

CLASSICAL INVENTION IN THE YORK TRIAL PLAYS

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Inherently, a play is a rhetorical event. It is generally not written for silent reading, but is meant to be heard and seen. As such, its speeches and dialogue must appeal to an audience, teaching, entertaining, or arousing it to reach whatever conclusion the playwright wishes to communicate. An understanding of composition theory current when a play was written may in fact help to uncover the methods by which a playwright convinces an audience. For analyzing a set of plays from fifteenth-century England, when rhetoric was the basis for teaching written and oral composition, knowledge of this theory is especially important.

In the introduction to his 1982 edition of the *York Corpus Christi Plays*, generally known as the *York Cycle*, Richard Beadle observes that a careful study of the language of the plays has yet to be made.¹ While early studies of the language of the cycle have usually centred on philology or prosody, it is only in the last twenty years that scholars of Middle English have begun to examine the rhetorical structure of the cycle as a whole.² The plays of the Passion Sequence, which form a unified group within the cycle, are thought to be the separate work of a skilled dramatist sometimes referred to as "The York Realist."³ This playwright combines rhetorical skill with a knowledge of English legal procedure to make these plays meaningful to a fifteenth-century York audience.

Within the Passion Sequence, there are several plays involving court scenes: No. 26, *The Conspiracy*; No. 29, *Christ before Annas and Caiaphas*;

No. 30, *Christ before Pilate 1*; No. 31, *Christ before Herod*; No. 32, *The Remorse of Judas*; and No. 33, *Christ before Pilate 2*. Since it is not known who wrote these plays, it is impossible to determine through records where and what the author studied. Such information can only be surmised from the product itself -- the plays. There is no doubt that a distinct parallel exists between the rules for invention in classical rhetoric and the language of the trials in the Passion Sequence. Not only does this parallel throw light on the structure of the persuasion in these plays, but also, though found in a literary text, it may also point to a real connection between classical rhetoric and mediaeval legal procedure.

Although these trials are based on Scripture, the dialogue is an elaboration, often departing from both the Gospels and the known literary sources for the plays.⁴ In each of the court scenes, with the exception of *Christ before Annas and Caiaphas*, the prosecutor Caiaphas, his supporter Annas, and their followers, doctors of law and knights, try to persuade the judges Pilate and Herod that the defendant Jesus is guilty of heresy and treason, and therefore deserves the death sentence. In *Christ before Annas and Caiaphas*, the setting is an ecclesiastical court, where Caiaphas, the bishop presiding as judge, convicts Jesus of heresy and sends him to the secular court in *Christ before Pilate 1* to be put to death. As in Scripture, the prosecutor and his followers are overtly successful, but they fail to convince anyone, including Pilate, that Jesus has committed a crime. While they display rhetorical skill in manipulating language, they are overcome by evidence in Jesus' favour, including visual effects like the bowing of the banners in *Christ before Pilate 2* and in intervening plays such as *The Last Supper*, where Jesus has ample opportunity to win the hearts and minds of the audience. Nevertheless, the use these villains make of the rhetorical devices of classical invention merits closer attention.

It would not be surprising to discover that the playwright knew classical rhetoric, and particularly invention methods. The *Rhetorica ad Herennium*, attributed to Cicero, and Cicero's *De inventione*, both standard treatments of invention theory, were school-texts in mediaeval England. Cicero's later rhetorical treatises and the *Institutio oratoriae* of Quintilian were not widely available in complete copies. It is probable that, for actual composition, mediaeval students preferred the more practically oriented *Rhetorica ad Herennium*, which contained invention theory consistent with that of the *De inventione*. A recent survey of rhetorical texts known to have existed in the libraries of York prior to 1500 shows that

there were several copies of both texts in the city by the fifteenth century. Moreover, it was possible to obtain a university-level education from material available in the library of the Augustinian Friars at York.⁵ The plays may have been written by someone educated in the city itself.

