

## Telling Stories About Marriage: Intent and Instability in *Measure for Measure* and the Early Modern English Courts

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Shakespeare's *Measure for Measure* depicts multiple breaches of faith that render characters' matrimonial intentions and marital status uncertain. Claudio and Juliet ratify their matrimonial contract through intercourse, believing themselves to be man and wife, but the ruling authority disagrees and charges them with fornication. Angelo thinks he has successfully revoked a former commitment to Marianna, but Duke Vincentio disagrees and engineers a bed-trick that results in the consummation of their relationship at the same time it echoes the offense for which Claudio received a death sentence. Lucio disclaims any obligation to Kate Keepdown after she bears his child, but the Duke's requirement that the pair marry signals his judgment that Lucio's previous words and actions created a matrimonial obligation. Even the Duke is not immune from scrutiny regarding his intentions and behavior, as his unanswered proposal to Isabella leaves their matrimonial future unclear and open for interpretation; what is "meet you all should know" (5.1.536) is left a mystery at the play's conclusion.<sup>1</sup>

Marianna's paradoxical declaration to the Duke that she is neither maid, wife, nor widow reflects a larger crisis of identity, endemic throughout Shakespeare's fictional Vienna. The inability to fit into an easily recognized marital category is the product of confusion among the agents of the state and their subjects about how to interpret the words, actions, and intentions of others.<sup>2</sup> Literary critics have puzzled over the Duke's marriage pronouncements in the final scene, but his sentences reflect the very types of decisions sought by parties seeking to uphold or dissolve disputed matrimony in early modern England's church courts.<sup>3</sup> This essay argues that *Measure for Measure* presents several recognizable patterns concerning marriage formation, albeit in

exaggerated form, also articulated in contemporary matrimonial litigation and that both sources reveal the practical functioning of real and imagined laws pertaining to sex and marriage to be more fluid and more contested than appear on the surface.<sup>4</sup> Just as a consideration of the intersection of intent, language, and action serves as a backdrop against which *Measure for Measure* explores and problematizes the construction of marriage, it was also a key dynamic in the legal dramas played out in the early modern courts.<sup>5</sup> The texts of both play and courts emphasize not only the importance of consent in making marriage, but also the ways in which attempts to demonstrate matrimonial consent or dissent shaped stories about marriage told by early modern people, both fictional and historical. While the play's improperly formed matrimonial relationships are at least superficially resolved at its conclusion, unanswered questions about what separates intent from action and whether the state should or could regulate its subjects' intentions destabilize its messages about marriage, identity, and intent. A consideration of matrimonial litigation likewise reveals the instability of England's marriage law and of the power of authorities to inform the practices of the English people.

The play and the historical documents problematize the formula for marriage prescribed by the Church of England, but in significantly different ways that demonstrate the power of narrativity and mediation in the making of early modern unions. *Measure for Measure's* punishments, pronouncements, and discussions of intent, words, and sex have the ability to exaggerate and mock the rules that governed marriage in a way that litigants and witnesses seeking the judgment of those responsible for maintaining the law dared not. In both texts the construction of marriage is joined in *medias res*; neither Shakespeare's characters and audience nor real-life judges, clerks, and other court officials witnessed the exchange of marital vows, as that action had already allegedly taken place before the stage or legal drama commenced. What serves as evidence in each, then, are narratives reflecting the memories and motives of participants; but while real-life deponents sought to present their stories in ways that would generate a favorable judgment, the characters in *Measure for Measure* have more license to tell stories that criticize, obfuscate, and obstruct. The play's omission of words of matrimony invited contemporary audiences not only to determine for themselves the intent of parties who allegedly consented to marriage, but also to consider whether the rules that bound individuals together were

in fact sound ones, something real-life neighbors, friends, and kin who assessed the legality of alleged matrimonial relationships in court suits would not have had ability to articulate.<sup>6</sup> The various iterations of marriage found in the play do more to engender uncertainty and contestation than they do to encode a sense of resolution and standardization concerning the making of marriage, something contemporary English authorities were striving to enact.<sup>7</sup> A consideration of both *Measure for Measure* and early modern legal sources thus reveals much about the institution of marriage by uncovering shared points of debate about what defined marriage, who was eligible to marry, and what happened when the interpretations of intention, word, and deed diverged, problems for which neither contemporary law nor drama had easy solutions.

**Matrimonial Narratives in Fact and Fiction.** Three distinct matrimonial narratives demonstrate anxieties engendered by early modern matrimony both in the play and in contemporary lawsuits from northwest England's diocese of Chester.<sup>8</sup> The Claudio/Juliet relationship exhibits the fictional equivalent of what is labeled here as the "marriage by mutual consent" narrative, which featured the exchange of matrimonial consent by courting couples as a binding contract even in the absence of clerical supervision or public solemnization.<sup>9</sup> The "jilted woman" narrative, dramatized by the relationship of Angelo and Mariana, and in an alternate fashion, of Lucio and Kate, demonstrates the ways in which disruption of courtship activities rendered women vulnerable during the process of contracting marriage. Both play and court papers also include examples of a "signs of consent" narrative, which shows real-life witnesses observing and interpreting the behavior of prospective spouses as indicators of assent to matrimony and as evidence of their transition from single men and women into husbands and wives in much the way that the final scene of *Measure for Measure* calls upon the audience to interpret the matrimonial intent of Duke Vincentio and Isabella in the absence of the latter's verbal response.

