

CHAPTER IV

“Maidens call it love-in-idleness”: The Capacity for Consent in *A Midsummer Night's Dream*

In Shakespeare's *A Midsummer Night's Dream*, the word 'consent' appears six times: three times in Athens and three times in the forest. Despite the use of the word being split evenly between the two worlds of the play, only the 'consent' of two of the play's seven main characters is addressed, that of Egeus and his daughter Hermia. Egeus is the primary user of the word, speaking it a total of four times—Helena and Hermia claim the other two instances. His disproportionate usage of the word reflects his insistence that he controls not only his will but that of his daughter. And in the world of the play, his presumption is not unwarranted. Indeed, the main actions in the play are a result of the patriarchal ideology underlying Athens. There, Egeus's consent takes precedence and his refusal to take his daughter's preference into account when choosing her husband is what drives her and her lover, Lysander, from the Athenian court. As the action of the play shifts from the Athenian court, ruled by a mythically renowned rapist and his captured bride, to the Fairy's forest, controlled by a couple, seemingly existing on more equal footing, the play's framework for consent shifts. The question is no longer whether the

lovers will consent to the demands of their elders, but rather to what extent they will have the capacity to consent. In the magical realm of the forest, Hermia and Lysander as well as Demetrius and Helena quickly become a casualty of a feud between the Fairy King and Queen, Oberon and Titania. While Egeus's consent no longer matters, Oberon proves to be a meddler in the lovers' affairs and, armed with a love potion meant for Titania, a would-be patriarch more capable of achieving the results he desires.

Indeed, the magical juice of the 'little western flower' is as much a weapon as is Theseus's sword. Armed with this weapon, Oberon facilitates multiple acts of sexual violence. Egeus's overt assertion of patriarchal privilege makes clear that he views Hermia's body as his to bestow, but in turning to Athenian law, he must appeal to a system that requires her consent. Her options are abysmal—she can consent to marry Demetrius, join a nunnery, or die—but under the terms of both the play and English society, Egeus cannot compel her to marry Demetrius.¹ Oberon, however, operates under no legal system and he does not have to appeal to a higher authority. As such, he can administer the floral juice without restrictions and, in doing this, he removes his unsuspecting victims' ability to consent. And as Hermia reminds the audience when she says, "ere I will yield my virgin patent up," the question of marriage in this play is inextricably linked to sex. In manipulating who the lovers will ultimately marry, Oberon manipulates their choice of sexual partner. Of course, the flower's juice was originally meant for Titania and Oberon renders her incapable of consenting to any sexual acts when he drops the

¹ As Amanda Bailey notes, "Hermia is not legally her father's property. He cannot force her to marry without her consent. In onstage Athens—as in offstage England—the consent of both marrying parties, not their parents, is mandatory" (407). "Personification and the Political Imagination of *A Midsummer Night's Dream*." *The Oxford Handbook of Shakespeare and Embodiment: Gender, Sexuality, and Race*, edited by Valerie Traub, 1 edition, Oxford University Press, 2016, pp. 400–18.

juice onto Titania's eyes as she sleeps. More, in making it impossible for Titania to resist her sexual urges, he facilitates Bottom's rape. Ultimately, though he is not physically present, Oberon is the perpetrator of sexual violence committed against Titania, Bottom, and eventually Demetrius. His unique role in these acts allows me to expand my investigation into how agency functions in facilitator-instrument relationships by examining the complications specific to acts of sexual violence. I previously argued that one can serve as an instrument of violence without knowing it. The validity of sexual assault claims, however, is often determined by a victim's consent, both in the early modern period and today. *Knowing*, then, can be more complicated in acts of facilitated sexual violence. By examining the different ways in which consent operates throughout *A Midsummer Night's Dream*, I explore how knowledge of one's role as an instrument and one's culpability might function differently in acts of facilitated sexual violence. More, I consider how the relationships between instrument and facilitator, victim and perpetrator intersect. I thus ask: How is consent recognized? What role does intelligence and/or one's capacity for intelligence play in consent? How can we understand consent in a world where motivations and actions are influenced by an external agency such as magic? And, finally, how might an investigation of the use of external agencies to influence sexual acts in *A Midsummer Night's Dream* help us to think about consent in present times?

Exeunt Fairies. Titania sleeps. Enter Oberon and squeezes the flower on Titania's eyelids.²

² Stage directions found in 2.2.26, *The Riverside Shakespeare*, Second Edition and Act II, Scene ii, line 26. [Exeunt Fairies] was added by Nicholas Rowe and [and squeezes the flower on Titania's eyelids] was added by Edward Capell. Shakespeare, William. *The Riverside Shakespeare, 2nd Edition*. Edited by G. Blakemore Evans and J. J. M. Tobin, 2nd edition, Houghton Mifflin Company, 1996.

When the audience first hears of Oberon and Titania, they learn that the couple is feuding over a changeling boy in Titania's service. Oberon is determined to take the boy from Titania to serve as his page. Many critics have written about the reasons behind the fairy King and Queen's attachment to the boy and what Oberon's eventual theft of the child symbolizes for female bonds in the play.³ My shift in emphasis to Oberon's use of the "little western flower" in his plot to extract the child as an act of facilitated sexual violence shows, instead, how consent and agency operate in the complex relationship between facilitators and instruments. When Titania rejects his request for the boy yet again, Oberon remarks: "Well go thy way/ thou shalt not from this grove / Till I torment thee for this injury" (2.1.46-47). Oberon will, indeed, torment Titania, but instead of fearing cuckoldry (as male characters do in previous chapters), Oberon plans to pair

³ Of Titania's telling Oberon of the changeling's mother, Deborah Uman writes "Titania recalls an idyllic world of female self-sufficiency...Notably, Titania's speech is a recollection of a place and time that she cannot carry over to her present circumstances. Her votress has died...Still, the changeling might embody the reality of her memory, and this possibility gives Oberon another reason to demand that Titania turn over the child to him and finally to steal the child" (78). Uman, Deborah. "Translation, Transformation and Ravishment in A Midsummer Night's Dream." *Allegorica*, vol. 22, 2001, pp. 68–91. Literature Resource Center. Ania Loomba notes that Titania may have taken the boy to "keep faith with the mother or, because (for her as well as Oberon) the child is a prized commodity, the ultimate gift, a culmination of the trifles his mother used to fetch her" (187). Loomba also discusses what is at stake in Oberon and Titania's dispute: "The crucial point is that Titania must evoke a bond with the Indian mother in order to challenge Oberon, and Oberon must wrest her property, however it was acquired, in order to establish his control" (188). "The Great Indian Vanishing Trick – Colonialism, Property, and the Family in A Midsummer Night's Dream." *A Feminist Companion to Shakespeare*, John Wiley & Sons, Ltd, 2016, pp. 179–205. *Wiley Online Library*, doi:10.1002/9781118501221.ch9. Also see: Kim Hall, *Things of Darkness: Economies of Race and Gender in Early Modern England*. 1 edition, Cornell University Press, 1995.; Little, Arthur L., Jr. "A Local Habitation and a Name': Presence, Witnessing, and Queer Marriage in Shakespeare's Romantic Comedies." *Presentism, Gender, and Sexuality in Shakespeare*, edited by Evelyn Gajowski, Palgrave Macmillan, 2009, pp. 207–236.

