

SIR WILLIAM SCHWENCK GILBERT AND THE ILLOGIC OF THE LAW*

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*Oh, winnow all my folly, and you'll find
A grain or two of truth among the chaff!*¹

I. INTRODUCTION

Librettist² Sir William Schwenck Gilbert and composer Sir Arthur Seymour Sullivan collaborated on fourteen operettas between 1871 and 1896.³ Although the score to the first of their operettas, *Thespis*,⁴ has disappeared, companies around the world continue to perform the others. The 1999 biographical film por-

* [Editor's Note: For clarity, quoted verse from the operas has been italicized and centered, while non-verse has been treated as regular quotes.]

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1. William Schwenck Gilbert & Arthur Seymour Sullivan, *The Yeomen of the Guard*, in *The Complete Annotated Gilbert and Sullivan* 753, 787 ll. 557–558 (Ian Bradley ed., Oxford U. Press 1996) [hereinafter *Yeomen*].

2. A librettist is someone who writes the “text of an opera or other long vocal composition.” *The New Shorter Oxford English Dictionary on Historical Principles Vol. 1 A–M* 1578 (Lesley Brown ed., Clarendon Press 1993).

3. Michael Ffinch, *Gilbert and Sullivan* 274–275 (Weidenfeld and Nicolson 1993). The years of initial performance of the operettas are as follows: *Thespis* (1871), *Trial by Jury* (1875), *The Sorcerer* (1877), *H.M.S. Pinafore* (1878), *The Pirates of Penzance* (1880), *Patience* (1881), *Iolanthe* (1882), *Princess Ida* (1884), *The Mikado* (1885), *Ruddigore* (1887), *The Yeomen of the Guard* (1888), *The Gondoliers* (1889), *Utopia, Limited* (1893), *The Grand Duke* (1896). *Id.* In addition to his operettas and one cantata with Sullivan, Gilbert wrote thirty-nine other dramatic works. *Id.*

4. Ffinch, *supra* n. 3, at 44.

traying Gilbert and Sullivan's lives, *Topsy-Turvy*,⁵ received tremendous critical acclaim,⁶ sparking great interest in the operettas. Since then, more than twenty DVDs of Gilbert and Sullivan's operettas have come on the market,⁷ and the renewed interest in the operettas has revived interest in their parodic content.

Before his days as a librettist, Gilbert started a career as a barrister; however, after a few years, he realized that he lacked the ability to succeed in that endeavor.⁸ "So poor were his talents considered, in fact, that in his first two years at the bar Gilbert's average earnings were no more than £75 a year."⁹ One story emphasizes his ineptitude in court, recounting when "an old woman whom he was defending on a pick-pocketing charge took off one of her heavy boots in the dock and hurled it at his head as a reward for his effort on her behalf."¹⁰ Nevertheless, in the fullness of time, Gilbert's legal experience would stand him in good stead, not as a lawyer, but as a legal humorist.¹¹

The late twentieth-century music critic Deems Taylor attempted to put Gilbert's plots into perspective:

For as this gay, silly, endearing crew [of the operettas' characters] skip upon the stage, the sum of all that they say is

5. *Topsy-Turvy* (Goldwyn Films 1999) (motion picture).

6. See International Movie Database, *Awards for Topsy-Turvy (1999)*, <http://www.imdb.com/title/tt0151568/awards> (accessed Jan. 23, 2010) (providing a complete listing of all national and international awards and recognitions received).

7. These DVDs include ten versions of *The Mikado*, seven of *The Pirates of Penzance*, three of *Patience*, two each of *The Gondoliers* and *The Sorcerer*, and one each of *Trial by Jury*, *H.M.S. Pinafore*, and *Iolanthe*. Amazon.com, *Gilbert and Sullivan*, <http://www.amazon.com; select Movies & TV; search Gilbert and Sullivan> (accessed Aug. 8, 2009). This includes the re-release of *The Mikado*, the first of the operettas produced in color. *The Mikado* (Image Ent. 1998) (DVD). Additionally, a master collection of most of the operettas, as originally produced for the BBC, is available. *Gilbert & Sullivan: Master Collection* (AcornMedia 2002) (DVD).