Early modern marriage litigation includes numerous examples of couples who, like Claudio and Juliet, exchanged vows privately, initiated sexual relations, and were frequently regarded by their community as husband and wife, even without three readings of the banns or a marriage license, as prescribed by the Church of England. Because England continued to follow the dictates of medieval canon law, even after the Reformation, the only requirement for contracting a binding union was the expression

of consent between parties eligible to marry.<sup>10</sup> Claudio provides the following narrative concerning his relationship with Juliet:

Upon a true contract,  
I got possession of Julietta's bed.  
You know the lady; she is fast my wife,  
Save that we do the denunciation lack  
Of outward order. This we came not to  
Only for propagation of a dower  
Remaining in the coffer of her friends,  
From whom we thought it meet to hide our love  
Till time had made them for us. (1.2.134-42)

Claudio admits that they kept their marriage secret and unsolemnized while Juliet's dowry was being negotiated, meaning that friends were unable to identify the pair as married. Still, Claudio's words indicate they clearly consider themselves husband and wife, regardless of the lack of public "denunciation." Further, his statement to Lucio, "You know the lady," suggests his prospective wife's public reputation for honesty and propriety, a concept frequently identified in contemporary court records by the phrase "common fame"; he avers that others would believe Juliet's consent to the initiation of sexual relations as plausible only following a legitimate and binding expression of matrimonial consent.<sup>11</sup>

Evidence indicates that matrimony-by-event, in the form of solemnization within a parish church, was beginning to supplant the kind of matrimony-by-process Claudio describes in many areas of England during the early modern period.<sup>12</sup> Angelo's rigid reliance on solemnization as the sole determinant of valid marriage seems an exaggerated representation of the Church's increasing disapproval of extra-ecclesiastical marriage and its attempt to curb what was apparently a fairly common disregard for prohibitions against pre-solemnization consummation, as does Claudio's death sentence.<sup>13</sup> Shakespeare makes Angelo, whose name evokes both the celestial being and the contemporary English coin that served as a popular courtship and marriage gift, a counterfeit.<sup>14</sup> In creating a superficially upright "angel," who fails to practice himself what he pronounces for others, the play criticizes both godly puritans of his day, of whom Angelo serves as a representation, and contemporary definitions of marriage.<sup>15</sup>

Litigation before the church courts in northwest England indicates the continued expression of matrimonial intent through a process, a circumstance that did not adhere strictly to the Church of England's emphasis on an easily recognizable and verifiable

event, such as a wedding in the local parish church. Of 138 sampled matrimonial suits heard between 1560 and 1653, nearly 40 percent included testimony that “talk of marriage” took place in a setting other than a church or chapel sanctioned for making marriages.<sup>16</sup> Matrimonial contracts were frequently formed in private residences, often in the presence of friends and family who were then called upon to offer assessments of the words spoken, the gifts exchanged between spouses, and, more broadly, the intentions of both parties if a subsequent rupture in the relationship resulted in litigation. Suits also indicate that witnesses established financial settlements between prospective spouses, like the friends Juliet and Claudio sought to win over: plaintiff Anne Powell’s pregnancy in 1600, for example, resulted in a “conference” of her friends with those of suitor John Bathoe and the setting of Anne’s marriage portion at £16.<sup>17</sup> Twenty percent of the suits expressly mention the couple’s failure to announce intent to marry through public reading of the banns or to seek a license that would have sanctioned private marriage.<sup>18</sup> While couples followed talk of marriage with cohabitation in eighteen percent of the suits, forty percent include evidence that, as with Claudio and Juliet, such talk prompted the initiation of sexual relations. In 1582, for example, witnesses reported that Dorothy Huxley and Ralph Farrer exchanged extra-ecclesiastical present-tense matrimonial vows and “were solemye brought to their bed w[i]th a bride possette (as the manor is) at whiche tyme as allsoe at other tymes the sayd Ralph dyd saye and confesse that he was contractid and married to the said Doritie and that shee was his lawfull wieffe.”<sup>19</sup>

Matrimonial litigation reveals that witnesses and litigants frequently conflated the terms “contract” and “marriage,” perhaps indicative of a popular perception that contracting was the equivalent of marriage.<sup>20</sup> While their oral testimony passed through a clerical filter to create the extant historical record, it is likely that the written terms attributed to witnesses accurately reflected spoken words, as the court clerk would have understood the terms’ differences. Although contemporary moralist and writer William Gouge famously claimed that “contracted persons are in a middle degree betwixt single persons, and married persons: they are neither simply single, nor actually married,” language in the court papers suggests the rejection of a clear separation between married and contracted.<sup>21</sup> On the whole, then, the litigation suggests that, like Claudio and Juliet, men and women in northwest England formed verbal contracts of marriage outside the boundaries of

the parish church that they nevertheless considered effective in expressing consent, which, according to the law, remained the most important element in establishing legitimate marriage in early modern England.

Matrimonial activities deemed irregular, including post-contract/pre-solemnization fornication, could also come to the attention of the early modern English courts, a reality that perhaps served as inspiration for the story of Claudio and Juliet.<sup>22</sup> Court records indicate that the threat of official censure could prompt couples to regularize their marriages without official punishment from ecclesiastic or civil authorities or with relatively light discipline, though, making Shakespeare's Vienna a marked departure from contemporary historical circumstance. For example, in 1572 Thomas Wrench agreed to solemnize his future-tense verbal contract with Ellen Sutton, "vpon w[hi]ch confession and promise they steyed the presentment" of irregular marriage by local churchwardens; the records mention no further disciplinary action.<sup>23</sup> The church courts could use their pronouncements to order individuals to ratify marriages lacking "denunciation" or exhibiting improprieties, and even offered marriage as an option to reduce punishments associated with fornication. In 1578 the court ordered John Sigiswicke and Elizabeth Gillis, for example, to declare "th[e]ir fault[es]" concerning an unsolemnized marriage during Sunday service and then to ratify marriage through a public ceremony; and when Anne Shaw delivered a child five months after her marriage to Randolph Smith in 1582, the only punishment listed for what had clearly been a premarital pregnancy was "open pen[a]nce."<sup>24</sup> Diocesan officials in Chester presented John Moston and Ellen Carter for fornication in 1590, but because the couple intended to marry, their only punishment was "to co[n]fes ther offence the day of ther mariage."<sup>25</sup> Helmholz's survey of marriage law and its enforcement during the sixteenth century identifies as one of the more notable changes the tightening of standards for proof of marriage, a shift designed to curtail the making of private matches.<sup>26</sup> Claudio and Juliet's relationship as well as the ones enumerated in the court records, however, suggest that the shift was far from complete at the turn of the century.