his wife with another. His desire for her embarrassment, her torment, is what matters.⁴ He tells his accomplice, Puck, to fetch for him:

a little western flower,
Before milk-white, now purple with love's wound,
And maidens call it love-in-idleness...

The juice of it on sleeping eye-lids laid
Will make or man or woman madly dote
Upon the next live creature that it sees.
Fetch me this herb. (2.1.166-73)

The “little western flower” is a substance capable of impairing its victim’s judgment. Oberon notes that maidens call the flower “love-in-idleness.” While idleness can mean the state of being unoccupied, it could also mean, during the 16th and 17th centuries, light-headedness, imbecility, and delirium.⁵ Given that it leads Titania to be enamored of an ass-headed Bottom, the flower’s ability to cause delirium seems quite plausible. But there is more to be gleaned from Oberon’s description of this flower. He notes that the juice of the flower is to be applied to sleeping eye-lids. Thus, not only does the juice have the ability to render its victim delirious, but its very application requires the victim’s prior incapacitation.⁶

⁴ Uman notes that Oberon may be hesitant to tell Titania of what happened between her and Bottom because the story “serves as a reminder of why ‘jealous’ Oberon is so willing to make himself into a cuckold” (77).

⁵ Definition taken from the 3rd edition of the Oxford English Dictionary.

⁶ James A.S. McPeck argues that there is an extensive relationship between the myth of Psyche and the dream world of *A Midsummer Night's Dream*. In his discussion of the connections between the two stories, he notes that Psyche and Titania have similar sleep experiences. Psyche, awaking from a refreshing sleep, she espies a pleasant wood of mighty trees...entering this heavenly palace, she is waited on by unseen servants and entertained by their song

After sending Puck off to fetch this flower, Oberon reveals his plans:

Having once this juice,

I'll watch Titania when she is asleep,

And drop the liquor of it in her eyes.

The next thing then she waking looks upon--

Be it on lion, bear, or wolf, or bull,

On meddling monkey, or on busy ape--

She shall pursue it with the soul of love.

And ere I take this charm from off her sight--

As I can take it with another herb--

I'll make her render up her page to me. (2.1.176-85)

Although this passage invokes lions, bears, and wolves, it is Oberon's predatory nature that is on full display. He will watch his wife as she sleeps and drop this magic juice into her eyes,

and music; and after going to bed, she becomes the bride of an unseen husband, the supposed Serpent Bridegroom of the oracles, as Venus would have it, the 'most vile' creature alive. (76)

He goes on to note that "Titania's experiences are curiously akin. In the Palace woods of Theseus, Titania is lulled to sleep...[and] she awakens to love, not a serpent bridegroom, but another monster, Bottom the ass-man" (76). "The Psyche Myth and *A Midsummer Night's Dream*." *Shakespeare Quarterly*, vol. 23, no. 1, 1972, pp. 69–79.

David Roberts, asserts that "no dramatist represents the act of sleep more frequently or graphically than he [Shakespeare] does, whether it is disturbed like Lady Macbeth's and Richard III's, comical like Titania's, deathly like Henry IV's or restorative like Lear's..." (235). Just as Venus's pursuit of Adonis was not humorous (see Chapter 3), I suggest that Titania's sleep, which is disturbed by Oberon's application of an incapacitating drug, is not comical. "Sleeping Beauties: Shakespeare, Sleep and the Stage." *The Cambridge Quarterly*, vol. 35, no. 3, 2006, pp. 231–54.

For more on sleep in Shakespeare, see: Viswanathan, S. "Sleep and Death: The Twins in Shakespeare." *Comparative Drama*, vol. 13, no. 1, 1979, pp. 49–64.; Sullivan, Garrett A., Jr. *Sleep, Romance and Human Embodiment: Vitality from Spenser to Milton*. Reprint edition, Cambridge University Press, 2015.

subjecting her to its power to make her desire animals she would normally fear. Oberon is clearly the one in power in this situation. Titania will have no choice but to desire whatever she sees when she wakes; what's more, her desire will be sexual. The flower from which the liquid comes was hit with "Cupid's fiery shaft," is "purple with love's wound," "will make man or woman madly dote" and pursue their target with "the soul of love" (2.1.161, 167, 171, 182). As Oberon knows that this liquor will make Titania experience uncontrollable sexual desire, I argue that when he sneaks into his wife's bower and applies this substance to her eyes, he commits an act of drug-facilitated rape.⁷ Oberon takes away not only her capacity to consent to sexual acts, but also to choose her sexual partners—the flower "will make or man or woman madly dote/Upon the next live creature that it sees" (2.1.171-172). And if we are to believe his incantation has any power, more than just putting limits on Titania's rights, Oberon seizes them for himself, as he commands, "wake when something vile is near" (2.1.184). While he is not directly choosing who or what she will wake up to, he is not content to leave things to chance. With the addition of the spell, he ensures the object of her affection will be "vile."

Oberon also controls the duration of Titania's incapacitated state as he is the one who holds the "herb" that can remove the spell she is under:

And ere I take this charm from off her sight—

As I can take it with another herb—

I'll make her render up her page to me. (2.1.183-185)

⁷ Kilpatrick, et. al. defines drug-facilitated rape as when the "perpetrator deliberately gives the victim drugs without her permission or tries to get her drunk, and then commits an unwanted sexual act against her involving penetration (all forms). The victim is passed out or awake but too drunk or high to know what she is doing or to control her behavior" (10).

Kilpatrick, Dean, et al. *Drug Facilitated, Incapacitated, and Forcible Rape: A National Study. Final Report*. Vol. 14, Jan. 2007, pp. 2–71.