Invention, the first of the five parts of the art of rhetoric, is defined thus: "Invention is the devising of matter, true or plausible, that would make the case convincing."⁶ In Roman oratory it was applied to the six parts of an oration: introduction, statement of the case, division, proof, refutation, and conclusion.⁷ Although the plays do not contain speeches divided into such sections, the classical principles for their composition fit the dialogue of the plays in the following areas: 1) the brief opening of the debate between the prosecutor and the judge; 2) the presentation of the "facts" of Jesus' misdemeanours; 3) the methods of proving Jesus' guilt and of refuting the validity of the New Law; and 4) the methods of emphasizing or amplifying arguments against Jesus.

In order to prepare a convincing court speech, a lawyer must first decide what sort of case he or she has. The *Rhetorica ad Herennium* outlines four types, of which the second, "discreditable," fits the case framed by Caiaphas and Annas against Jesus: "A cause is understood to be of the discreditable kind when something honourable is under attack or when something discreditable is being defended."⁸ Among the points to be made in the introduction of such a case, the *Rhetorica ad Herennium* recommends that "the agent, not the action, ought to be considered."⁹ At the opening of each court trial or examination, where the prosecutor or one of his supporters speaks to the judge, the emphasis is always on the base character of the defendant. For example, in *The Conspiracy* Annas describes Jesus as "a ranke swayne whos rule is nojt right" (26/33).¹⁰ These openings fail to impress Pilate, and Herod is more interested in being entertained with Jesus' miracles than in hearing a court case. Though such introductions might have held up in a Roman oration, here they reveal prosecution out of malice, a violation of both canon and common law in fifteenth-century England. Hence the speakers immediately lose credibility with both the judge and the audience.

After the introductory lines in each court scene, the enumeration of the prosecutor's charges begins. As in a classical oration for a discreditable case, these charges are based on presentations of facts in which the speakers attempt to turn every detail to their advantage.¹¹ In a case where the advocate must defend a client with a set of facts that are not true, the

Rhetorica ad Herennium advises that "these measures (to make the case plausible) will have to be observed all the more scrupulously."¹² The facts that Jesus' opponents have to work with, his miracles and preaching, are all to the advantage of the defendant, in spite of Caiaphas' attempts to misrepresent them. Cicero advises that in a case where the facts would alienate or sway the hearers, the *narratio* (statement of the case) section should be broken up and distributed throughout the speech, and explanations should follow each set of facts.¹³ Caiaphas and his followers adopt this principle; they add their interpretations of the evidence as they present it. Thus their dialogue combines facts with proof of their side and refutation of arguments for the defendant. For example, in *Christ before Pilate 1* Caiaphas construes Jesus' healing of the sick, lame, and deaf as the work of witchcraft which will eventually drive him mad:

Sir, halte men and hurte he helid in haste,
 The deffe and þe dome he delyuered fro doole
 By wicchecrafte, I warande -- his wittis schall waste --
 For þe farles þat he farith with loo how þei folowe yone fole.
 (30/441-44)¹⁴

Before suitable arguments can be devised for the proof of a case, it is necessary to determine the issue(s) at stake. The "issue" is the central conflict in the case, and is discovered by joining the "primary plea of the defence with the charge of the plaintiff."¹⁵ In the plays, the primary plea of Jesus is "not guilty" of breaking "the law." The charge of the prosecutor is that Jesus is guilty of violating "the law." The conflict in the case turns on the question: Which law do we accept, the Old Law, as upheld by the high priests, or the New Law, which Jesus represents? Here are the claims of each side:

Caiaphas: I am sorie of a sight
 Þat egges me to ire,
 Oure lawe he brekis with all his myght,
 Þat is moste his desire. (26/96-98)

Jesus: Sir, if I saie þe sothe þou schall not assente
 But hyndir, or haste me to hynge.
 I prechid wher pepull was moste in present,
 And no poynte in priuité to olde ne ʒonge

And also in youre tempill I tolde myne entente;
 Ye myght haue tane me þat tyme for my tellyng
 Wele bettir þan bringe me with brondis vnbrente,
 And þus to noye me be nyght, and also for nothyng. (29/312-19)

Jesus is asserting that he has broken no law, secular or religious, and in fact the means by which he was arrested, by stealth (with unlit torches) at night, is suspect. The secular law as represented by Pilate is used throughout the trials as the means of putting Jesus to death. In order to accomplish this end, Caiaphas and his followers attempt to charge Jesus with particular offences: defamation, riot, apostasy, witchcraft, heresy, and finally treason.