Other relationships in the play break down when one character disclaims matrimonial intent or experiences a reversal of fortune. The Duke describes how Angelo broke off his marriage contract with Mariana after her dowry was lost at sea:

[Mariana] should this Angelo have married, was affianced to her oath, and the nuptial appointed; between which time

of the contract and limit of the solemnity, her brother Frederick was wrecked at sea, having in that perished vessel the dowry of his sister. But mark how heavily this befell to the poor gentlewoman. There she lost a noble and renowned brother, in his love towards her ever most kind and natural; with him, the portion and sinew of her fortune, her marriage dowry; with both, her combinate husband, this well-seeming Angelo. (3.1.213-23)

The consequences of Angelo's having "swallowed his vows whole, pretending in her discoveries of dishonour" (3.1.226-27) are most startlingly expressed in an exchange between the Duke and Mariana; upon being questioned by the Duke—"What, are you married?" (5.1.172)—Marianna responds that she is not a maid, a wife, or a widow, an answer that prompts the Duke to declare, "Why, you are nothing then." Lucio's subsequent input, that "she may be a punk; for many of them are neither maid, widow, nor wife" (5.1.180-81), establishes an association of uncertain marital status with sexual immorality.

Contemporary court suits also reveal disruptions in the matrimonial process that could expose women (especially those who became pregnant) to hardship and censure; indeed, their undefined status likely drove the initiation of litigation. In some cases it is clear that a male litigant sought sexual gratification rather than a spouse, perhaps talking vaguely about the possibility of marriage in hopes of convincing the female litigant to sleep with him. Other suits have greater complexity, though, relating accounts of relationships proceeding much like the ones considered above that then fractured, frequently on economic grounds and sometimes because the couple could not secure the support of friends and family. Sixty-three percent of the matrimonial contract suits from the northwest contain sufficient detail to indicate the identity and gender of the plaintiff, and of those suits, female plaintiffs outnumber male plaintiffs by a margin of more than two to one. The majority of those female plaintiffs were seeking the enforcement of a contract rather than its dissolution, demonstrating that the formation of marriage outside the church could leave women open to the possibility of abandonment, as Marianna had been cast away by Angelo in the wake of her loss of dowry and reputation. Without the ratification provided by a church ceremony, women could find it difficult to demonstrate the intent that accompanied promises to marry, exchanges of gifts, or negotiations concerning financial settlements. In a suit from 1564, for example, witnesses indicated that sexual relations and

a subsequent pregnancy followed present-tense vows between Thomas Snelson and Ellen Ricroft.<sup>27</sup> The stable, consensual nature of that relationship changed, however, when Snelson's friends desired him to marry a widow instead, presumably because that second match would bring Snelson greater financial benefits. He twice announced his intentions to marry Widow Joan Willie in the parish church of Prestbury, but on the third occasion, Ricroft objected, citing her own prior contract with Snelson. He responded by relocating the site of his marriage to Willie to the nearby parish of Rushton, thus temporarily evading Ricroft's charge and prompting Ricroft to initiate litigation against him.<sup>28</sup>

Disputes concerning marriage portions and allegations of irregular relationships interrupted early modern courtship in northwest England in much the same way Angelo and Marianna's relationship foundered in the face of unfulfilled financial considerations of marriage and rumors of impropriety. In 1625 John Povall testified that his promise to marry Jane Morres was based on a financial settlement of £30 but that "her said frend[es] fayled" to delivered the sum on the day appointed for the marriage.<sup>29</sup> He was, he concluded, "by law freed from the said condic[i]onall promise he made vnto the said Jane."<sup>30</sup> Rumors of marriage could, however, interrupt subsequent courtship activities. When Thomas Rawland and Anne Booth announced intentions to marry in 1625, Richard Brownesword objected on the grounds of pre-contract, a charge Booth's subsequent suit against him claimed had "hindred & iniured the s[ai]d Anne in her fortunes and p[re] ferment in marriage," particularly because it prevented her public solemnization of marriage with Rawland.<sup>31</sup>

The Lucio and Kate Keepdown subplot provides a further link between licit and illicit sexual relations and an extreme example of the jilted woman narrative found in the court records. According to the Duke, Lucio swore "there's one / Whom he begot with child" (5.1.504-5), and Mistress Overdone claims that "Mistress Kate Keepdown was with child by [Lucio] in the Duke's time; he promised her marriage. His child is a year and a quarter old come Philip and Jacob. I have kept it myself" (3.2.193-96).<sup>32</sup> The Lucio and Kate Keepdown relationship becomes a marriage issue, it seems, once literal issue (a child) results from their coupling. Mistress Overdone's comments emphasize the resulting economic problem: who is responsible for financing the child's care? That question was of particular importance by the writing of *Measure for Measure*, as Elizabethan parliaments had undertaken a massive project of social legislation concerning poverty, operationalized



by a series of statutes requiring local communities to provide financially for bastard children in cases in which a father could not be identified.<sup>33</sup> None of the sampled court records compelled a man to marry a woman with whom his sexual relationship was purely commercial; the play, then, may be exaggerating for comic effect the state's new attempts to regulate sexuality and poverty through the relationship of Lucio and Kate. Yet if the story Mistress Overdone tells about their relationship is correct, the pair provides another example of unfulfilled matrimonial promises, which the returned Duke corrects with enforced marriage. For Claudio and Juliet, as well as for Lucio and Kate, pregnancy and a child, respectively, create incontrovertible proof of pre-solemnization intercourse. In each relationship a child both symbolically and physically represents the intersection of the couples' intent and action.