With control of her sexual desires, some modicum of influence over the object of these desires, and complete power over how long her sexual desires and choice of sexual partners will be compromised, Oberon renders Titania a controlled subject. We have seen this before. In *The Maid's Tragedy*, Melantius, acting as facilitator of his sister, uses psychological manipulation and the threat of physical violence to turn Evadne from a rebellious, independent woman to one he can use as an instrument. Unlike Melantius, Oberon does not vow to make a sword Titania's lover, nor does he claim to have wooed her with a sword, as Theseus wooed Hippolyta.⁸ As King of Fairies, he uses the tools more common for his world—but his weapon of choice is just as dangerous. The juice of the magical flower has the power to cause physical and psychological harm.⁹ Indeed, as it propels its victim to orchestrate their own violation, this juice is an ideal weapon for sexual predators.

Do I not in plainest truth / Tell you I do not nor I cannot love you?¹⁰

When Demetrius first enters the forest, he is so adamant in his disdain for Helena, he threatens to “do [her] mischief in the wood” (2.1.237). But by the end of the play, although he knows “not by what power,” he has fallen out of love with Hermia and back in love with Helena. The audience, of course, is privy to the reason for the sudden transformation in Demetrius's feelings. Unlike the other lovers, Demetrius is still under the spell of the flower and will remain so. As he attempts to explain the change in his feelings to Theseus, he says:

⁸ When he first confronts his sister and future instrument, Melantius threatens Evadne, saying: “This sword shall be thy lover! Tell or I'll kill thee!” (4.1.100). In the opening of *A Midsummer Night's Dream*, Theseus tells Hippolyta: “I wooed thee with my sword” (1.1.16).

⁹ Loomba asserts that “Oberon uses the juice of ‘a little western flower’ to trick Titania, but he disciplines her by a manipulated arousal of her sexual appetite, so that even her desire is not her own” (195).

¹⁰ 2.1.200-201

But, my good lord, I wot not by what power—

But by some power it is – my love to Hermia,

Melted as the snow, seems to me now

...

And all the faith, the virtue of my heart,

The object and the pleasure of mine eye

Is only Helena. (4.1.161-163, 165-167)

Demetrius is not mistaken that the change in his affection is due to “some power.” Just as Bottom is aware that *something* took place during the time he was with Titania, even if he cannot quite remember what that something was, Demetrius knows that his feelings are the result of an outside force.¹¹ This knowledge, however, does not seem to give him the ability to alter his feelings. In fact, there is no indication that he wants to do this. As he says, Helena occupies the faith and virtue of his heart. Where before Demetrius was said to have been a “spotted and inconstant man,” his amorous eye is now focused only on Helena (1.1.110). And in addition to the shift in his affection, Demetrius is now amending the harsh statements he previously made to

¹¹ As Catherine Belsey writes of Bottom’s experience:

What happened cannot be reported because it can’t be specified. Even its status as illusion or reality is unclear: was it a vision, or a waking dream? Bottom is not sure. ‘I have had a most rare vision. I have had a dream, past the wit of man to say what dream it was’ (*A Midsummer Night’s Dream*, 4.1.204–6). The play, of course, delicately evades the question of what actually went on, since whatever it is takes place offstage, in Titania’s bower (3.1.197). The ass, preoccupied by oats and hay, as well as a desire to be scratched, apparently made very little of the event until afterwards when, lodged precariously in the memory, it is unable to be made fully present, accounted for, recorded, textualised. For Bottom now, waking up, it is not therefore so much a question of recovering lost presence as of producing something new which is nonetheless already recognisable, of *making* sense of an event. (96)

Helena. When they first entered the forest, he told her, “I am sick when I look on thee,” but now he says:

To her, my lord,
Was I betrothed ere I saw Hermia
But like in sickness did I loathe this food;
But, as in health come to my natural taste,
Now I do wish it, love it, long for it,
And will for evermore be true to it. (2.1.212, 4.1.168-173)

Demetrius claims that he has come to his natural taste “as in *health*,” but the only thing that has changed since he flatly told Helena, “Do I not in plainest truth / Tell you I do not nor I cannot love you,” is that he has been drugged by Oberon (2.1. 200-201). Thus, it is precisely the opposite of health that has brought about this change in his feelings. The immense danger of the flower’s juice is shown in Demetrius’s ability to both recognize that there is an outside force influencing his emotions and think that the infatuation he feels is akin to a healthy change. And his desire for Helena is not mild. His words reflect the mad doting that Oberon described: he “wishes,” “loves,” “longs” for Helena. Oberon has delivered on his promise: “Ere he do leave this grove...he shall seek thy love” (2.1.246).

“I’ll streak her eyes, / And make her full of hateful fantasies”¹²

After Oberon’s assault of Titania, he must leave her presence, for he is now a passive bystander and Titania, when she awakes, will function as an active agent. According to Oberon’s plan, Titania awakes to Bottom singing and, though Puck has given him an ass-head, Titania’s “eye is

¹² 2.1.257-58

enthralled to [his] shape” (3.1.123). Titania’s attraction to Bottom soon takes a downward turn as Bottom upsets the Fairy Queen with his words, “If I had wit enough to get out of this wood, I have enough to serve mine own turn” (3.1.132-33). The thought of being separated from her new love object is unacceptable and it becomes clear that Titania will not be giving Bottom the option to leave: “Out of this wood do not desire to go. / Thou shalt remain here, whether thou wilt or no” (3.1.134-135). Titania will not only confine Bottom to the forest but—as she goes on to state that she “will purge [his] mortal grossness so / That [he] shalt like an airy spirit go”—will be taking control of what happens to his body (3.1.142-143). Eventually, she will have her faeries “tie up [her] love’s tongue [and] bring him silently,” an act that reveals she has no intention to ask for his consent (3.1.182).

While Bottom is Titania’s victim, however, Titania’s role as his perpetrator is questionable. Titania’s infatuation with Bottom is compulsory and it evokes Junior Brother’s words: “For I’d no power to see her and to live” (Middleton 1.2.62). The scaffold does not await Titania, but unlike Junior Brother, Titania’s actions are not due to a lack of willpower or a temporary lapse in judgement. When Titania sees Bottom, she is *truly* powerless to suppress her manufactured desire for him. With Titania unable to resist her sexual urges and Bottom defenseless against her power, who is the perpetrator in Bottom’s rape? Or, as Melissa Sanchez asks, “What is the nature of individual responsibility when individual resistance is futile, if not impossible?” (88) Titania is unaware of her incapacitated state. She does not know that there is anything to resist. Nonetheless, Titania does have agency. While she does not have a choice in her infatuation with Bottom, she does have a choice in how she pursues him. Does the fault of restraining Bottom lie with Titania or, as she is under the influence of a drug, should none of her actions be considered her own?