8. Christopher Hibbert, *Gilbert and Sullivan and Their Victorian World* 28–30 (Am. Heritage 1976).

9. *Id.* at 30.

10. Finch, *supra* n. 3, at 25.

11. Gilbert actually mocked his own career choice by having Ko-Ko the executioner in *The Mikado* add the judicial humorist to the list of those who would not be missed if Ko-Ko were to carry out their death sentences stating:

*And that Nisi Prius nuisance, who just now is rather rife,
The Judicial humorist—I've got him on the list!*

William Schwenck Gilbert & Arthur Seymour Sullivan, *The Mikado*, in *The Complete Annotated Gilbert and Sullivan*, *supra* n. 1, at 551, 573 ll. 263–264 [hereinafter *The Mikado*].

always the same thing; and it is a romantic thing: That the light of pure reason casts grotesque shadows; that a world in which there is nothing but the letter of the law, and the logical conclusion, and the inevitable deduction, and the axiomatic fact, and the rational course of conduct, is, in the last account, a ridiculous one. Looking at their world, in which there is everything but the truth that lies beyond logic, we perceive that it is, in more ways than one, an impossible world.¹²

Gilbert delights in satirizing the illogical results that follow from the rigid application of logic—particularly legal logic—to romance, and to life in general.¹³ Whether set in or out of court, Gilbert's operettas pillory logical analysis. No character more embodies his distaste for sophistry than the logician and attorney Sir Bailey Barre, who comments:¹⁴

*He's a great Arithmetician who can demonstrate with ease
That two and two are three, or five, or anything you please;
An eminent Logician who can make it clear to you
That black is white—when looked at from the proper point of view;
A marvellous Philologist who'll undertake to show
That 'yes' is but another and a neater form of 'no.'*¹⁵

As a barrister, Barre determines a defendant's guilt or innocence based on whose solicitor's brief he is reading.¹⁶ With this, Barre exemplifies the type of barrister that The Lord Chancellor in

12. Deems Taylor, *Preface*, in W.S. Gilbert, *Plays & Poems of W.S. Gilbert* LX (Deems Taylor ed., Random House 1932).

13. "[Gilbert] was fascinated by the impudence of jurisprudence Virtually every opera satirizes abuses of the British legal system; its maze of incomprehensible regulations, its courtroom solemnities concealing bias or incompetence." Jon Kertzer, *Life Plus Ninety-Nine Years: W.S. Gilbert and the Fantasy of Justice*, 36 *Mosaic* 1, 1–2 (2003).

14. In *Utopia, Limited*, Sir Bailey Barre is Queen's Counsel and a Member of Parliament. Barre is one of the "Flowers of Progress" sent from England to reform the Utopian government. William Schwenck Gilbert & Arthur Seymour Sullivan, *Utopia, Limited*, in *The Complete Annotated Gilbert and Sullivan*, *supra* n. 1, at 969, 1027 [hereinafter *Utopia*].

15. *Id.* at 1029 ll. 1096–1101.

16. He states:

*That whether you're an honest man or whether you're a thief
Depends on whose solicitor has given me my brief.*

Id. at ll. 1106–1107.

*Iolanthe*¹⁷ implicitly criticizes by saying that when he first became a barrister he was determined to function on the novel concept that he would never determine guilt or innocence purely based on an attorney's writing.¹⁸

Gilbert does not merely attack legal sophistry; he attacks the entire system of legal reasoning.¹⁹ He has legal logic fly in the face of nature and the letter of the law fly in the face of fairness.²⁰ Repeatedly, the operettas display the outrageous results that flow from literal readings of the law and raw logic.²¹ This Article examines the satirical manner in which Gilbert treated the law and legal reasoning in his thirteen extant operettas. Part II explores Gilbert's satirical attacks on the legal argumentation in court. Part III studies the lay person's argumentation outside of court. Finally, Part IV analyzes Gilbert's satirical treatment of politicians and the legislation they produce.