Narratives about matrimonial consent could focus on couples' deeds and words other than marriage vows, although such evidence made marriage difficult to prove to the satisfaction of the authorities. While the law of marriage was concerned with whether couples said present-tense vows and bound themselves irrevocably, deponents often catalogued alternate signs of matrimonial assent such as kissing, hand holding, and cohabitation. They also described actions associated with spousal behavior, recounting stories about litigants sharing meals together, calling one another husband and wife, and attending church or social functions as a couple, all of which helped create a "common fame" of marriage.<sup>34</sup> What emerges from the records is a sense that local communities evaluated the performance of signs and gestures of consent to assess the seriousness and legitimacy of relationships, in much the way playgoers of *Measure for Measure* watched the performance of matrimonial processes between the play's prospective spouses to interpret their marital status. The Duke's proposal to Isabella serves as a fictional example of this third narrative pattern, since Isabella's subsequent silence leaves the audience to determine by other means whether or not she will consent to marry the Duke.

It is perhaps telling that although the Duke requests Isabella's verbal assent, he first asks for her hand, a gesture contemporaries would have recognized and understood as associated with making a matrimonial contract: "Give me your hand and say you will be mine" (5.1.490). A number of the suits from the northwest, including that between Anna Blackden and Peter Rogers in 1583, report the physical details of handfasting as evidence of consent:

The said Peter Rogers holdinge the right hand of the said Anne in his right hand spake vnto her this word[es] or the like in effect: I Peter take thee Anne to my wedded weif to haue & to holde from this daie forward, for better for worse, for richer for poorer, in sicknes & in healthe till deathe vs depart & thereto I plight thee my trothe. And the said Anne after they had loosed handes, the said Anne holdinge the right hand of the said Peter in her right hand spake vnto him this word[es]: I Anne take thee Peter to my wedded husband to haue & to holde from this daie forward for better for worse for richer for poorer in sicknes & in health till death.<sup>35</sup>

In *Measure for Measure* the Duke's final direct comment to Isabella, the request "if you'll a willing ear incline" (5.1.533), places the dramatic focus squarely on the silent gesture of listening, however, rather than the speaking of words aloud. This encourages audiences seeking to understand Isabella's response to watch for physical signs expressing her intentions rather than wait to hear canonical words of consent.

How audience members interpreted signs of intent, spoken or unspoken, would have depended on a wide range of cultural beliefs and practices. The play's contemporary audience assumed the role of the real communities in court suits who determined the legitimacy of a given couple's relationship. By giving this interpretive power to the audience, Shakespeare returns to and reinforces the theme raised at the very start of the play during the initial discussion of Claudio and Juliet's relationship: common fame of matrimonial intent seems to exonerate Claudio, in that most of the characters—save Angelo, in whom the authority of the state temporarily resides—interpret Claudio and Juliet's union as valid, although improperly formed and technically incomplete. The primary distinction between that contract and a possible contract in the making between the Duke and Isabella is that the latter lacks any clear, scripted expression of mutual consent. Isabella's silence forces the audience to determine her intent, and by extension, the future status of the relationship. By making the closing moments of the play a final locus of interpretation, Shakespeare brings the plot back around full circle to the opening scene, this time inviting the play's audience, rather than its characters, to judge the status of a potential matrimonial relationship.

Many suits seeking a judgment of legitimate marriage before the courts relied upon witnesses' accounts of the words, gestures, and practices that helped broadcast the expression of consent to

the wider community. Forty-six percent of the suits catalogued the value and meanings of gifts exchanged between purported spouses. Gloves, petticoats, rings, coins and other items were often exchanged directly between contracting individuals, but others who knew of their giving could offer valuable commentary on the mood and intent of givers and receivers. Thirty-two percent of the suits contained language from litigants and witnesses averring the existence of a common perception of marriage, often resting on various social or economic markers of commitment. A suit from 1570, for example, contained testimony that Anne Helyn shouldered the responsibility of managing Richard Bunburie's household, an action witnesses read as indicative of the formation of a matrimonial contract.<sup>36</sup> In a suit from 1635, Elizabeth Fazakerly attempted to prove her suitor, Lawrence Mather, guilty of a breach of contract by reporting that he "did sell div[er]s good[es] and thing[es] w[hi]ch were hers" and "did carry himself . . . as though hee had bene & were husband of the said Elizabeth."<sup>37</sup> In such suits, litigants pursuing a judgment of valid marriage and their supporters sought to demonstrate the existence of an intent to marry as actualized through words and deeds not legally binding, but nonetheless pregnant with significance.

While the fictional and historical authorities studied here both underscored consent as the key element in determining matrimonial commitment, when evidence of consent could not be determined or had been withdrawn, the texts diverge.<sup>38</sup> Litigation reveals people talking about more circumstantial, but popularly accepted, proofs of marriage to demonstrate their claims, while the play problematizes contemporary rules governing matrimony by relying on irony, showing a commercial sexual transaction and an act of sexual trickery resulting in the same binding commitment as that of the stable, consensual relationship of Claudio and Juliet. *Measure for Measure*, with its consideration of malformed or broken relationships, thus acts as a critique of the construction and "measure" of marriage in early modern England and debated far more boldly than any real-life litigants the intersection between the personal and the public by exposing, often through comic exaggeration, the interaction between characters' intentions and actions.

**The Problem of Intent.** While contemporaries understood vows of marriage to be speech-acts that transformed words into actions,<sup>39</sup> both the play and the suits clearly indicate that audiences "read" other words and gestures as indicative of externalized mutual intent as well. This circumstance demonstrates the presence

of a complex relationship of intentions, words, and deeds. In the play the only time Juliet speaks is when the Duke, disguised as a friar, questions her about her sin. When Juliet expresses her love for Claudio, the Duke asks, “So then it seems your most offenceful act / Was mutually committed?” (2.3.26-27). It is significant that the Duke confirms their mutual consent, as the concept acts in the play as proof of the legitimacy of matrimony-by-process in Claudio and Juliet’s relationship. More problematically, though, mutual consent is overridden in the Duke’s decrees that Lucio and Angelo solemnize marriage with women to whom they clearly do not wish to be bound.