In our legal system, a defendant's mental state and their crime is considered. As law professor, Kari Hong, explains: "the legislature defines the mental state, known as mens rea, as what a defendant must have when engaging in the prohibited conduct—known as the actus reus. Together the bad thoughts and the bad act combine to constitute the elements of the crime" (272).¹³ While Titania committed the bad act, she did not have the bad thoughts. A similar claim can be made of Oberon. He facilitated Bottom's rape in that he prompted Titania's actions, but in the eyes of the law, he would have the bad thoughts and not the bad deeds. Oberon's role is complicated further, however, when we take into consideration what bad deeds he does perform. He may not physically be present during Bottom's rape, but he does apply the drops to Titania's eyelids himself. And his application of the flower's juice is most certainly done with an intention to harm. Speaking to Puck about the flower, he says, "And with the juice of this I'll streak her eyes, / And make her full of hateful fantasies" (2.1. 257-58). His assault of Titania, then, marks Oberon as criminally responsible—he had an intent to harm while engaged in a harmful act. Oberon's conversation with Puck also indicates that Oberon's assault is pre-meditated. As soon as Titania declared that she would not give up her changeling boy, Oberon began to plan to "torment [her] for this injury" (2.1.147). He carefully selects his weapon and while swords and daggers may be ideal options for those in the human world, Oberon chooses a tool that reflects his role as Fairy King: an enchanted flower. As Amanda Bailey notes, *A Midsummer Night's Dream's* "interest in magic...suggests Shakespeare's indebtedness to a developing early modern scientific discourse. Yet the play's Athenian setting and inclusion of Theseus...situates its action squarely in the intellectual tradition of common law" (403). As such, the magic in the play is "a

¹³ Hong, Kari. "A New Mens Rea for Rape: More Convictions and Less Punishment." *American Criminal Law Review*, vol. 55, no. 2, Spring 2018, pp. 259–332. General OneFile.

form of power which, like the law, regulates relations among different parties by exploiting and constraining their control over one another” (403). Oberon ultimately uses the magic of the flower to control Titania, but he also exploits his role as her husband to execute his plan. As her husband, he is privy to her habits and he uses this information to assault her when she is most vulnerable. When speaking to Puck about how he will apply the flower’s juice, Oberon provides an intimate image of her resting place:

I know a bank where the wild thyme blows
Where oxlips and the nodding violet grows,
Quite overcanopied with luscious woodbine,
With sweet musk-roses, and with eglantine.
There sleeps Titania sometime of the night,
Lulled in these flowers with dances and delight;
And there the snake throws her enameled skin,
Weed wide enough to wrap a fairy in; (2.1. 249-256)

Oberon’s words conjure sweet smells of roses and violets, the movement of blowing thyme, and the image of a tucked away garden covered—“quite overcanopied”—in a variety of flowers. When he mentions that this bank is where Titania sleeps, he also notes that she is “lulled” in the flowers. The word “lull” denotes a sense of calm or soothing. Being in a sleeping state already indicates vulnerability and the imagery of delicate flowers surrounding Titania enhances this feeling. Oberon’s final two lines seem to signal a shift in this otherwise pleasant imagery. He likens Titania to a snake and the metaphor only serves to draw more attention to how exposed she will be. This private space, filled with fragrant flowers, is where Titania comes to rest and shed her “enameled skin”—her protective layer. But the serenity that Titania is accustomed to

experiencing in this covered garden will soon be disrupted by Oberon. Instead of keeping the location of his wife's resting place safe, he will invade it with the intent to harm her.

Oberon's plan to take advantage of Titania in her most vulnerable state suggests that, like most rapists, he wants to exert the most control over his victim. Shirley Nelson Garner writes:

At the beginning, Oberon and Titania would seem to have equal magical powers, but Oberon's power proves the greater. Since he cannot persuade Titania to turn over the boy to him, he humiliates her and torments her until she does so. He uses the love potion not simply to divert her attention from the child, so that he can have him, but to punish her as well. (50)¹⁴

While Oberon does humiliate and torment Titania, I would argue that these actions signal weakness and not power. As Garner acknowledges, Oberon is not capable of persuading Titania to give up the boy. Only by putting Titania in a state of incapacitation can Oberon gain the upper hand in the couple's relationship.¹⁵ And, notably, to induce Titania's drugged state, Oberon turns to Cupid's power, not his own:

Cupid, all armed. A certain aim he took
At a fair vestal thronèd by the west,
And loosed his love-shaft smartly from his bow
As it should pierce a hundred thousand hearts. (2.1.157-160)

¹⁴ Garner, Shirley Nelson. "A *Midsummer Night's Dream*: Jack Shall Have Jill; / Nought Shall Go Ill." *A Midsummer Night's Dream: Critical Essays*, edited by Dorothea Kehler, 1 edition, Routledge, 1997, pp. 127–44.

¹⁵ Oberon's desire for power is further exhibited in his need for Titania to "render up her page" (2.1.185). With her distracted by her infatuation with Bottom, it would be easy for Oberon to simply take the changeling boy, but Oberon needs Titania's complete submission; he needs her to *give* him the boy.

Cupid is the one who shoots his enchanted arrow. His power ultimately imbues the flower with the ability to make anyone infected with its nectar experience love-sickness. And Puck is the one who will “fetch [Oberon] that flower” (2.1.169). Oberon’s task is the assault; he has no role in giving the flower its magic or even the great speed with which Puck retrieves the plant. More, Puck is the one who “left sweet Pyramus translated there; / When in that moment, so it came to pass, / Titania waked and straightaway loved an ass” (3.2.32-34). Puck’s mischief has added to Titania’s humiliation, not Oberon’s craftiness or power. His limited thinking is confirmed in his reply to Puck’s report: “This falls out better than I could devise” (3.2.35). The flower’s nectar, then, only gives Oberon a temporary power over Titania. He does succeed in getting the changeling boy. However, Titania’s parting with the boy may be just as fleeting as her infatuation with Bottom. When she wakes, she asks Oberon, “how came these things to pass?” (4.1.75). Oberon ignores her question, telling her instead “silence a while,” but he cannot silence her forever (4.1.77). Titania follows him to bless Hippolyta and Theseus’s marriage ceremony, but she does not forget her earlier question. Rather, she says:

Come, my lord, and in our flight
Tell me how it came this night
That I sleeping here was found
With these mortals on the ground. (4.1.96-99)

