

Title	Twelfth Night and the Law : Malvolio's Lawsuit against the Sea Captain
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Citation	STUDIES IN THE HUMANITIES. Vol.64, pp.165-177.
Issue Date	2013-03
ISSN	0491-3329
Type	Departmental Bulletin Paper
Textversion	Publisher
Publisher	大阪市立大学大学院文学研究科
Description	衣笠忠司教授退任記念

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Twelfth Night and the Law: Malvolio's Lawsuit against the Sea Captain

Masashi Sugii

The earliest record for the performance of William Shakespeare's *Twelfth Night* exists in the diary of John Manningham, a law student at the Middle Temple, one of the Inns of Court in London. Moreover, some critics argue that the play's first performance was the one mentioned by Manningham. The purpose of the present report is to examine the relationship between *Twelfth Night* and the law, focusing especially on the implication of the steward Malvolio's lawsuit and the judicial detention of a sea captain. There are many references to the law in the play. As the title, *Twelfth Night*, is shown to suggest, the play emphasizes the theme of human cognitive ability by referring to the protection and legal competency of idiots and madmen. Hence it can be assumed that this play was performed for the appreciation of those involved in legal circles. The play's relationship with the law and its parallelism to *The Merchant of Venice* lead us to the following conclusion: In Shakespeare's original plot of *Twelfth Night*, Malvolio's lawsuit and the arrest of the sea captain were presented for appreciation by the Inns of Court students, and Malvolio's lawsuit was against the sea captain for default on financial obligations owing to his shipwreck. Yet further considerations and examinations are needed to conclude whether the text's revision concerning the scene associated with the sea captain's arrest took place before the publishing of the First Folio in 1623.

Introduction

The earliest record for the performance of William Shakespeare's *Twelfth Night* exists in the diary of John Manningham, a law student at the Middle Temple, one of the Inns of Court in London. The Inns of Courts were four eminent law colleges where students yearning to enter legal circles studied after graduating from Oxford or Cambridge. Whether the first performance of *Twelfth Night* was the one mentioned by Manningham or not remains unsettled in Shakespearean studies so far. However, it doesn't straightforwardly lead to the assumption that Shakespeare didn't anticipate its appreciation by law students when coming up with the original plot. Rather the Inns of Court were often sites for theatrical performances in the Elizabethan period, as was the

case with *Gorboduc*, commonly referred to as the first English tragedy and initially staged at the Inner Temple, another Inn in London, in 1567. As Elizabethan playwrights introduced the forensic rhetoric used in the moots which were involved in the curricula of the Inns of Court into their dramaturgy, their plays and the Inns of Court were closely linked. The purpose of the present report is to examine the relationship between *Twelfth Night* and the law, especially focusing on the implication of the steward Malvolio's lawsuit and the judicial detention of a sea captain to whom the heroine Viola owes her life.

I Legal Allusions in *Twelfth Night*

Shakespeare's comedy, *Twelfth Night; Or What You Will*, is composed of a main plot and a subplot. The former centers around Viola's masculine disguise and a love triangle between Viola, Orsino and Olivia. The latter centers around the gulling of a steward, Malvolio. Although Malvolio's gulling is often staged as a comical subplot, a number of scholars and critics have argued that the atmosphere of happy ending is crucially disturbed when Malvolio storms off in the denouement promising revenge on all the other characters. Some scholars have gone so far as to say that Malvolio is an unfairly victimized character or a tragic hero of this play. For Shakespearean students, the denouement is intriguing not merely for this issue, but also for presenting Olivia's lines, symbolic in associating this play with the law, when the household mistress, employing legal metaphors, attempts to pacify Malvolio after informing him that he has been wholly duped by a forged epistle: "Thou shalt be both the plaintiff and the judge / Of thine own cause" (5.1.348-349)¹⁾. Given the metaphoric employment of "plaintiff" and "judge," it is possible to deduce that Olivia doesn't advise the steward to have resort literally to a legal action. As is demonstrated in this usage, there appear several references to the law or legal procedures in this play.

First, Antonio, Viola's twin brother Sebastian's rescuer from the shipwreck in the Adriatic Sea, is currently subject to the Illyrian laws. He complains to Sebastian that he cannot walk on the street in Illyria because he once inflicted damage on the Illyrian fleet while engaging in a marine conflict, or according to the lines of a bailiff, because he amputated the leg of Titus, nephew to Duke Orsino.

