to maintain social order through force.”⁹⁸ The play stages those forced choices, opening with Lear’s display of his right to employ legal violence in Act 1, then demonstrating how that same violence expedites, in the king’s words, “death on [his] state”:

Death on my state! Wherefore
Should he sit here? This act persuades me
That this remotion of the Duke and her
Is practice only. *Give me my servant forth.*⁹⁹

When Lear sees Kent in the stocks, he pronounces the demise of this state, then he pleads for his servant to be returned to him. There is immense pathos in that entreaty. Kent is the same servant, after all,

94. *Id.* at ll. 1467, 1477, 1490.

95. *Id.* at act 1, sc. 1, l. 130.

96. *Id.* at l. 152.

97. SHAKESPEARE, *supra* note 2, at l. 184.

98. SARAT, *supra* note 1, at 8.

99. SHAKESPEARE, *supra* note 2, at act 2, sc. 2, ll. 1388–91 (emphasis added).

who in the play's second scene tried to mitigate the king's own force against both his daughter and himself.¹⁰⁰ And now the king must impotently demand his return.

C. Disproportionality and Tragedy

Famously, in that very scene in which Lear so aggressively defends his right to punish, he reveals what he cryptically calls his "darker purpose": he is relinquishing his state authority and will disperse his "power, / Pre-eminence, and all the large effects / That troop with majesty" to his daughters and sons-in-law.¹⁰¹ Part of the "powers" that Lear bestows, as I have examined in this article, is the authority to exercise legally-sanctioned violence. One of the "large effects" that "troops with majesty" is the right to draw the sword on those who offend, the right to incapacitate, to imprison, even to legally mark and wound anyone who resists the sovereign's power and preeminence. When Lear hands the symbolic sword of Justice—and the keys to the stocks—to Regan, Goneril, Cornwall, and Albany, he abdicates his own right to deploy violence in defense of his authority, but he does not seem to envision that his daughters will then use that same legal force against him or against each other. Herein lies some of the play's tragedy: Lear subjects himself to his daughters' authority and unwittingly makes himself vulnerable to the pain that the state can inflict. Lear is no longer immune from being "whipped by justice."

Shakespeare does not give Lear a redemptive speech denouncing legal violence. No person holding power in *King Lear* has a parallel moment to Prospero, who relinquishes his revenge: "Though with their high wrongs I am struck to th' quick," Prospero tells Ariel,

Yet with my nobler reason 'gainst my fury
Do I take part. The rarer action is
In virtue than in vengeance. They being penitent,
The sole drift of my purpose doth extend
Not a frown further. Go, release them, Ariel.
My charms I'll break, their senses I'll restore,
And they shall be themselves.¹⁰²

100. See *id.* at act 1, sc. 2, ll. 358–61.

101. *Id.* at act 1, sc. 1, ll. 138–140.

102. WILLIAM SHAKESPEARE, *THE TEMPEST* act 5, sc. 1, ll. 34–40 (Barbara A. Mowat & Paul Westine eds., The Folger Shakespeare Library ed. 2015) (1623).

Lear is also “struck to th’ quick,” but he dies without either the turn toward Prospero’s restorative justice or with any kind of “evening of the scales,” i.e., justice. In the end of the play, not only is Kent’s stocking disproportionate, but almost everything else is, as well. Terry Eagleton ponders whether disproportionality lies at the center of all tragedy.¹⁰³ In this essay, I have sought to show the ways that Shakespeare quarried a specific kind of disproportionate violence—paradoxically, that of the law itself—for his darkest tragedy. In the essay’s final section below, I situate *King Lear* within the philosophical framework of the law’s violence and point toward how legal violence destabilizes a society, then and now.

IV. THE LAW’S VIOLENCE AS A DISMEMBERING OF THE BODY POLITIC

More broadly, of course, legal imagery permeates the entirety of *King Lear*. An opening love trial, a mock trial, controversies surrounding political succession, division of property, dowries, legitimate inheritance, political exile, patricide, and treason make *Lear* one of Shakespeare’s most legally oriented plays.¹⁰⁴ Scholars have illuminated and interpreted the tragedy’s legal imagery in brilliant ways.¹⁰⁵ But Shakespeare braids the play’s legal imagery with the darker side of the law, the violence on which the law depends, purportedly in order to control violence. Forty-eight times in the play legal violence is threatened, described, or enacted.¹⁰⁶ This number does not include *extra* legal violence, such as the physical quarrels between Kent and Oswald, Goneril poisoning Regan, or Edgar and Edmund’s fight; nor does it include violence between states, such as France and Britain warring on the fields near Dover. Rather, the play contains forty-eight instances or threats of state-issued penalties, criminal sentences, and threats of retribution that technically fall within the legal right of the authority:

“I’ll have you whipt”

103. TERRY EAGLETON, SWEET VIOLENCE: THE IDEA OF THE TRAGIC 132, 140 (2003).

104. See generally Charles Edward Andrew Lincoln IV, Law and Catastrophe in Shakespeare’s *King Lear* (Jan. 3, 2018) (unpublished manuscript), <https://ssrn.com/abstract=3095917> (showing that scholars find that law is a central theme of *King Lear*).