Titania’s statement, notably not a question, makes it clear that she will not let Oberon get out of explaining the day’s events. Just as Bottom attempts to make sense of his “most rare / vision,” Titania seeks clarification of the “visions” she has seen (4.1.199-200,73). Magic is, after all, just

a form of power. Cupid's flower and Dian's bud were just tools Oberon employed in his manipulation of Titania's right to consent to sexual acts.¹⁶

While his use of these flowers as tools of sexual violence and his clear malicious planning shows that Oberon has mens rea while engaging in actus reus regarding Titania's assault, Bottom's rape is still not accounted for legally. This gap in legal statutes necessitates a discussion of the special role consent can play in acts of facilitated sexual violence. As noted throughout this dissertation, the legal definition of rape was beginning to shift during the early modern period. Women, no longer thought of as property, were beginning to be seen as individuals whose will played a larger role in determining the validity of rape claims.¹⁷ As Miranda Chaytor notes: "For so long as rape was perceived as a theft, the woman herself was not called into account; the crime lay in the robbery...But once the law began to turn on consent, what was at stake was not property, but sexuality, morality, not the criminal's act but the victim's resistance, her innocence, her will, her desires" (396). This understanding of consent would seem to suggest that someone who engaged in intercourse with an unconscious woman

¹⁶ As indicated in 4.1.70-71, Oberon used "Dian's bud" to undo the spell laid with "Cupid's flower": "Dian's bud o'er Cupid's flower / Hath such blessed power." These lines also stress that the power lay in the flowers, not with Oberon.

¹⁷ Legal conceptions of "rape" were changing in the early modern period. Explaining how "the change...lay in the role assigned to the victim, the weight attached to consent," Miranda Chaytor explains:

'Rape,' Matthew Hale wrote... 'is the carnal knowledge of any woman above the age of ten years against her will, and of a woman-child under the age of ten years with or against her will'...the centrality of consent which Hale formulates here had not (as far as I know) been formulated so clearly before. It isn't that the concept was lacking in earlier centuries...but simply that its status was weak, in that what was determined by the victim's consent was not *whether* a rape had been committed but *in whose name* the prosecution was brought: 'If a feme covert be ravished and *consent to the ravisher*,' Edgar wrote in *The Lawes Resolutions*, 'the husband alone may have an Appeale'...[In short,] (395-396, emphasis in original)

Chaytor, Miranda. "Husband(ry): Narratives of Rape in the Seventeenth Century." *Gender & History*, vol. 7, no. 3, 1995, 378-407.

would be guilty of rape, as the woman could not consent. And yet, as Chaytor emphasizes, the focus was not on the criminal's act, but on the victim's resistance. An unconscious woman cannot offer resistance for the same reason that she cannot consent.

This emphasis on the victim's behavior, rather than the criminal's act has brought about a dangerous link between resistance and consent that still persists today. The two have become somewhat synonymous with one another. For example, according to a 2011 study, less than 3% of college women who were raped in situations involving drugs or alcohol reported their rapes to the police" and these women were less likely to acknowledge their experience as rape (Maurer 783).¹⁸ One explanation for why incapacitated sexual assault is not typically acknowledged as rape is that "Incapacitated assault is inconsistent with the rape myth that the archetypical rape is violent because the victim resists" (783).¹⁹ The idea that a victim needs to fight back or to be attacked with a weapon is still a stereotype in today's culture, but more importantly, it is still a big factor in today's legal system: "forty-six jurisdictions (forty-five states and Washington, D.C.) define rape as involving an actus reus of force" (Hong 277). In a disturbing 2017 case in which a 15 year old-girl was gang-raped:

A jury convicted Mr. Brown of rape in concert of a minor, forcible rape, rape of an intoxicated person, and rape of an unconscious person. But on appeal, the conviction for forcible rape was reversed. The issue in the case was that there were two encounters, one in a bedroom in which five men, including Mr. Brown, pushed the victim onto her hands

¹⁸ Maurer, Trent W. "Perceptions of Incapacitated Heterosexual Sexual Assault: Influences of Relationship Status, Perpetrator Intoxication, and Post-Assault Sleeping Arrangements." *Violence Against Women*, vol. 22, no. 7, 2016, pp. 780–97. *PubMed*.

¹⁹ Kilpatrick, et. al. defines incapacitated rape as an "unwanted sexual act involving all forms of penetration that occurs after the victim voluntarily uses drugs or alcohol. The victim is passed out or awake but too drunk or high to know what she is doing or to control her behavior" (10).

and knees and held her in that position while penetrating her, and a second in a vacant apartment in which the victim pushed away Mr. Brown and then fell unconscious. The court agreed that the bedroom encounter involved sufficient force to uphold a rape conviction, but the second one did not on the basis that ‘[b]ecause [the victim] was unconscious, there was no need to use force or fear to overcome her will.’ Because the prosecution had argued both encounters met the definition for force, there was potential that the jury wrongfully considered that second encounter met the definition of a forcible rape. The court accordingly reversed the conviction. (276)

Here, we see the precedence force takes in rape statutes. Not only does it play a major role in the prosecution of rape, but force also dominates cultural perceptions of sexual violence. The definition of rape, articulated by Matthew Hale, as “the carnal knowledge of any woman above the age of ten years *against her will*, and of a woman-child under the age of ten years with or *against her will*” still influences our understanding of the word today (Chaytor 395, my emphasis). Though there was no doubt regarding whether five men forcibly raped a minor at some point on the day this “second encounter” took place, our legal system’s focus on *will* makes it easier to scrutinize a victim’s behavior than punish a perpetrator. More, the emphasis on overcoming a victim’s will reinforces the idea that victims must actively resist attackers. Until our justice system focuses more on the actions of perpetrators, we will continue to see outcomes like Mr. Brown’s reversed conviction. When determining whether an event involves sufficient force to convict a defendant of rape, courts will continue to consider *whether* “there was...need to use force or fear to overcome” the victim’s will and completely ignore *the reason why* there was no need to use force.

“The will of man is by his reason swayed”²⁰

As stated in the beginning of the chapter, the play’s framework for consent shifts as Lysander and Hermia flee from Athens to the forest of the fairies. Lysander tells Hermia that “the sharp Athenian law / Cannot pursue” them once they reach his aunt’s home, but the power of that law fades as soon as the couple reaches the forest. While the patriarchal ideology of Athens devalued Hermia’s consent—she could not be forced to wed Demetrius, but her consent alone was insufficient to secure her marriage to Lysander—Hermia’s escape to the forest allows her to take more control of her body without removing it from the heterosocial market.²¹ When the young couple prepares to spend their first night in the forest, Hermia makes it clear that she understands the worth she holds in her patrilineal society. She tells Lysander: “for my sake, my dear, / Lie further off yet; do not lie so near” (2.2.49-50). Of course, Lysander attempts to convince Hermia that his request is an innocent one—“O, take the sense, sweet, of my innocence!”—but Hermia is firm and will not be taken in by Lysander’s flattery:

Lysander riddles very prettily

...