SEBASTIAN. Belike you slew great number of his people?

ANTONIO. Th'offence is not of such a bloody nature,
Albeit the quality of the time and quarrel
Might well have given us bloody argument.
It might have since been answered in repaying
What we took from them, which for traffic's sake
Most of our city did. Only myself stood out,
For which if I be latched in this place
I shall pay dear. (3.3.29-37)

The exchange above convincingly reveals that Captain Antonio stands in debt of Orsino's dukedom of Illyria, besides them both being in bitter rivalry with each other. In this sense, Antonio is a party concerned in a case of bodily injury and compensation, the issues to be committed to judges and lawyers in courts of law. Regardless of his own safety, Antonio in pursuit of Sebastian mistakes Viola (in masculine disguise and then challenged by Aguecheek) for her brother, and attempts to give support to her on the street before Olivia's house, thereby being identified and inviting his own arrest by another bailiff: "I arrest thee at the suit / Of Count Orsino" (3.4.324-325). Arrest and detention are also issues administrated in the name of the law, and lawyers, such as former students of the Inns of Courts, were increasingly required by clients to solve them.

Second, let us consider the case of Sir Andrew Aguecheek, a simple minded companion of Sir Toby, wooing Olivia. Having witnessed Cesario, Viola in masculine disguise, as being in Olivia's favor, Aguecheek in despair is on the verge of abandoning his wooing. In order to persuade Andrew, their financial supporter, still to entertain hope and continue his wooing, Sir Toby and Fabian employ terminologies concerning judiciary argument:

FABIAN. This was a great argument of love in her toward you.
ANDREW. 'Slight! Will you make an ass o' me?
FABIAN. I will prove it legitimate, sir, upon the oaths of judgement and reason.
SIR TOBY. And they have been grand-jurymen since before Noah was a sailor.
(3.2.10-16)

The term "argument" itself affords the very basis of court procedure and the adjective

“legitimate,” derived from the Latin “lex,” denotes the validity of logic. “[U]pon the oaths” refers to the custom of an oath in judiciary procedure performed by putting hands on the Bible, not to mention “judgement” or “grand-jurymen.” Furthermore, on the grounds that Cesario has flung a humiliating insult at Andrew, Toby in sport inveigles two cowards, Andrew and Viola, into a sword duel. Hence on Toby’s instigation, Andrew issues a challenge ingeniously avoiding his legal responsibility and hence inviting Fabian’s sarcastic banter: “A good note, that keeps you from the blow of the law” (3.4.148-149) and “[s]till you keep o’th’windy side of the law” (3.4.159). What Andrew is deeply concerned about in this scene is whether his challenge letter constitutes defamation of character or not in the law, the issues centering on mediation, settlement out of court and reconciliation between the two parties concerned. When surprised suddenly by Andrew’s challenge, Viola vindicates herself while desperately seeking mediation by Toby: “I beseech you do me this courteous office as to know of the knight what my offence to him is. It is something of my negligence, nothing of my purpose” (3.4.247-250). Whether the injury one gives the other is “of negligence” or “of purpose” has crucial significance in English common law. As is exemplified in her excuse prior to drawing her sword, “I do assure you ’tis against my will” (3.4.305-306), both “will” and “purpose” are key terms in this play. I will here propose a hypothesis that the “Will” in the play’s subtitle, “Or What You Will,” owns a legal connotation, which I would like to enlarge on later. So far as I know, this is the first indication in the Shakespearean study of the legal connotation involved in the “Will” of this play’s subtitle, “What You Will.”

Then Andrew attempts to have recourse to the law after being attacked by Sebastian, in return for his attack on the assumption that the opponent is Cesario, Viola in masculine disguise: “I’ll have an action of battery against him if there be any law in Illyria” (4.1.33-35). Anthony Arlidge annotates that “assault” refers to nothing more than the possibility of offense while “battery” refers to an attack consummated, thus revealing the fact that Shakespeare was more concerned about legal minutiae and discrimination than we expect. (Arlidge, 37-38)