105. See generally Paul A. Cantor, *The Cause of Thunder: Nature and Justice in King Lear*, in KING LEAR: NEW CRITICAL ESSAYS 230 (Jeffrey Kahan ed., 2008); Ronald W. Cooley, *Kent and Primogeniture in King Lear*, 48 STUD. IN ENG. LITERATURE: 1500–1900 327 (2008); Andrew Hadfield, *The Power and Rights of the Crown in Hamlet and King Lear: ‘The King: The King’s to Blame’*, 54 THE REV. OF ENG. STUD. 566 (2003); PAUL W. KAHN, LAW AND LOVE: THE TRIALS OF KING LEAR (2000); Shupack, *supra* note 84; and KENJI YOSHINO, A THOUSAND TIMES MORE FAIR: WHAT SHAKESPEARE’S PLAYS TEACH US ABOUT JUSTICE (2011) (reflecting the important studies on *King Lear* and the law).

106. See generally SHAKESPEARE, *supra* note 2. While the Folio and first quarto differ by several hundred lines, the F only lacks one of the references, when Regan explicitly calls to “put in his legs” during the stocking scene. Compare SHAKESPEARE, *supra* note 65, at act 2, sc. 7, l. 1226.1, with SHAKESPEARE, *supra* note 2, at act 2, sc. 2, l. 1227.

“bring the murderous coward to the stake”
 “fetch forth the stocks”
 “I’d have thee beaten”
 “Pluck out his eyes”
 “bind fast his corky arms”
 “to this chair, bind him”
 “hang him instantly”
 “he that conceals him, death”
 “come, bring away the stocks!”¹⁰⁷

Cordelia is disinherited, Kent is exiled and stocked, Edgar is sentenced to burn at the stake, Gloucester is dismembered, and threats of whipping, beating, and flogging predominate the conversations between Lear and his Fool.¹⁰⁸



Justice, by Pieter Bruegel the Elder and engraved by Phillip Galle, c. 1556- c. 1560

A. The Question of Justice

Such an accumulation of the law’s violence—much of it enacted on stage, in visceral spectacle—imperils the audience’s association of the law’s violence and the ideal of justice. In Shakespeare’s England, of course, the law’s violence was publicly

107. SHAKESPEARE, *supra* note 2, at act 1, sc. 4, l. 147; act 1, sc. 5, l. 41; act 2, sc. 1, l. 61; act 2, sc. 2, l. 123; act. 3, sc. 7, ll. 5, 28, 52; act 2, sc. 1, l. 62; act 2, sc. 2.1, l. 29.

108. See generally *id.* at act 1, sc. 1, l. 115; act 1, sc. 2, l. 358–61; act 2, sc. 1, l. 999; act 3, sc. 7, l. 2064.

inscribed on people's bodies, as seen in *King Lear* and in Pieter Bruegel the Elder's mid-sixteenth century illustration, above.

As in *King Lear*, Bruegel's illustration makes it difficult to consider "law" as distinct from the violent state of nature: hanging, scourging, dismembering, burning, whipping, racking, and even what we now call "waterboarding" in the foreground left. The law severed the heads of traitors, then displayed them at the Northern Gate of the London Bridge. Pillories, stocks, whipping poles and gallows were centrally positioned in cities and towns to visually reinforce the law's capacity for violence. And the bodies of the prisoners themselves signify, through what the law and aesthetics scholar Desmond Manderson calls the "slow process of objectification" that torture enacts:

In the days when torture was a normal weapon in the arsenal of the state, [torture] was accomplished publicly. The mutilated bodies of traitors were displayed as if they were statues or icons on which state power had been etched. Their wounds were symbols for which their bodies had become a canvas of dissemination.¹⁰⁹

Blindfolded *Justicia*, wearing a fool's cap (an irony not lost on readers of *King Lear*), does not see the bodies mutilated in her name. They are a canvas for disseminating norms to others, like themselves, who are subject to the central authority. In the engraving, *Justicia* may also be unaware—as was Lear in the play's opening scene¹¹⁰—that her scales are tipped instead of even. And in the foreground right, the magistrates gather with their heads bowed over legal texts, their backs to the gruesome scenes, writing the sentences that will mandate the violence that seems essentially invisible to them in practice. Lear comes to realize his own blindness to the mechanizations of justice in the kingdom he once ruled, blind to his subjects' fate until he became a subject himself. He acknowledges as much in the storm:

Poor naked wretches, whereso'er you are,
That bide the pelting of this pitiless storm,
How shall your houseless heads and unfed sides,
Your loop'd and window'd raggedness, defend you
From seasons such as these? O, I have ta'en

109. DESMOND MANDERSON, SONGS WITHOUT MUSIC: AESTHETIC DIMENSIONS OF LAW AND JUSTICE 114 (2000).

110. See generally SHAKESPEARE, *supra* note 2, at act 1, sc. 1.

Too little care of this! Take physic, pomp,
 Expose thyself to feel what wretches feel,
 That thou mayst shake the superflux to them,
 And show the heavens more just.¹¹¹

The “physic” that Lear has taken is his own subjection to law, in the form of exile from the kingdom he once ruled and the sight of his servant in the stocks. Now that Lear has been “expose[d] . . . to feel what wretches feel,” he recognizes the inequity that subjects experience and concludes that the ethos of Justice’s scales is injustice: “I am a man / [m]ore sinned against *than* sinning.”¹¹² While Kent, Lear, and Edgar are pleading with Lear to seek safety out of the storm, Lear says that only those who have not been flogged or beaten by the law must fear the storm, those “unwhipt of justice.”¹¹³ As for Lear, he considers himself safe.

B. *Spectacle*

The spectacle was the point. In contrast, for the last fifty years in particular, the United States has historically concealed the law’s violence: mass incarceration, solitary confinement, non-public capital punishment, and the stop-and-frisk police practices that have been enacted disproportionately on young men of color—these have been invisible to most of us who are not directly affected by them.¹¹⁴ Toward the end of the twentieth century, legal scholar Robert Cover sought to expose the paradox from which *King Lear* draws much of its tragedy—that the law purports to protect us from violence, but is violent in the process:

Legal interpretation takes place in a field of pain and death Legal interpretive acts signal and occasion the imposition of violence upon others: A judge articulates her understanding of a text, and as a result, somebody loses his freedom, his property, his children, even his life.¹¹⁵

111. *Id.* at act 3, sc. 4, ll. 1809-17.

112. *Id.* at act 3, sc. 2, ll. 62-63.

113. *Id.* at act 3, sc. 2, l. 56. Shakespeare’s use of “unwhipped” in Lear’s speech is the first recorded, although it has since moved steadily into our lexicon, from Alexander Pope to the Supreme Court. See ALEXANDER POPE, AN ESSAY ON MAN. MORAL ESSAYS AND SATIRES 87 (Henry Morley ed., The Project Gutenberg 2007); *Monroe v. Pape*, 365 U.S. 167, 175 (1961). It describes the state of being unpunished. *Unwhipped*, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/unwhipped> (last visited Mar. 7, 2025).

114. See generally Jeffery D. Morenoff & David J. Harding, *Incarceration, Prison Reentry, and Communities*, 40 ANN. REV. SOCIO. 411, 413 (2014) (discussing the rise in incarceration rates in the United States).

115. Robert M. Cover, *Violence and the Word*, 95 YALE L.J. 1601, 1601 (1986).

Cover's argument has been expanded by legal scholars such as Austin Sarat and Thomas R. Kearns:

Violence stands before the law, unruly; it defies law to protect us from its cruelest consequence. It demands that law respond in kind, and requires law to traffic in its own brand of force and coercion It is the task of law and of much legal theory to insist, nonetheless, on the difference between the force that law uses and the unruly force beyond its borders. Legal theorists name the superiority of the former by calling it legitimate. Such naming suggests that violence can be cleansed, if not purified, by its contact with law.

Yet the violence that calls law into being and becomes part of its arsenal makes law, or at least the achievement of particular kinds of law, impossible. It both provokes the hope of law and defeats the hope that law can be other-than-violence Violence requires us to ask how, if at all, the force of law differs from the force it is called into being to regulate, as well as whether law can accommodate and control violence without becoming a captive of its own violent instincts.¹¹⁶

Through the work of scholars such as Cover, Sarat, and Kearns, as well as the current prison abolition movement, contemporary audiences confront what Shakespeare unrelentingly enacts in *King Lear*: how the law's violence becomes a "captive of its own violent instincts" and subverts order, rather than safeguarding it.

V. CONCLUSION

Legal scholars *critique* the law's violence, but cell phone footage of police violence *exhibits* it, enacted on real people. Wider audiences watch the footage of Eric Garner, Tamir Rice, Philando Castile, and George Floyd, and are compelled to confront the fictive "stability" that law affords.¹¹⁷ The illusion of social cohesion cannot be maintained when watching armed police officers kill weaponless citizens, and particularly children. In response, fellow citizens enact

116. Austin Sarat & Thomas R. Kearns, *Making Peace with Violence: Robert Cover on Law and Legal Theory*, in *LAW'S VIOLENCE* 211, 212–13 (Austin Sarat & Thomas R. Kearns eds., 1992).