But, gentle friend, for love and courtesy,

Lie further off, in humane modesty.

Such separation as may well be said

Becomes a virtuous bachelor and a maid,

So far be distant; and good night, sweet friend.

²⁰ 2.2.121

²¹ In running away with Lysander, she reserves the option to accomplish what Kathryn Schwarz labels “the chanciest task of heterosocial ideology, the elusive transmutation of virginal separatism into chaste marriage” (112). Schwarz, Kathryn. *What You Will: Gender, Contract, and Shakespearean Social Space*. University of Pennsylvania Press, 2011.

Thy love ne'er alter till thy sweet life end. (2.2.51, 59, 62-67)

Though Lysander speaks of love in his attempts to convince Theseus to let him marry Hermia, this word is notably absent from Hermia's strategy for preserving her virginity.²² Instead, Hermia acknowledges the commodification of the female body in Athenian society, just as she did when, attempting to exert some control over her body, she told Theseus in his court that she will join a nunnery "ere she will yield her virgin patent up" (1.1.80). Her "love" was not being bartered; rather, it was the disposition of her virgin body. So, too, until she and Lysander *are* married, she must preserve her virginity. To do so, she reminds Lysander of their unwed status by referring to them as "a virtuous bachelor and a maid." Additionally, she repeatedly refers to him as her friend—"my gentle *friend*" and "my sweet *friend*." This contrasts with the more affectionate language she uses the next day—"sweet *love*" and "my *love*"—when daylight and the presence of their companions, Helena and Demetrius, provide her with an alternative means of protecting her chastity (3.2.263, 273).²³ The palace scene did more than just remind Hermia of her place in

²² Lysander's comment to Demetrius links love to marriage—"you have her father's love, Demetrius; let me have Hermia's. Do you marry him" (1.1.93-94). But Hermia, as does her father, recognizes that, for the Athenian legal system, who she loves and who she marries does not need to be the same person. Egeus responds: "True, he hath my love; And what is mine my love shall render him, / And she is mine, all my right of her / I do estate unto Demetrius" (1.1.95-98). Only Egeus's love matters; it determines who will receive Hermia's body.

²³ European women in the higher echelons of society found it easier to substantiate their innocence in cases of sexual assault than domestic servants and women who worked outside of the home. This was because upper class women were, ostensibly, always with servants, a male chaperone, or other women of their social class. The absence of chaperones when Hermia is alone in the forest with Lysander makes separation necessary for the maintenance of Hermia's virtue—or perhaps more importantly, the appearance of her virtue. However, when they are in the presence of Demetrius—who, as the man her father has chosen as her future husband, can be viewed as a male chaperone—and Helena—a woman of their social class—Hermia may feel more comfortable using affectionate terms with Lysander. The couple has someone to "substantiate their innocence." For more information on women, class, and sexual violence, see Julius Ruff's *Violence in Early Modern Europe, 1500-1800*; Frances E. Dolan's *Dangerous Familiars: Representations of Domestic Crime in England, 1500-1700*.

Athenian society. It also reminded her of the fleeting nature of love. In his attempts to get Theseus to side with the young couple, Lysander says: “Demetrius...Made love to Nedar’s daughter, Helena, / And won her soul, and she, sweet lady, dotes...Upon this spotted and inconstant man” (1.1.106-108, 110). Demetrius’s inconstancy could afflict any of the lovers. Hermia’s final line to Lysander before they sleep shows her caution: “Thy love ne’er alter till thy sweet life end.” Hermia may love Lysander enough to flee her home, but as she shows in the opening scene, she is not a fool. She is as strategic in the forest as she is at court, and, in not compromising what patriarchal society deems her most prized possession, she makes sure that she keeps as many options available to her as possible.

Hermia’s caution is immediately proven warranted as Lysander’s love for her seems to shift to Helena the very next day. Unlike Demetrius, though, Lysander is not simply fickle in his desires. Instead, he has been drugged by Puck with the nectar of the “love-in-idleness” flower. Ironically, having fled the patriarchal rule of Athens, where the devaluing of feminine consent prohibited the couple from entering into a mutually consensual sexual relationship, the couple now finds themselves in the forest, where Titania’s authority provides the model for female autonomy. In this space, Hermia is able to take control of her body and it is here that she occupies what is perhaps her most agentive role in the play. She chooses Lysander as her *future* sexual partner while asserting her right as “a virtuous maid” to deny him access to her body. And yet, in the same space that Hermia is finally able to exercise her right to consent, Lysander will be stripped of his. For him, the forest becomes a space in which his sexual autonomy is lost, as he is incapacitated by Oberon’s rape-facilitating drug.

Puck finds Lysander and, mistaking him for another Athenian, Demetrius, “*drops the juice on Lysander’s eyelids,*” saying:²⁴

Churl, upon thy eyes I throw

All the power this charm doth owe.

When thou wak’st, let love forbid

Sleep his seat on thy eyelid. (2.2.84-87)

Just as Titania does with Bottom, Lysander wakes to find Helena before him and immediately falls in love with her. Of course, he cannot love Helena and Hermia at the same time:

Content with Hermia? No, I do repent

The tedious minutes with her I have spent.

Not Hermia but Helena I love.

Who will not change a raven for a dove? (2.2.117-120)

Lysander’s declaration of love for Helena is one of comparison. Helena is the dove to Hermia’s raven.²⁵ In referring to Helena as “worthier,” Lysander indicates that there is another maid.²⁶

Despite the echoes of Hermia in Lysander’s wooing of Helena, he is convinced that he loves Helena. Her apparently self-evident superiority to Hermia is not the only reason why:

The will of man is by his reason swayed,

And reason says you are the worthier maid.

²⁴ Stage direction at 2.2.86.

²⁵ This comparison foreshadows Lysander’s later slurs that suggest Hermia has a darker complexion: “Away, you Ethiopie.”; “Out, tawny Tartar, out” (3.2.258, 265). For a brilliant discussion of why these slurs should be seen as more than just an allusion to dark and light hair, see Kim Hall’s *Things of Darkness: Economies of Race and Gender in Early Modern England*.