II Malvolio’s Madness and the Law

Third, such legal issues as were intriguing to the audience in the Inns of Court are associated with Malvolio’s abuse as well. It can be presumed that a kill-joy like Malvolio didn’t enjoy the favor of the London Inns audience. Entirely convinced through a letter

written by Maria that Olivia is in love with him, Malvolio appears wearing yellow stockings cross-gartered in the presence of Olivia, with the result that he is adjudged by his mistress as insane. Moreover, he is locked up by Toby and his companions in a dark room as treatment for the insane. His complaint to Olivia in the denouement genuinely encapsulates his mistreatment so far:

And acting this in an obedient hope,
Why have you suffered me to be imprisoned,
Kept in a dark house, visited by the priest,
And made the most notorious geck and gull
That e'er invention played on! (5.1.334-338)

Here "invention" owns the meaning of a stratagem, but, in legal terms, it refers to "the processing of finding the most appropriate arguments, figures of speech and topics to use in a particular kind of oration, or persuasive discourse." (Hutson, 1) A person who excels in his cognitive ability is commonly defined as a "wit," one who fails to possess regular cognitive ability is a "fool" or an "idiot" and one who is disabled in it is a "madman" or a "distracted" man. In this play, all the dramatis personae are deceived in one sense or another. It is only Viola herself and the sea captain who know Viola's disguise. She herself doesn't know of her brother Sebastian's survival. Orsino's love for Olivia is enormously out of touch with reality, Olivia's mourning for her father and brother is extremely exaggerated, Malvolio is fully self-conceited. In a broad sense, all are under self-deception. From this viewpoint, the play can be said to address the issue of human cognitive ability or epistemology. "Twelfth Night" is a reference to the twelfth night following Christmas Day, called the Eve of the Feast of Epiphany. Thus the title also suggests that the play centers on all human wit. Feste's jokes as well suggest that the play's theme is cognitive ability: "Nothing that is so is so" (4.1.8) and "what is 'that' but 'that' and 'is' but 'is'?" (4.2.16)

In this sense, "wit" and "fool" are precisely clues to the implication of this comedy. In the early modern England, madmen were commonly thought to be possessed by devils. Although madmen were reported to undergo treatment so harsh as to be spectacles for the audience in London theaters, still it cannot be denied that their legal competency, protective custody, detention and honor were no less crucial legal issues than is the case today.

Non compos mentis is a reference to mental conditions where, owing to the mental disability, one doesn't have two capacities at the same time, the former being the capacity to appreciate whether a given matter is right or wrong and the latter being behavior control capability, that is the capacity to behave according to the former. In a non compos mentis state, as the prosecution cannot pursue the person's liability under criminal law, he or she is commonly found not guilty once he or she is acknowledged as non compos mentis in a criminal court. Thus those who have a mental disability received exemption from responsibility, even if they committed a crime.

In the play, Olivia explains to Malvolio in anger at the fool Feste's banter: "There is no slander in an allowed fool though he do nothing but rail" (1.5.89-90). Her speech suggests that the fool's calumny cannot constitute an offence because he is an idiot and has no legal competency.

In the play, when Malvolio appeals to his mistress, he focuses on "wrong" and "injury": "Madam, you have done me wrong, / Notorious wrong" (5.1.322-323) and "I . . . speak out of my injury" (5.1.303-304). Hence in this play, the perspective of a character who is diametrically opposed to the heroes and heroines is as well taken into consideration as in Shakespeare's *The Merchant of Venice*. Toby's speech to Maria, "we will bring the device to the bar and crown thee for a finder of madmen" (3.4.135-136), is also a reference to the legal procedure where jurors confirmed lunatics as really insane preceding their imprisonment. (Arlidge, 37, Elam, 282) It is assumed that Shakespeare meant to represent Malvolio as a disgusting social climber and represent his imprisonment as comic punishment.

III Malvolio's Accusation of the Sea Captain

Malvolio's relationship to legal procedure is not limited to his gulling or to his incarceration. He is not only a victim but also an accuser of the sea captain who saved Viola's life. The sea captain rescued her from shipwreck, kept her feminine clothes and helped her to serve Orsino but thereafter he doesn't appear until the last scene, where he is merely reported in the exchange between Olivia and Viola as being detained by Malvolio's accusation:

VIOLA. The captain that did bring me first on shore
Hath my maid's garments. He upon some action

Is now in durance, at Malvolio's suit,
A gentleman and follower of my lady's.
OLIVIA. He shall enlarge him - fetch Malvolio hither.
And yet, alas, now I remember me,
They say, poor gentleman, he's much distract. (5.1.270-276)

It is not until this scene that the audience is informed that the sea captain, the rescuer of Viola from her shipwreck who helped her to her service at Orsino's palace, is kept in custody at Malvolio's suit. The terminologies above, "action," "durance," "suit" and "enlarge," are all associated with the administration of legal justice.