It is up to Pilate to determine whether or not Jesus has committed a crime in violation of the secular law. Therefore Annas and Caiaphas attempt to prove to Pilate that Jesus has committed a particular crime. In classical rhetoric, that type of issue is called "conjectural," and is based on a question of fact: Does this factual evidence cited point to a crime of which the defendant is guilty?¹⁶ In a conjectural case "the prosecutor's Statement of Facts should contain material inciting suspicion of the defendant, so that no act, no work, no coming or going, in short nothing that he has done may be thought to lack a motive."¹⁷ There follows a scheme of six steps by which the behaviour of the defendant should be connected with the circumstances of the crime.¹⁸ Caiaphas and his followers produce arguments accordingly.

First the prosecutor should demonstrate that the crime was profitable to the defendant in some way.¹⁹ In the plays, the prosecution, who seek to maintain their own power, accuse Jesus of wrongfully assuming both divine and secular power. As is typical of these villains, they accuse Jesus of their own crimes. Since their doctrines and power are threatened by Jesus' authority and growing popularity, they try to convince Pilate that Jesus is preaching solely for his own end, obtaining power:

Caiaphas: He lykens hym to be lyke God, ay-land to lende,
 To lifte vppe þe laby, to lose or relese. (26/61-62)

Annas: Yone briboure, full baynly he bed to forbere
 The tribute to þe emperoure, þus wolde he compell
 Oure pepill þus his poyntis to applye. (30/461-63)

Secondly the next point the prosecutor must consider is whether or not he can show that the crime is a habit with the defendant. Here the

prosecutor will show that the defendant's character is such that he has a propensity to such a crime or crimes. However, if the defendant has a good reputation, "the prosecutor will say that deeds, not reputation, ought to be considered."²⁰ In the plays, apart from the introductory lines, much of the emphasis is on Jesus' deeds, those good works that are deliberately misrepresented by his accusers.²¹

Thirdly, the next step is for the prosecutor to show that the accused alone benefitted, or benefitted more than others, from the crime of which he is accused.²² To do this, the bishops and their supporters make several references to the general distress that Jesus has caused. He is upsetting the commons in taking on royal power. Moreover, he is dangerous to the current religious establishment, to Pilate, and to the emperor Caesar. The minor crimes of which Jesus is accused lead to the charge of a greater crime, treason:

II Doctor: 3a sir, and also þat caytiff he callis hym oure kyng,

And for þat cause our comons are casten in care. (26/115-116)²³

Fourthly, having shown that the defendant is a person of a character most likely to have committed the crime, the prosecutor then demonstrates that the circumstances of the crime were such that only the defendant could have committed it. By "signs" it is proved that the accused sought a suitable opportunity, with the greatest chance of success, in which to commit the crime. According to the prosecutor and his party, Jesus has committed his crimes in a most advantageous location, the temple (place), many times (point in time), on the Sabbath (occasion), and with an increasing following, therefore with the greatest chance of success (hope of success).²⁴

Fifthly, having established the circumstantial evidence against the defendant, the prosecutor then looks for means to arouse further suspicion of his adversary. For this he uses "presumptive proof," in which it is pointed out that by certain indications before, during, and after the crime, the defendant has given away his own guilt.²⁵ The aspect of this technique used in the plays is that pertaining to the behaviour of the defendant.²⁶ Every attempt is made to construe Jesus' silence and bearing in court as indications of his own guilt. The only exception is in *Christ before Herod*, where he is taken for a fool or a madman.²⁷ Generally his refusal to pay homage to his "superiors" is taken as unwarranted arrogance in defying ecclesiastical and secular authorities, and therefore as proof of his guilt:

Annas: Sir, we myght als wele talke tille a tome tonne.
 I warande hym witteles, or ellis he is wrang wrayste,
 Or ellis he waitis to wirke als he was are wonne. (29/247-49)

I Miles: Whe, harke how þis harlott he heldis oute of harre,
 This lotterelle liste nocht my lorde to lowte. (30/380-81)