The contradictions inherent in the play’s messages concerning consent and marriage are in keeping with *Measure for Measure*’s exploration of intent in more general terms. This is accomplished most frequently through a consideration of the words and deeds of the two characters who are, at least superficially, the most fixed and uncompromising: Angelo and Isabella. In pleading for Claudio’s life, Escalus asks Angelo to call to mind instances in which he was tempted by the same sin to which Claudio succumbed. Angelo’s response seems to establish a chasm between temptation and sin:

‘Tis one thing to be tempted, Escalus,  
 Another thing to fall. I not deny  
 The jury passing on the prisoner’s life  
 May in the sworn twelve have a thief, or two,  
 Guiltier than him they try. (2.1.17-21)

The rationale for Claudio’s punishment is presented as a single, unified idea, but its mixed message instead exposes hypocrisy in the law’s functioning. Angelo first establishes a clear separation between thought and action (17-18), but then identifies the true difference between those who do justice and those subject to it as the fact that the faults of the former remain secret and internalized, while the errors of the latter are exposed and externalized (18-21). In her first appeal to Angelo, Isabella, too, problematizes the relationship between internalized and externalized intentions. She claims that even verbal expressions of intent (in this case, Angelo’s pronouncement of condemnation) can be put aside: “Too late? Why, no. I that do speak a word / May call it again” (2.2.57-58). For a novice preparing to take final vows, the sentiment is particularly striking, since, like words of marriage spoken in the present tense, clerical vows could not be “called again.” Later, Angelo, waiting alone for Isabella’s return, further muses that words and thoughts/intentions could be at odds in externalizing desire:

When I would pray and think, I think and pray  
 To several subjects: Heaven hath my empty words,  
 While my invention, hearing not my tongue,  
 Anchors on Isabel. (2.4.1-4)

Isabella also identifies the disconnect between words and intentions during her second interview with Angelo. When he rebukes her for too easily excusing Claudio's actions, she responds, "O pardon me, my lord; it oft falls out / To have what we would have, we speak not what we mean" (2.4.117-18). From the mouths of Angelo and Isabella come contradictory and unsettling interpretations about the intersection of intent, words, and actions, the three requirements of early modern marriage in theory and practice.

Perhaps most intriguing is Isabella's plea for Angelo's life to be spared, when she reasons that one cannot be held accountable for thoughts (in this case, Angelo's attempt to extort sexual favors from her in return for Claudio's exoneration), as long as they are not acted upon. While still believing that Claudio has been executed on Angelo's orders, Isabella nevertheless defends Angelo:

Look, if it please you, on this man condemned  
 As if my brother lived. I partly think  
 A due sincerity governed his deeds,  
 Till he did look on me. Since it is so,  
 Let him not die. My brother had but justice,  
 In that he did the thing for which he died.  
 For Angelo,  
 His act did not o'ertake his bad intent,  
 And must be buried but as an intent  
 That perished by the way. Thoughts are no subjects,  
*Intents but merely thoughts.* (5.1.436-46, italics added)

The superficial appeal of Isabella's argument is undermined, however, by the fact that Angelo did, although unknowingly, commit the same act as Claudio in sleeping with the woman with whom he had consented to marriage. Isabella's logic recalls her earlier confession that words can mask a hidden agenda: "I sometimes do excuse the thing I hate / For his advantage that I dearly love" (2.4.119-20). In this case, her entreaty is intended to aid Marianna, but it nevertheless demonstrates how intention shapes and often distorts speech.

In Shakespeare's England, however, once thoughts were voiced as words, they could constitute powerful acts that could not be undone: vows made marriages, promises made binding contracts, seditious speeches made treason. Isabella's impassioned

plea for Angelo's life ironically subverts the institutional efforts to determine intent that lie at the heart of matrimonial litigation and is more broadly bound up in contemporary puritan reformers' attempts to police personal morality. Her dismissal of the significance of "mere" intent challenges the interpretive practices of both the community and the courts in their attempts to discern the matrimonial intentions of specific individuals based on words and signs of consent.

The exploration of differences between internalized and externalized expressions of intent that runs throughout the play's text has significant consequences for its depictions of matrimony. On the one hand, it suggests that externalized assent to marriage was as binding as a church wedding itself, the premise that governed Duke Vincentio's instigation of the bed-trick, as well as his decrees concerning his subjects' relationships. On the other, the bed-trick's circumvention of Angelo's consent to his relationship with Marianna undermines the clarity engendered by the Duke's pronouncements, as do Isabella's declarations that words could be recalled and that thoughts were not subject to the censure of law. Her radical stance on the impossibility of proving intent may, however, have been constructed precisely to provoke the audience's disapprobation and compel them to consider that intent can be inferred and does determine public and legal judgments. Distinct from the historical records, then, the play satirizes the concept of justice itself, most notably in Angelo's description of the jury, the Duke's decrees, and the final, pointed warning concerning the measure of judgment.