Next, I will consider what implications Malvolio's suit of the sea captain owns in this comedy and why the former accused the latter. Researchers working on *Twelfth Night* so far have paid relatively little or no attention to Malvolio's suit of the sea captain. To cite a few examples, in her annotation for "upon some action" in the Shinozaki Shorin Shakespeare version, Toshiko Oyama expounds as follows: "The plot so far affords no information whatsoever about this suit probably because Shakespeare employed this incident as a *device* intended to bring back Malvolio once more to the stage." Her comment reveals her position that, regarding the suit, she feels it has virtually no influence on the play. Keir Elam, editor of New Arden version (3rd series), also ascribes this incident to the playwright explaining the captain's long absence from the stage. In accord with these two editors are the New Cambridge edition, the Oxford edition, the Kenkyusha edition by Sanki Ichikawa and Takuji Mine and the Taishukan edition. Their annotative reticence about the incident is probably based on the following consideration: it is because any further reference to the reason for Malvolio's lawsuit in this scene might distract the audience's attention from the main plot - Viola and Sebastian's reunion and their marriage - that Shakespeare made Viola's phrase only "upon *some* action."

By contrast, my proposition is that, if we pay no attention to Malvolio's motivation for his suit, it causes a major disadvantage to our interpretation of the text. In that case, Malvolio's malice remains obscure and he comes to look a victim, as is exemplified in the view of the novelist and essayist Charles Lamb, and the stage actor Henry Irving, both of the 19th century. So far as I know, no critics or editors in the Shakespearean study so far have referred to this issue. The designation, "Malvolio," consists of an Italian prefix "mal" denoting "ill" and an Italian noun "voglia" denoting "will," so that

their combination means “ill will.” Hence he must be an embodiment of ill will like the characters of medieval morality plays. As is observed above, “Will,” or voglia, in the subtitle “What You Will” is crucial in this play. It is because Malvolio is stern like the Puritans and insolent that he is gulled and incarcerated in a dungeon. The reason is also because he reproaches Toby and his companions for their boisterous merrymaking late into the night and because he raises an objection to the fool’s wit: “I marvel your ladyship takes delight in such a barren rascal. . . . Unless you laugh and minister occasion to him, he is gagged” (1.5.79-83). Malvolio is cleverly tricked through a fabricated billet-doux into fancying himself as Olivia’s beloved and appears wearing yellow stockings cross-gartered in her presence. He is judged by his own mistress as insane and is incarcerated by Toby and his companions in a dark room. Malvolio is physically confined and made fun of though he is only performing his duties as a house steward. Accordingly, to do him justice, the clear sense of malafides is on Toby’s side and Malvolio is an injured party. The play remains incomplete as a comedy if the lawsuit brought by him is regarded as nothing more than a dramaturgical device. After all, Malvolio’s suit must be motivated by ill will.

IV Motivations for Malvolio’s Lawsuit

In this chapter, let us consider the motivation for Malvolio’s lawsuit against the sea captain, focusing on three major issues:

- 1) the text’s relationship with *The Merchant of Venice*
- 2) the sea captain’s shipwreck
- 3) Puritanism

While there seems to be a general agreement in Shakespearean studies that *Twelfth Night* is the last comedy written among Shakespeare’s mature comedies and that it postdates *The Merchant of Venice*, there are several remarkable similarities between the two comedies. First, they present antagonists diametrically opposed to their heroes and heroines, i.e. Malvolio and Shylock. Interestingly enough, both plays present those dramatis personae (the sea captain and Antonio in *Twelfth Night* and Antonio in *The Merchant of Venice*) in striking contrast to the antagonists (Malvolio and Shylock), whom we can refer to as “Benvolio” characters, because an Italian prefix “ben” denotes good and “voglia” denotes will as opposed to Malvolio. Incidentally, Benvolio is a real character in Shakespeare’s *Romeo and Juliet*, belonging to the Montague family and a

friend of Romeo's. In *Twelfth Night*, the Benvolio characters are the sea captain, who rescues Viola and Antonio, and in *The Merchant of Venice*, it is his namesake Antonio, a friend of Bassanio's. The homonymity is no accident. As is demonstrated in the figure below, in *Twelfth Night*, the good-natured character opposed to Malvolio overlaps between Antonio and the sea captain, the rescuer of Viola. The overlap can be conjectured