²⁶ This language contrasts to the words Demetrius will later use to discuss his love for Helena. He mentions Hermia only to say that his love for her has “melted as the snow” (4.1.163). Demetrius’s explanation to Theseus focuses on how he previously loathed Helena, but now loves her.

Things growing are not ripe until their season,
So I, being young, till now ripe not to reason.
And, touching now the point of human skill,
Reason, becomes the marshal to my will,
And leads me to your eyes.... (2.2.121-127)

Lysander's insistence that reason has led him to choose Helena is more than a little ironic, as the application of the flower's juice has made it impossible for Lysander to exercise reason.

Lysander believes Reason "leads...[him] to [Helena's] eyes," but it is Puck's application of the flower's nectar to *his* eyes that guides him. Oberon explains that the flower has the power to make a person take "what thou seest when thou dost wake...for thy true love" (2.2.33-34). Just as Demetrius claimed that he came to his newfound affection for Helena "as in health," Lysander insists that Reason has "become the marshal to [his] will" (4.1.171). However, the drug has actually become the marshal to his will. He is now forced to abandon Hermia and "madly dote" on Helena (2.1.171). In trying to make sense of their feelings, these two men have convinced themselves that their condition is the result of something positive. Not only have they been stripped of their capacity to consent, then, but the flower's juice has the ability to make the men—and Titania—active participants in what amounts to their own sexual assault.

Lysander and Titania will be freed from the powers of the flower's juice. Demetrius, however, will never wake from his drugged state. In a sense, he will remain Oberon's instrument forever. Not only will he continuously seek Helena's love, but when he engages in sexual acts with her in the future, he will be playing an active role in his own sexual assault. In the facilitator-instrument relationships between Oberon and Titania, and Oberon and Demetrius, the fairy king proves to be a facilitator unlike any previously discussed in this project. Other acts of

facilitated violence indicate that the facilitator-instrument relationship is inherently a dependent one, with the facilitator eventually having to take on the role of a passive bystander and rely on the actions of their instrument. However, while Oberon became more passive after drugging the sleeping Titania, and he will be less in control of the Athenians when they leave the forest, Oberon does not have to worry about his instruments' compliance. By introducing an outside agent—a magical flower—to the facilitator-instrument relationship, Oberon erases any possibility of resistance and renders Titania and Demetrius completely obedient for the duration of *his* will. The facilitator-instrument relationships in *A Midsummer Night's Dream*, then, can help us think about not only acts of facilitated sexual violence, but also how consent functions when a victim is incapacitated. As seen with Demetrius, Titania, and Lysander, incapacitation not only impairs an individual's ability to fully understand their circumstances, but removes their ability to consent.

As the reversal of Mr. Brown's conviction shows, U.S. sexual violence law still centers on force and will. This allows defendants to claim that "because [a] victim [is] unconscious there [is] no need to use force or fear to overcome [their] will" (Hong 276). Instead of thinking of will as something to be overcome, our court system should recognize it as something to be exercised. If the legal system shifted the concept of will in this way, then incapacitation could be viewed as a state in which a victim is unable to exercise their will.²⁷ As Shakespeare's play demonstrates, an inability to consent should not be taken as consent. Just as Titania, Demetrius, and Lysander were unable to recognize that they were in a situation that *required* their resistance, so in the law, the absence of dissent should not be taken as consent.

²⁷ While I am focusing on the legal system's use of "will" here, I want to be transparent in my belief that force should only be considered an aggravating factor in rape charges and the term should otherwise be removed from rape and sexual assault statutes.

CODA

“Legal interpretation takes place in a field of pain and death”:

Violence, Voice, and the Legal System—then and now

This dissertation was written with an insistent backdrop of violence, particularly sexual violence. Such violence is experienced not only, as I show in this dissertation, in terms of interpersonal dynamics between perpetrator and victim, facilitator and instrument, but also in terms of social systems such as courts of law. Feminist projects such as mine typically approach such social systems as monolithic systems of constraint, in which women can only be further oppressed. This view, however, is too simplistic, and it risks eliding voices, particularly female voices, that protest and change their conditions of existence. The early modern texts I have read in this dissertation, alternatively, show us women’s diverse methods for affecting such change.

When *A Midsummer Night's Dream* opens, Egeus comes to Theseus’s court, hoping to assert his paternal right to choose who Hermia will wed. Unwilling to abide disobedience, Egeus “beg[s] the ancient privilege of Athens,” insisting that Hermia choose between forced matrimony or death. According to Peter C. Herman:

When, therefore, Egeus invokes the “ancient privilege of Athens,” Shakespeare employs a phrase that would have automatically granted the law in question tremendous authority in early modern England. The term was closely associated with the authority of the

Ancient Constitution, the privilege of Parliament, habeus corpus, and Magna Carta. In each of these cases, the privileges in question exist independently of the ruler, who, as even Henry VIII realized, must accommodate them rather than vice versa...[Further, when Egeus invokes this right,] he puts both Theseus and the audience on notice that this law is not something any ruler of a commonwealth, be it ancient Athens or late sixteenth-century England, can ignore or casually supersede. (11)

This scene takes place in a palace, but the mention of Hermia's death reminds the audience that what Egeus is requesting is not just the enforcement of an ancient custom. He is asking Theseus to pass judgement on a civil dispute between him and his daughter. Theseus's court, then, is much like a modern courtroom, with its powers over life and death. As legal scholar Robert Cover has argued, "legal interpretive acts signal and occasion the imposition of violence upon others," and, in deciding if and how this ancient privilege will be enforced, Theseus has the power to impose death upon Hermia (1601).

Egeus is impatient and demands that Hermia "here before your grace [Theseus] / consent to marry with Demetrius" (1.1.39-40). But Theseus must give his opinion on the matter before he allows Hermia to reply to her father:

Be advised, fair maid.

To you your father should be as a god,
One that composed your beauties, yea, and one
To whom you are but as a form in wax
By him imprinted, and within his power
To leave the figure or disfigure it.
Demetrius is a worthy gentleman. (1.1.46-52)

Here, Theseus attempts to provide a justification for the patriarchal framework of Athens society that allows for Egeus to “dispose of” his daughter.¹ As Hermia’s creator, her father has the authority to preserve or destroy her. Almost as an afterthought, Theseus concludes with a line about the important, but silent Demetrius. Voicing an opinion he likely does not believe, Theseus refers to Demetrius as “a worthy gentleman”—a statement that contrasts with his later confession that he meant to speak to Demetrius about rumors regarding the man’s character.² And, as in confirmation, when Hermia rebuts Theseus’s compliment to Demetrius—saying “So is Lysander”—Theseus has no other information with which to recommend Demetrius (1.1.53). Instead, he returns to his argument regarding the importance of Hermia obeying her father.