Contemporary legal sources also show individuals struggling over the intersection of words, actions, and intentions, particularly, but not exclusively, with regard to matrimony and reputation. While certain words had commonly understood definitions, testimony reveals that the manner and occasion of their speaking could alter their impact; conversely, meanings could exist independently of words, since, as suggested above, gestures or signs apparently had widely recognized communicative power. The noun "intent" and its early modern verbal variant "intended" found their way repeatedly into witness depositions discussing a wide range of topics and behaviors, and several related meanings accompanied the terms' application. Deponents employed the words in accounts of carefully constructed schemes to bring financial harm or cause damage to reputation. In a suit from 1612, for example, Alice Hurleston alleged that Hugh Done sought to trick her into marriage by coaxing her to sign her name to a note

on which was written binding vows. In describing his actions, she noted that he had “form[er]lie plotted his deceitfull strategeme w[i]th a p[re]meditate intent to abuse the simplicitie of this R[esp]ondent.”<sup>40</sup> Intent also had considerable legal import in early modern England with regard to abusive speech, as prosecutions for slander required proof of intent to injure to be actionable; it is therefore unsurprising to find several references to intent in suits of defamation before the courts in the northwest as well.<sup>41</sup> On numerous occasions, witnesses were asked to provide their insight into both the meanings of words spoken and the motives of their speakers. According to testimony in a suit from 1617, William Fallowes publicly and “malitiouslie” reported an adulterous relationship with Margery Daniell “w[i]th an intention to take her the said Margery her good name from her.”<sup>42</sup> Court documents contain abundant evidence of early modern witnesses offering assessments of litigants’ intentions, either in conjunction with specific actionable words of marriage or defamation, or in their absence. Still, the project of defining intent and determining its consequences in both the play and the records reveals that the intersection of the individual and the authorities and of public and private were often sites of contestation and negotiation in early modern England.

Exploring dramatized and historical narratives about marriage allows for the emergence of a composite picture of early modern matrimony and its discontents, even as it demonstrates their related but distinct articulation in both texts. The stories that court witnesses and players provided to their respective audiences about making marriage share a central focus on the issue of consent. Each source also affirms the difficulty of ascertaining such assent, especially when the precise words used to verbalize intentions are unknown or contested. The fact that England had not restructured its matrimonial laws in the wake of the Reformation allowed some men, like the fictional Angelo and Lucio, to attempt to renounce their relationships, while it left some women, like Shakespeare’s long-suffering Mariana, wondering whether they were a wife or a maid. The Duke’s question to the latter, “What, are you married?” would thus have had considerable resonance with early modern audiences. Seen in this light, the play’s conclusion was perhaps not as mystifying or troubling on the matter of marriage in its early seventeenth-century context as it has appeared to more modern audiences and scholars. It did, after all, provide clarity about the future of most of the play’s uncertain relationships. Still, in its exaggerated collisions of intent and action, word and

deed, internal and external, and private desire and public censure, it questions these dichotomies in ways that produce no easy or concrete answers and that contemporary litigants and their supporters seeking favorable judgments could not. The Duke's tantalizing guarantee of resolution—"So bring us to our palace, where we'll show / What's yet behind that's meet you all should know" (5.1. 535-36)—becomes the last of *Measure for Measure's* unfulfilled promises.

## Notes

1. References to the text come from William Shakespeare, *Measure for Measure*, The Arden Shakespeare, ed. J. W. Lever (London: Methuen, 1965; repr., London: Thompson Learning, 2006). While the Duke apparently has no prior matrimonial quandaries, his apparent departure from Vienna, leaving his people to suffer Angelo's more rigorous application of the law, could be viewed as an alternate form of breach of faith, between ruler and subject. Further, Lucio accuses the Duke of immorality and womanizing, which might have motivated the Duke to seek a "pure" wife in the convent-bound Isabella to improve his image.

2. For a treatment of previous scholarship on the matrimonial contracts in *Measure for Measure*, see Margaret Scott, "This Our City's Institutions': Some Further Reflections on the Marriage Contracts in *Measure for Measure*," *English Literary History* 49, no. 4 (1982): 790-804; and Victoria Haynes, "Performing Social Practice: The Example of *Measure for Measure*," *Shakespeare Quarterly* 44, no. 1 (1993): 1-29.

3. Marriage was both a civil and spiritual institution in early modern England, but questions about its validity were determined by the ecclesiastical courts, a continuation of medieval practice; civil courts, by contrast, were the more proper venue for questions about inheritance stemming from matrimonial uncertainties. Because England failed to reform its marriage laws in the wake of the Reformation, binding unions could continue to be formed without clerical oversight, a circumstance that could prompt litigation by parties seeking to uphold or dissent from claims of matrimony.

4. This study uses both documentary and dramatic sources to investigate early modern England's matrimonial culture. For recent thoughtful scholarly considerations of this methodological approach, see Lisa Jardine, *Reading Shakespeare Historically* (London: Routledge, 1996); Haynes, "Performing Social Practice"; Alberto Cacciado, "'She is fast my wife': Sex, Marriage, and Ducal Authority in *Measure for Measure*," *Shakespeare Studies* 23 (1995): 196; and Debora Keller Shuger, *Political Theologies in Shakespeare's England: The Sacred and the State in Measure for Measure* (Houndmills, UK: Palgrave, 2001).

5. The terms "intent" and "consent" appear regularly in this essay, but their meanings are not meant to be conflated. "Consent" was a term that had legal significance with regard to early modern marriage, as canon law required mutual consent for a union to be binding. "Intent," in the discussion below, refers to the motives of early modern subjects, fictional and historical. Luke Wilson's definition of "intention," that it "purports to describe what it's like to feel a certain way about what one does," is useful in differentiating between the two terms. See *Theaters of Intention: Drama and the Law in Early Modern England* (Stanford: Stanford University Press, 2000), 6.



6. The audience's participation in supporting or condemning the play's relationships seems to be encouraged by the characterizations of the *dramatis personae*. While most characters' responses to Claudio's plight seem designed to provoke the audience's sympathy, for example, Angelo's abandonment of Mariana is depicted as a dishonorable deed redressed by the bed-trick.

7. In her study of patriarchy and marriage in *The Taming of the Shrew*, Amy L. Smith notes, "Early modern marriage, like all institutions, exists only in the imperfect and often resistant repetitions of its subjects"; "Performing Marriage with a Difference: Wooing, Wedding, and Bedding in *The Taming of the Shrew*," *Comparative Drama* 36, no. 3/4 (Fall 2002/Winter 2003): 298-320.