Sixthly and finally, the prosecutor employs "confirmatory proof" to clinch his argument. This divides into two sets of topics. One set, special topics, falls into two groups, those for use by the prosecution and those for use by the defence. These are applicable to the plays. The other group, common topics, does not apply.²⁸ Throughout these trials, Pilate and Caiaphas have a running debate over whether or not the prosecutor is moving out of malice. It is in this debate, where Pilate acts as a sort of "advocate" for Jesus that special topics are employed. According to the *Rhetorica ad Herennium*, special topics for each side are as follows:

In a conjectural issue the prosecutor uses a special topic when he says that wicked men ought not to be pitied, and expatiates upon the atrocity of the crime. The defendant's counsel uses a special topic when he tries to win pity, and charges the prosecutor with slander.²⁹

Here is Pilate employing a special topic in *The Conspiracy*:

Loo, is he nocht a mad man þat for youre mede melles,
 Sen 3e ymagyn amys þat makeles to myre?
 3oure rankoure is raykand full rawe. (26/91-93)

Two lines below, Caiaphas responds to this appeal to pity by emphasizing the atrocity of the crime, breaking the ecclesiastical law, and he admonishes Pilate that such a man as Jesus is not to be pitied, but despised:

Why sir? For he wolde lose oure lawe
 Hartely we hym hate as we awe,
 And þerto schulde 3e mayntayne oure myght. (26/96-98)³⁰

In *Christ before Pilate 2*, it is Caiaphas' argument that Jesus is not to be pitied, but is a traitor, that finally persuades Pilate to have Jesus scourged and ultimately crucified.

Once the proof and refutation have been completed, the prosecutor must close his speech. The formal classical conclusion for the prosecution divides into three parts: the summing up or peroration (*enumeratio*), amplification (*amplificatio* or *indignatio*), and final appeal for the sympathy of the hearers (*commiseratio* or *conquestio*). The summing up is a brief review of the points that have been made; the amplification uses rhetorical devices to arouse the indignation of the audience toward the opposition; and the appeal for sympathy is the final exhortation to the hearers to support the speaker's side of the case.³¹

The only section resembling a three-part conclusion is in *The Conspiracy*, at the end of the petition to Pilate by Caiaphas, Annas, and their followers. It is very condensed, but each set of lines serves a distinct purpose. After a series of charges designed to demonstrate that Jesus has broken the law through his preaching and miracles, this conclusion starts at line 113, right where a new verse begins within Caiaphas' lines. Pilate's threats, showing that his indignation has been aroused, are inserted where they appear in the play.

1. *Summing up*

Caiaphas:

For he pervertis oure pepull þat proues his prechyng,
And for þat poynte ʒe schulde prese his poosté to paire. (113-14)

2. *Amplification: Arousal of Indignation with Commonplace 2*

II Doctor:

ʒa sir, and also þat caytiff he callis hym oure kyng,
And for þat cause our comons are casten in care. (115-16)

3. *Indignation of Judge*

Pilate:

And if so be, þat borde to bayll will hym bryng
And make hym boldely to banne þe bones þat hym bare.
For-why þat wrecche fro oure wretthe schal not wryng
Or þer be wrought on hym wrake. (117-20)

4. *Close of Petition: Appeal to Judge with Commonplace 2*

I Doctor:

For so schulde ʒe susteyne youre seele
And myldely haue mynde for to meke ʒou.

II Doctor:

And so pat oure force he may feele

All samme for þe same we beseke þou. (121-22, 125-26)

The first two divisions function like the parts of the classical form. Caiaphas opens the conclusion by summing up; the First and Second Doctors attempt to arouse Pilate's indignation with a commonplace, one of the recommended devices for the amplification section, and they end with a brief request for the compassion of the judge.³² Commonplace 2 is the second type of commonplace listed for use in conclusions of speeches. It is "when we consider who are affected by these acts on which our charge rests; whether all men, which is a most shocking thing; or our superiors, such as are those from whom the commonplace of authority is taken; or our peers . . . or our inferiors"³³ Although this is the only conclusion in the court scenes that has a tripartite form, commonplaces abound in the pleading. As the Ciceronian handbooks recommend, these can be used for emphasizing various points in the proof of the case.