117. See generally Wesley Lowery et al., *Public Perceptions of the Police*, COUNCIL ON CRIM. JUST., (Oct. 7, 2020), <https://counciloncj.org/public-perceptions-of-the-police> (reviewing survey data that suggest Americans are losing confidence in police).

civil unrest, protesting that law be held accountable for its purported commitment to justice: “no justice, no peace.”¹¹⁸

I am not suggesting that *King Lear* explicitly subverts, critiques, or seeks reform in early modern legal practices,¹¹⁹ nor that legal violence is a larger trend in Shakespeare’s plays. In fact, most of Shakespeare’s violence in other plays consists of extralegal violence such as dueling, stabbing, poisoning, rape, and assassination.¹²⁰ Rather, I have argued that Shakespeare employed conspicuously *legal* violence to enact tragedy in *King Lear*, violence that Shakespeare reiterated in many forms—from disinheritance and dismemberment to exile and stocking—but always as forms of violence that are sanctioned by those in power.

Throughout *King Lear*, Shakespeare stages disproportionate acts of legal punishment in the play that A.C. Bradley famously called “the most terrible picture that Shakespeare painted of the world.”¹²¹ Shakespeare creates such a terrible picture, in part, by repeatedly inviting the audience to witness unjust and inequitable pain, imposed not by those who *break* the law, but by those who are charged with *enforcing* it: Kent’s stocking, Gloucester’s eye-gouging, Edgar’s fugitive isolation, Cordelia’s hanging, and the incessant threats of whipping or flogging: the play unspools as a film reel of conspicuously *legal* violence, the violence that law imposes purportedly to control extralegal violence. Thus, in *King Lear*, Shakespeare exposes the irony of how the law’s violence destabilizes, rather than stabilizes communities, as well as the hollow claim by those in power that violence contributes to order. In *Lear*, the law’s violence ushers in chaos. As the state relies on legal violence, its fragility increases and the enactors of the legal violence are weakened, both personally and politically. The profound tragedy of both *Lear* as a narrative arc—and the law’s violence as a tool of the state—converge by the play’s last act.

118. See Alex Altman, *Why the Killing of George Floyd Sparked an American Uprising*, TIME (June 4, 2020, 6:49 AM), <https://time.com/5847967/george-floyd-protests-trump>; Bill Hutchinson, *From Eric Garner to George Floyd, 12 black lives lost in police encounters that stoked mass protests*, ABC NEWS (June 6, 2020, 5:08 AM), <https://abcnews.go.com/US/eric-garner-george-floyd-12-black-lives-lost/story?id=70999321>; Aaron Morrison, *Decades later, Al Sharpton still insists: No justice, no peace*, PBS NEWS (Aug. 26, 2020, 11:56 AM), <https://www.pbs.org/newshour/politics/decades-later-al-sharpton-still-insists-no-justice-no-peace>.

119. But see Karen Cunningham, *Renaissance Execution and Marlovian Elocution: The Drama of Death*, 105 MOD. LANGUAGE ASS’N, 209, 209–10 (1990) (making a compelling argument for Marlowe’s subversion of public executions).

120. See Richard H. Armstrong, *Poetry and Violence*, UNIV. OF HOUS. CULLEN COLL. OF ENG’G, <https://engines.egr.uh.edu/cdlist/theater/4> (last visited Mar. 7, 2025).

121. A.C. Bradley, *SHAKESPEAREAN TRAGEDY: LECTURES ON HAMLET, OTHELLO, KING LEAR, MACBETH* 273 (Macmillan and Co., Limited, 2d ed. 1905).

Four hundred years later, we may envision the law's violence as racial profiling, inflated and unpayable fines for misdemeanors, solitary confinement, the death penalty, state torture, or mass incarceration. We envision 8 minutes and 46 seconds on the Minneapolis pavement.¹²² Elizabethans likely envisioned the gallows, the stocks, dismemberment of ears and noses, or heads on pikes at the northern gate of London Bridge. They may also have envisioned *King Lear*.

122. "8 minutes and 46 seconds" was the widely reported length of time that Minneapolis Police Officer Derek Chauvin knelt on George Floyd's neck, leading to Chauvin's 2021 conviction of two counts of murder and one count of manslaughter. The exact time has since been disputed by the prosecutorial team and may have been closer to 7 minutes and 46 seconds. See Nicholas Bogel-Burroughs, *8 Minutes, 46 Seconds Became a Symbol in George Floyd's Death. The Exact Time Is Less Clear.*, N.Y. TIMES (June 20, 2020), <https://www.nytimes.com/2020/06/18/us/george-floyd-timing.html>.