Twelfth Night

The Merchant of Venice

Malvolio ↔ sea captain
Antonio

Shylock ↔ Antonio

to be based on the fact that their friends, Sebastian and Viola, are twins. In both plays, each Antonio character is closely tied to the hero by a masculine friendship verging on homosexuality. They share a common feature in that they are left out in the cold after the other characters enjoy a happy ending. The sea captain of *Twelfth Night* is a good-natured character as well. In Act 1, Scene 2, when Viola asks the sea captain to help her to serve Duke Orsino, she describes his character as follows:

There is a fair behaviour in thee, captain,
And though that nature with a beauteous wall
Doth oft close in pollution, yet of thee
I will believe thou hast a mind that suits
With this thy fair and outward character. (1.2.44-48)

Her speech is based on a Neo-Platonic idea that a sound mind exists in a sound body (*mens sana in corpore sano*) and she praises the captain as an embodiment of *mens sana*. As is observed above, Antonio in *Twelfth Night* stands in debt due to his assaults in a past fight, as well as his namesake in *The Merchant of Venice*, who owes one pound flesh to Shylock. Granted the similarities between the two plays and those between Antonio in *Twelfth Night* and the sea captain, we can assume that the sea captain in *Twelfth Night* is in debt as well and that the motivation for Malvolio's lawsuit and the sea captain's detention is no other than pecuniary debt.

Second, let us consider the motivation for the lawsuit brought by Malvolio with reference to the shipwreck of the sea captain, who encounters the disaster with the

twins, Viola and Sebastian, on board. In Act 1, Scene 2, he reveals that he engages in marine traffic in reply to Viola's inquiry concerning his birthplace: "I was bred and born / Not three hours' travel from this very place (=Illyria)" (1.2.20). Furthermore, we are informed that he set sail for Illyria from Messaline one month before by his speech: "but a month ago I went from hence" (1.2.28). We are informed by the exchange between Sebastian and another sea captain, Antonio, and by the latter's explanation, "[W]hich for traffic's sake / Most of our city did" (3.3.34-35), that Illyria is an international city of commerce where injuries inflicted in a sea battle can be compensated for by money. Accordingly, it would be no wonder even if Malvolio's litigation were financially motivated.

Let us consider Malvolio's religious and political background. Malvolio is an Illyrian steward to Olivia with the status of "gentleman" (5.1.273). Concerning his religious sect, the household gentlewoman Maria ascribes Puritanism to him, with: "Marry, sir, sometimes he is a kind of Puritan" (2.3.136), and furthermore adds, "The devil a Puritan that he is, or anything constantly but a time-pleaser" (2.3.142-143). To whatever religious sect Malvolio may belong, we cannot deny that Malvolio has a tendency toward Puritanism, that is to say, an appetite for social status and frugality. It is none other than Malvolio who, in the play, informs against Fabian to Olivia, denouncing his sport of bearbaiting as morally degenerate. Toby reproaches Malvolio for hypocrisy as well: "Dost thou think because thou art virtuous, there shall be no cake and ale?" (2.3.112-113). It comes as no surprise that the people involved in theaters, like Shakespeare or the regular theater-going audience, hated the Puritans, the contemporary advocates of closure of the theaters from the viewpoint of public morals. Concerning this sect and its principle, Max Weber, a German sociologist and political economist in the early 19th century, commented as follows:

In the Puritan concept of the calling the emphasis is always placed on this methodical character of worldly asceticism.... (Weber, 162)

The Jews stood on the side of the politically and speculatively oriented adventurous capitalism; their (=Puritan) ethos was, in a word, that of pariah-capitalism. Puritanism carried the ethos of the rational organization of capital and labour.

(Weber, 166)

Weber's theory applies to Shakespeare's time, when Puritans founded the basis of British capitalism, and is useful for the analysis of Puritans' or Jews' behaviour in the Elizabethan age. You don't need to refer to Max Weber to say that the steward reviled as a Puritan is a petty capitalist and, aiming at the accumulation of wealth, he invested in the sea captain's passenger-cum-trading ship. It is conjectured that, though Malvolio cannot be an owner of the sea captain's ship, he can be an investor in its cargoes since he is in the status of steward as is the case with the Jewish merchant, Shylock, who also lends money to Bassanio in anticipation of the money to be brought by the benevolent Antonio's argosies.