8. These categories should be considered as storytelling patterns, as witness testimony indicates a relatively sophisticated understanding of matrimonial law on the part of deponents, who shaped their testimonies to reflect that law and the practices of the courts in making decisions concerning marriage: Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford: Stanford University Press, 1987); Charles Donahue, *Law, Marriage, and Society in the Later Middle Ages: Arguments about Marriage in Five Courts* (Cambridge: Cambridge University Press, 2007), 10-11, 46-62.

Materials on matrimony from the northwest are rich in detail and far less thoroughly examined than their counterparts elsewhere in England, making them a useful source base. For records of the diocese of Chester's two courts, see Cheshire Record Office, Deposition Books of the Consistory Court of Chester, 1554-1574 (hereafter, CRO EDC 2/6, 2/7, 2/8, or 2/9); Cause Papers of the Consistory Court of Chester, 1560-1653 (hereafter, CRO EDC 5); and West Yorkshire Archive Service (WYAS) Leeds RD/AC/1-7, the Cause Papers of the Consistory Court of Richmond. Appeals material for both courts is housed at the Borthwick Institute: Ecclesiastical Cause Papers at York: Files Transmitted on Appeal, 1500-1883 (hereafter, Borthwick Institute Trans CP). These archival sources are supplemented by Frederick J. Furnivall, ed., *Child-Marriages, Divorces, and Ratifications, &c., in the Diocese of Chester, A. D. 1561-6* (London: Kegan Paul, Trench, Trübner, 1897). Most of the records involve private suits between individuals, known as instance suits.

9. Real-life "mutual consent" marriages usually came to the attention of the church courts either because one party changed his or her mind, after an expression of what seems to have been a legitimate intent to marry, or the couple was presented by local churchwardens or people as being irregularly married.

10. Various impediments could render parties ineligible to contract marriage including age (the age of consent for girls was 12 and 14 for boys), prior contract, force, consanguinity, affinity, and impotence. For a contemporary discussion of requirements, see Henry Swinburne, *Treatise of Spousals, or Matrimonial Contracts*, Garland facsimile edition, vol. 3 of the *Marriage, Sex, and the Family in England 1660-1800* series, ed. Randolph Trumbach (London: S. Roycroft, 1686; repr., New York: Garland Publishing, 1985), 18-44. The marriages described here were binding in the eyes of the church, but irregular in construction; contracts were expected to be "perfected" through a church solemnization.

11. For treatments of spousals and "common fame" in the Consistory Court of Chester's jurisdiction, see Jennifer McNabb, "Ceremony Versus Consent: Courtship, Illegitimacy, and Reputation in Northwest England, 1560-1610," *Sixteenth Century Journal* 37, no. 1 (2006): 59-81, and "Talk of Marriage' in Northwest England: Continuity and Change in Matrimonial Litigation, 1560-1640," *Quidditas, the Journal of the Rocky Mountain Medieval and Renaissance Association* 31 (2010): 213-32. Similar ideas concerning the intersection of female honesty and sexuality in matrimonial activities are voiced in contemporary litigation: witness Alice Mainwaring testified in 1564 that she and her neighbors thought

Ellen Ricofit “so honest” that Thomas Snelson could not have persuaded her to engage in sexual intercourse unless “she toke her[self] as his wife” at the conclusion of their contract; Borthwick Institute TransCP 1564/1.

12. For a recent study examining the “normalization” of matrimonial practices during the early modern period, see R. B. Outhwaite, *The Rise and Fall of the English Ecclesiastical Courts, 1500-1860* (Cambridge: Cambridge University Press, 2006). Even in northwest England, where marriage-by-process seems to have maintained a degree of popular support until the eve of the civil wars, episcopal visitations and presentments of parish churchwardens began targeting a host of pre-Reformation traditions, among which was extra-ecclesiastical marriage, by the 1580s. See WYAS Leeds RD/CB/8/1-6, Early Churchwardens Presentments 1577-1700.

13. See Richard Adair, *Courtship, Illegitimacy and Marriage in Early Modern England* (Manchester: Manchester University Press, 1996).

14. Ten shillings is the amount both Diana O’Hara and Loreen Giese identified as the most popular courtship and matrimonial gift in later sixteenth-century Canterbury and London, respectively: O’Hara, *Courtship and Constraint: Rethinking the Making of Marriage in Tudor England* (Manchester: Manchester University Press, 2000), 69; and Giese, *Courtships, Marriage Customs, and Shakespeare’s Comedies* (New York: Palgrave Macmillan, 2006), 141. It was also the commonly referenced amount in accounts of gift giving from Chester as well.

15. The fact that Shakespeare’s first-born child’s birth occurred about five months after the reading of the banns established his marriage with Ann Hathaway perhaps shaped the play’s critique of marriage by process versus ceremony.

16. “Talk of marriage” could take many forms, ranging from the exchange of present-tense vows to future-tense or conditional vows to less concrete promises or discussions of marriage.

17. CRO EDC 5 1600, no. 12.

18. For a discussion of the use of marriage licenses, see R. B. Outhwaite, *Clandestine Marriage in England, 1500-1850* (London: Hambledon Press, 1995). According to proper procedures, the banns were to be read aloud in church on three Sundays to ensure publicity of the upcoming marriage.

19. CRO EDC 5 1582, no. 34. The “bride possette” refers to a ceremonial beverage accompanying matrimonial festivities.

20. Shakespeare’s language, too, frequently equated contract and marriage, both in *Measure for Measure* and in other plays; see B. J. Sokol and Mary Sokol, *Shakespeare, Law, and Marriage* (Cambridge: Cambridge University Press, 2003), 15-23.