None of these trials uses the form of a classical court oration in its entirety; this would be inappropriate for dialogue that must move quickly, involve several speakers, and portray rather than imitate courtroom debate. Also, mediaeval court procedure did not, as far as we know, involve long, formal speeches, but consisted of questions and answers based on set formulae and written documentation. However, there may be more of a parallel between the techniques of rhetorical invention and mediaeval English legal pleading than is generally recognized. J.H. Baker describes late mediaeval English pleading thus:

The basis of the science was the simple principle of logic, or rhetoric, that the essential core of a controversy lay in the contradiction of a proposition by a direct denial; a *quaestio*. The *quaestio* in common-law parlance was the issue, or *exitum*, the end and object of all pleading.³⁴

In a note Baker provides an observation from Thomas Elyot's *The Boke Named the Governour* (1531), ff. 56-57:

In the lernyng of the lawes of this realme, there is at this daye an exercise, wherin is a maner of a shadowe or figure of the auncient rhetorike. I mean the pleadynge used in courte

and Chauncery called notes . . . they do lacke very litle of the hole art: for therin they do diligently observe the rules of Confirmation and Confutation, wherin resteth proufe and disproufe.³⁵

Indeed, the trial scenes of the *York Cycle* may well reflect not only classical rhetorical invention but also mediaeval courtroom practice adapting that art.

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NOTES

¹ See Richard Beadle, ed., *York Plays* (London 1982) 39. This edition is cited throughout. I am indebted to Professors Alexandra F. Johnston at the University of Toronto and Elaine Fantham at Princeton University for their guidance in the research for this paper.

² For a summary of previous scholarship on the language of the plays, see Beadle (at n. 1) 39-40. Richard J. Collier is one of the first to consider the poetic composition of the cycle as a whole in *Poetry and Drama in the York Corpus Christi Play* (Hamden, Conn. 1978).

³ See, for example, J.W. Robinson, "The Art of the York Realist," *Modern Philology* 60 (1962-63) 241-51 and Clifford Davidson, "The Realism of the York Realist and the York Passion," *Speculum* 50 (1975) 270-83.

⁴ Literary sources for the Passion sequence include the Middle English *Gospel of Nicodemus* and *Northern Passion*. For evidence of verbal parallels, see W.A. Craigie, "The Gospels of Nicodemus and the York Mystery Plays," in *An English Miscellany Presented to Dr. Furnivall* (Oxford 1901); Marie C. Lyle, *The Original Identity of the York and Towneley Cycles* (Minneapolis 1919); F.H. Miller, "The Northern Passion and the Mysteries," *Modern Language Notes* 34 (1919) 88-92; and F.A. Foster, ed., *The Northern Passion*, 2, EETS, O.S. 147 (1916). See also Beadle (at n. 1) 40-41. These sources have been used primarily for narrative structure, but not for large portions of the courtroom dialogue.

⁵ See Elza C. Tiner, "Evidence for the Study of Rhetoric in the City of York to 1500," Licentiate Research Report (Toronto: PIMS, 1984).

⁶ *Rhetorica ad Herennium*, ed. and tr. Harry Caplan, Loeb Classical Library, ed. G.P. Goold (Cambridge, Mass. 1949; 1976) 1.9, p. 18. Quoted sections are from the facing-page translation in these editions. Page numbers in the notes refer to the Latin text. Henceforth the *Rhetorica ad Herennium* is abbreviated AdH.

⁷ AdH 1.4, pp. 8-10.

⁸ AdH 1.5, p. 10. Cicero's *De inventione* (DeI) does not include the "discreditable" category, but similar to it is the "difficult" (*admirabile*) case: "one which has alienated the sympathy of those who are about to listen to the speech"; tr. H.M. Hubbell, Loeb Classical Library (Cambridge, Mass. and London 1949) 1.20, p. 40. On Hubbell's interpretation of the Latin *admirabile*, see note b, p. 40. In the plays, however, since the defendant has won the sympathy of the audience in the preceding ministry plays, it is the prosecutor who has the "difficult" case from the point of view of the juror (or audience), who "thinks it strange" that anyone should speak against such a defendant.

⁹ AdH 1.9, p. 16. The type of introduction to be used in a discreditable case is called *insinuatio* or "subtle approach." There are three instances in which this applies: 1) when the subject of the case itself alienates the hearer; 2) when the audience has been won over by previous speakers for the opposition; and 3) when the hearer has become wearied by listening to previous speakers. See AdH 1.9, p. 16. Although the first is closest, the second is also applicable, as the ordering of the pageants shows.