So far I have explained that, from three viewpoints—first, the play's parallelism to *The Merchant of Venice*, second, the sea captain's shipwreck and third, Puritanism—we can suppose that Malvolio invested in the sea captain's vessel, it met with a disaster and then Malvolio brought an action in court against the sea captain for default on financial obligations thereby giving rise to antipathy on the part of Toby and his companions. It can be assumed that Shakespeare formulated the pattern of opposition of the malicious Malvolio versus the benevolent sea captain, the former bringing an action against the latter in seeking compensation for the properties lost in the shipwreck. If Malvolio was really a plaintiff in the litigation against the sea captain then the following metaphors concerning the relationship between him and his abusers are the more persuasive to the audience: "Thou shalt be both the plaintiff and the judge / Of thine own cause" (5.1.348-349).

Conclusion

I have explained that, in Shakespeare's original plot of *Twelfth Night*, Malvolio's lawsuit and the arrest of the sea captain were presented for appreciation by the Inns of Court students, and that Malvolio's lawsuit was against the sea captain for default on financial obligations owing to the his shipwreck. I suspect that, coming up with the plots of Malvolio's lawsuit and the arrest of the sea captain, Shakespeare presented not only the references to them, but also their scene of interaction.

The issues essential to this hypothesis are where Shakespeare originally presented what scenes in the play and why the reason for the sea captain's detention was obscured into "upon *some* action" and why the scene of his arrest disappeared from the First Folio. According to my argument that Toby and his company embrace a sense of antipathy

and devise a trick after Malvolio's base character has been revealed by his lawsuit, the scene portraying the arrest of the sea captain through Malvolio's suit must be positioned before Toby, Feste, Maria and Fabian conspire to gull Malvolio. Accordingly the scene is best advisable to be inserted before Act 2, Scene 3 in the First Folio version published in 1623. However, we need further examinations for concluding this theory.

As for the reason for disappearance from the text or stage of the scene where sea captain was arrested, I consider as follows. When Shakespeare composed this play, presumably in 1601, as the Arden editor Keir Elam observes, he was supposed to expect the Inns of Courts to be its chief staging sites. In the Elizabethan time, plays were often staged in the Inns of Courts for educational purpose and entertainment purpose. However, the sites gradually shifted to the palace or to permanent theaters like the Globe Theatre, and the significance of the plots centering around arrest and lawsuit declined while the love and reunion plot was intensified. And when the First Folio was published in 1623, the scene where the sea captain is arrested disappeared and accordingly reference to it in the last scene became "upon *some* action." This hypothesis as well needs further consideration and examination. I would like to examine these issues in my future research.

Note

- 1) The text adopted for reference is *Twelfth Night, or What You Will* edited by Keir Elam in the third Arden Shakespeare edition (London: Methuen, 2008).

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【2012年9月6日受付, 10月26日受理】

Twelfth Night and the Law: Malvolio's Lawsuit against the Sea Captain

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シェイクスピアの『十二夜』上演についての最古の記録は、ミドル・テンブル法学院生、ジョン・マニンガムの日記の中にあり、この劇の最初の上演がマニンガムが日記に記録している上演であるという説も存在する。本報告では、シェイクスピアの『十二夜』と法律との関係を考察する。そして、その中で特に、ヴァイオラの救済者である船長の拘留の意味を考える。劇には、多くの法律に対する言及が存在する。また、神の知恵の顕現を祝する、キリスト教の祭日である『十二夜』という題名との関連で分かるように人間の知に対するテーマが敷衍されているが、その際強調されているのは、知恵のない者や狂気の者の人権や保護である。これらの点から、この劇は法律に関心のある観客の鑑賞を想定したものであると推測可能である。さらにこの劇と『ヴェニス商人』との類似から次のような結論を導くことが可能である。『十二夜』についてのシェイクスピアの当初構想においては、マルヴォーリオの告訴と船長の逮捕は法学院の学生が観ることを予想して上演され、マルヴォーリオの船長に対する告発は、舟の難破による船長の債務不履行により起こった。上演後、ファースト・フォリオ刊行までに劇に改変が行われたかどうかについては、さらに考察を行うことが必要である。