21. William Gouge, *Of Domesticall Duties* (London: John Beale, 1626), 116. He also notes, though, that “so firme is a contract, as the law calleth a betrothed maid, a wife: and a betrothed maid might not be put away without a bill of diuorce” (108), a sign of the difficulty of assessing the boundary between single and married status, for both those who came before the courts and those authorities, like Gouge, who commented on the laws of marriage and their application.

22. This type of suit, an office case initiated by the agents of the court, was known as office litigation (since it proceeded *ex officio*, from the office of the bishop).

23. CRO EDC 5 1572, no. 20.

24. WYAS Leeds RD/A 1, Archdeaconry of Richmond Act Book 1577-1579, p. 85, and CRO EDC 5 1582, no. 65.

25. CRO MF 8/1 (acct. 1308), Diocese of Chester: Visitation: R.VI.A.11 (V. 1590-I CB.3), fol. 109v.

26. R. H. Helmholz, *The Oxford History of the Laws of England, Vol. 1, The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford: Oxford University Press, 2004), 531-64.

27. Borthwick Institute TransCP 1564/1.

28. A suit from 1598 reveals a similar trajectory. After Joann Whitworth gave birth to an illegitimate child, Ellen Brooke employed her “to spinne” for the space of one year, during which time Whitworth’s suitor, Thomas Bostock, came often to visit her and his child. Mistress Brooke granted this access, but only after she “dyd breeke oute and dyd demaund of [Bostock] what was the reason that hee dyd styll resorte into the companie of [Whitworth].” Despite his answer, “I am mynded to marrie her & make her my wief,” Bostock failed to fulfill his promises, prompting Whitworth to file suit against him on the grounds of breach of contract, a full ten years after the contract had allegedly been created. CRO EDC 5 1598, no. 20.

29. CRO EDC 5 1625, no. 43. Richard Lowe reported to the court in 1561 that he had promised to marry Jane Walkden, but when asked “whie he married her not, he sais her frendes promysed hym a pece of good, and wold not performe hit,” and thus failed to fulfill the marriage settlement; Furnivall, *Child-Marriages, Divorces, and Ratifications*, 56.

30. Some scholars see Angelo’s contract as conditional on the receipt of the promised dowry, so when it was lost, he was free to separate from her without legal recrimination. That Angelo casts aspersions on Mariana’s reputation and prioritizes her “disvalu’d” reputation in his own explanation of his actions (5.1.220), however, suggests that their initial contract may have been of a more binding nature (that certainly seems to be the disguised Duke’s interpretation) and thus required another justification that allowed Angelo to have “swallowed his vows whole.” According to Swinburne, impropriety of the sort allegedly committed by Mariana would have given Angelo grounds to withdraw from an unsolemnized and unconsummated union (*Treatise on Spousals*, 237). See B. J. Sokol and Mary Sokol, *Shakespeare’s Legal Language: A Dictionary*, Athlone Shakespeare Dictionary Series (London: Athlone Press, 2000), s.v. “pre-contract,” for a discussion of this point. Alternately, Angelo may have coupled his withdrawal from the contract with allegations of impropriety for fear that his own reputation would suffer from making the loss of the dowry the sole reason for renunciation of the relationship.

31. CRO EDC 5 1625, no. 44.

32. The feast day of Philip and Jacob was 1 May, the holy day traditionally associated with courtship and betrothal, a circumstance that cautions against a casual dismissal of the relationship between Kate and Lucio as purely driven by commercial sex: Hayne, “Performing Social Practice,” 7; Lever’s editorial note in *Measure for Measure*, 91.

33. For an overview of the poor laws, see Paul Slack, *Poverty and Policy in Tudor and Stuart England* (New York: Longman, 1988).

34. The law itself allowed for a consideration of gestures to determine matrimonial intent, recognizing that not all individuals were able to assent verbally to marriage. While Swinburne cautions against according too much power to gestures, he notes that the law did not prohibit the dumb from marriage, affirming that other means of contracting was possible (Swinburne, *Treatise on Spousals*, 203-12).

35. CRO EDC5 1583, no. 12. The practice of handfasting is hinted at in Claudio’s early reference to Juliet being “fast my wife,” so its appearance here again at the conclusion of the play is another way in which the play’s end is an alternate figuration of its beginning.

36. CRO EDC 5 1570, no. 24.

37. CRO EDC 5 1635, no. 23.

38. In her study of the London Consistory and the comedies *The Two Gentlemen of Verona* and *Twelfth Night*, Loreen Giese concludes that Shakespeare consistently underscored the significance of matrimonial consent in establishing marriage; Giese, *Courtships, Marriage Customs, and Shakespeare's Comedies*. Consent, as exhibited by a recognized formula of words of matrimony spoken in the present tense or in the future tense then followed by consummation, was the single most important legal proof of marriage. For an overview on the law of marriage during the time of Shakespeare, see Helmholz, *Canon Law and Ecclesiastical Jurisdiction*, 531-64.

39. For an introduction to speech act theory, see J. L. Austin, *How to Do Things with Words* (Cambridge, MA: Harvard University Press, 1962); H. Paul Grice, *Studies in the Way of Words* (Cambridge, MA: Harvard University Press, 1989); and Angela Esterhammer and Douglas Robinson, "Speech Acts," in *The Johns Hopkins Guide to Literary Theory and Criticism*, 2nd ed. (Baltimore: Johns Hopkins University Press, 2005).

40. CRO EDC 5 1612, no. 5.

41. For a discussion of slander and the law, see M. Lindsay Kaplan, *The Culture of Slander in Early Modern England* (Cambridge: Cambridge University Press, 1997); Cyndia Susan Clegg, "Truth, Lies, and the Law of Slander in *Much Ado About Nothing*," in *The Law in Shakespeare*, ed. Constance Jordan and Karen Cunningham (New York: Palgrave Macmillan, 2007), 167-88; and Ina Habermann, *Staging Slander and Gender in Early Modern England* (Aldershot, UK: Ashgate, 2003).

42. CRO EDC 5 1617, no. 37.