Theseus’s continued promotion of the validity of the patriarchal system would suggest he agrees with Egeus that Hermia’s duty is to accept her father’s choice. Laura Levine supports this interpretation, going so far as to argue that “rather than transforming the sexual coercion he begins the play by promising to get rid of, [Theseus] immediately repeats it. Rather than undoing an act of sexual violence, he reenacts one. In fact, this sexual violence is embodied in the principle of Athenian law itself” (211). While Athenian law is certainly based on patriarchal

¹ James A. Calderwood points out that, “If patriarchal authority rests on conception, then mothers have as natural a right to be considered gods as fathers. What is glaringly absent from Theseus’s justification of patriarchy calls our attention to what is glaringly absent from the scene itself—mothers” (427). “A Midsummer Night’s Dream: Anamorphism and Theseus’ Dream.” *Shakespeare Quarterly*, vol. 42, no. 4, 1991, pp. 409–30.

Margaret Tudeau-Clayton argues that Theseus asserts his political authority at the same time that he asserts Egeus’s authority as Hermia’s father. “Scenes of Translation in Jonson and Shakespeare: ‘Poetaster, Hamlet’, and ‘A Midsummer Night’s Dream.’” *Translation and Literature*, vol. 11, no. 1, 2002, pp. 1–23.

Also see: Weller, Barry. “Identity Dis-Figured: ‘A Midsummer Night’s Dream.’” *The Kenyon Review*, vol. 7, no. 3, 1985, pp. 66–78.

² When Lysander notes that Demetrius is a “spotted and inconstant man,” Theseus replies: “I must confess that I have heard so much / And with Demetrius thought to have spoke thereof” (1.1.110, 111-112).

authority, and thus on pervasive gender inequalities, I am not convinced that the text supports the idea that the Athenian legal system must embody sexual violence. As Herman notes:

While we are not privy to the exact wording of the ‘ancient privilege of Athens,’ I think we can safely assume that the ‘true intent’ (Coke, *Reports* I:80) of this privilege is not to kill, but to enforce daughterly obedience to paternal authority. Theseus’s job is to ‘make such construction as shall suppress the mischief, and advance the remedy’ (Coke, *Reports* I:80), the reasonableness of the demand put upon the daughter unfortunately not being a relevant factor. (15-16)

Indeed, we do not know the exact wording of the privilege Egeus invokes. While I hesitate to make any assumptions regarding “true intent,” the words of the text offer some clarification regarding Athenian law. Egeus says:

I beg the ancient privilege of Athens
As she is mine, I may dispose of her,
Which shall be either to this gentleman
Or to her death, according to our law
Immediately provided in that case. (1.1.41-45)

As stated here, the ancient privilege refers to Egeus’s ownership of Hermia and his subsequent right to dispose of her. The demand, as Herman notes, is secondary and up to the father. This elucidation does not make Hermia’s situation much better, but it does, at least as far as this law is concerned, challenge the idea that a particularly *sexual* violence is built into the Athenian legal system. Indeed, to accede to that view is to accept that women have absolutely no power to contest the conditions of patriarchal oppression.

Similarly, while Theseus begins the play alluding to sexual violence, I am not certain that he repeats this act in his interaction with Hermia. Rather, his various examples of why Hermia should submit to her father's will can be taken as his justification for the violence he knows he is about to impose. Cover writes: "Interpretations in law also constitute justifications for violence which has already occurred or which is about to occur. When interpreters have finished their work, they frequently leave behind victims whose lives have been torn apart by these organized, social practices of violence" (1601). Theseus, in order to affirm Egeus's request for the ancient privilege, must provide an explanation for the law's application and enforcement. As Athens does appear to be founded on a patriarchal system, it is logical that he would draw on this discourse to justify his decision.

But of course, Theseus has yet to render a decision. Before he does, Hermia is given the chance to speak and she uses the opportunity to ask a question of her own:

I do entreat your grace to pardon me.
I know not by what power I am made bold,
Nor how it may concern my modesty
In such a presence here to plead my thoughts,
But I beseech your grace that I may know
The worst that may befall me in this case
If I refuse to wed Demetrius. (1.1.58-64)

Hermia may not be in a court of law, but she is in a space where, as a woman, she is not expected to play an active role. Despite this, however, Hermia chooses not to accept her father's interpretation of the ancient privilege as fact, and she summons the courage to ask for clarification. Recognizing she is in a male dominated space, Hermia begins her statement with a

request for pardon. She also acknowledges that her actions are bold, and ascribes her ability to proceed with them to an unknown force.³ In this way, she can, if only rhetorically, excuse herself. She goes on to recognize that her speech, in the company of so many men, may affect their perception of her modesty. However, in using the word “but,” she indicates that this concern for how her boldness will come across or the possible taint on her modesty is outweighed by the importance of the question she is about to ask. With her life on the line, Hermia must know if death is really the only alternative to marrying Demetrius.

The importance of Hermia’s question cannot be overstated. In challenging the authority of her father by seeking Theseus’s interpretation, Hermia provides Theseus with the space to employ *aequitas*. As Herman notes:

one finds a keen awareness that the rigor of law sometimes needed to be softened by a form of *aequitas*, or equity. As Aristotle writes in the *Rhetoric*, equity is ‘justice that goes beyond the written law’ (1.13.13), and by the Elizabethan period, it was understood that legal interpretation covered a very wide range of options. (12)

Had Hermia simply accepted Egeus’s word and chosen to agree or refuse to marry Demetrius, Theseus may not have had the opportunity to offer a third option. He would have had to enforce

³ This statement contrasts interestingly with Demetrius’s later statement to Theseus regarding his feelings for Hermia:

But, my good lord, I wot not by what power—
But by some power it is – my love to Hermia,
Melted as the snow, seems to me now.... (4.1.161-163)

Both Demetrius and Hermia understand that a power guides their feelings and actions, respectively, but where Demetrius is unaware of the source, it is unlikely that Hermia’s statement is more than a rhetorical strategy. Additionally, both characters are expressing their disinterest in one another, but while Hermia knows she must tread carefully, Demetrius’s incapacitated state does not allow him to recognize the potential danger he is in. At the time he confesses his feelings to Theseus, Egeus is still insisting that Hermia marry Demetrius and Theseus could punish all of the lovers for their perceived transgressions.