¹⁰ See also 29/237, 30/410-11, 31/106-7, 32/41-47, and 33/84-87. Numbering of plays follows Beadle's edition (at n. 1).

¹¹ Of the three kinds of statements of facts given in the AdH, those in the trials best fit the first in AdH 1.12, p. 22. See also DeI 1.27, p. 54 and 1.28-30, pp. 56-62.

¹² AdH 1.16, p. 28.

¹³ DeI 1.30, p. 60.

¹⁴ See also 26/51-54, 29/259-61, 31/199-202, 32/100-03, and 33/328-32.

¹⁵ AdH 1.18, p. 32.

¹⁶ See AdH 1.18, p. 34 for a definition and an example of such an issue. Other examples are in DeI 1.11, p. 22 and 2.14-15, pp. 178-80.

¹⁷ AdH 2.3, p. 60.

¹⁸ "The scheme of the Conjectural Issue includes six divisions: Probability, Comparison, Sign, Presumptive Proof, Subsequent Behaviour, and Confirmatory Proof" (AdH 2.3, p. 62). The DeI, though less systematic, gives the same material in 2.16-51, pp. 180-212.

¹⁹ AdH 2.3, p. 62.

²⁰ AdH 2.5, p. 64. This section of the AdH also explains the use of flaws of character to reinforce suspicion of the defendant. Since Jesus has a good reputation, the prosecution tries to show that his deeds, the miracles, all point to his guilt.

²¹ Refer to examples of the "facts" in n. 14.

²² AdH 2.6, p. 66.

²³ See also 26/49-50, 29/302-03, 30/438-40, 32/45, and 33/97-99. Note that some of these examples serve more than one purpose in the arguments of the prosecution.

²⁴ "By Signs one shows that the accused sought an opportunity favourable to success. Sign has six divisions: the Place, the Point in Time, the Duration of Time, the Occasion, the Hope of Success, the Hope of Escaping Detection" (AdH 2.6, p. 66).

²⁵ AdH 2.8, pp. 70-72. Examples in the plays are 26/71-74 (place, time), 29/99-100 (occasion), and 30/444 (hope of success).

²⁶ This comes under evidence subsequent to the crime. See AdH 2.8, p. 72.

²⁷ Such misinterpretations of Jesus' behaviour are made in 31/173, 179-80, 183-84, 251-56, 271-72, 279-83, 327-28, and 402-03. The result is that Herod, thinking that Jesus is either witless or dumb, can find no cause against him.

²⁸ AdH 2.9, p. 72 and DeI 2.47-51, pp. 208-12.

²⁹ AdH 2.9, pp. 72-74.

³⁰ Other examples are 26/91-93, 30/481-90, 32/56-57, 64-71, and 33/324-32.

³¹ See AdH 2.47-50, pp. 144-52. There are ten "commonplaces" one may use in the amplification section; these are explained in AdH 2.48-49, pp. 146-50. Commonplaces are rhetorical devices in the form of short arguments or comments designed to arouse the indignation of the audience against the speaker's opponent. They may also be used in other parts of the discourse, especially after a point has been proved or refuted. On three-part conclusions, see also DeI 1.98-100, pp. 146-52. Cicero gives 15 commonplaces for use in the amplification, which he calls *indignatio*, arousing of ill-will towards the opponent. See DeI 101-05, pp. 152-56. The first ten match the ones in the AdH. The plays make use of Nos. 2 and 4.

³² The entire petition to Pilate may be invented according to rhetorical rules from classical theory, but its arrangement and style are closer to mediaeval forms for letters and petitions. The close requesting the compassion of the judge is also found in mediaeval Chancery petitions. The verb "beseech" is typical in the openings of such petitions. For examples, see William P. Baildon, *Select Cases in Chancery, A.D. 1364 to 1471*, Selden Society Publications 10 (London 1896).

³³ AdH 2.48, pp. 146-48.

³⁴ John H. Baker, ed., *The Reports of Sir John Spelman*, 2, Selden Soc. 94 (London 1978) 143.

³⁵ Quoted in Baker (at n. 1) n. 4, 143.