17. William Schwenck Gilbert & Arthur Seymour Sullivan, *Iolanthe*, in *The Complete Annotated Gilbert and Sullivan*, *supra* n. 1, at 355 [hereinafter *Iolanthe*].

18. He states:

*I'll never assume that a rogue or a thief
Is a gentleman worthy implicit belief,
Because his attorney has sent me a brief[.]*

Id. at 387 l. 469. "This is the most revealing song. It draws attention to lawyers' malpractices, indicating with candour and satire what are certainly divergences from professional standards." A. J. Burgess, *The Notary and other Lawyers in Gilbert & Sullivan* 132 (Jardine Press 1997).

19. "In Gilbert's uncharitable world, the law is the source of both stability and instability." Kertzer, *supra* n. 13, at 6.

20. *Id.* at 11.

21. Gilbert's rule makers "devise legal fictions, which are promptly rendered preposterous by wordplay and equivocation, by treating figurative expressions literally, or through a comic conflict of jurisdictions." *Id.* at 3.

II. LEGAL ARGUMENTATION IN COURT

*The Prosaic Rules of Evidence*²²

England had long wrestled with the tension between equity and law.²³ Gilbert's predecessor, Shakespeare, once urged that the strict letter of the law should give way to the mitigating influence of compassion.²⁴ Shakespeare's Portia in *The Merchant of Venice* pleaded with the unrelenting Shylock that he not strain "the quality of mercy."²⁵ Only a few years later, Sir Edward Coke led the epic struggle of the English courts of common law against the ecclesiastical courts and courts of High Commission.²⁶ Gilbert draws on this historic tension to further his plots and to satirize strict legal logic.²⁷ Similar to Portia's scene in *The Merchant of Venice*, Edwin, in *Trial by Jury*,²⁸ and Strephon, in *Iolanthe*,²⁹ plead for compassion and human kindness only to have the jury and Lord Chamberlain in their respective operettas fall back on the letter of the law.

In *Trial by Jury*, Angelina brings a suit for breach of promise to marry against Edwin, who appears pro se³⁰ and pleads his case

22. *Iolanthe*, *supra* n. 17, at 387 l. 460. Strephon, an Arcadian shepherd asking to marry a ward of the court, queries of The Lord Chancellor, "And have you the heart to apply the prosaic rules of evidence to a case which bubbles over with poetical emotion?" *Id.* at 387 ll. 460–461. The Lord Chancellor then replies, "Distinctly. I have always kept my duty strictly before my eyes, and it is to that fact that I owe my advancement to my present distinguished position." *Id.* at 387 ll. 462–464.

23. See David M. Walker, *The Oxford Companion to Law* 203–204 (Oxford U. Press 1980) (stating that common law and equitable jurisdictions experienced a definite conflict during the late sixteenth and into the early seventeenth centuries).

24. Roma Gill, *Shylock*, in William Shakespeare, *The Merchant of Venice* xxvii (Roma Gill ed., rev. ed., Oxford U. Press 1992). The play originally appeared in 1600. Roma Gill, *Date and Text*, in William Shakespeare, *The Merchant of Venice*, *supra* n. 24, at xxx.

25. William Shakespeare, *The Merchant of Venice*, *supra* n. 24, at 70 l. 182.

26. Catherine Drinker Bowen, *The Lion and the Throne: The Life and Times of Sir Edward Coke: 1552–1634*, 291–306 (Little, Brown & Co. 1957).

27. Although it may seem as though The Lord Chancellor should dispense equity as the highest judicial office in the English system of equity, at the time Gilbert wrote the Court of Chancery had become merely a division of the new High Court of Justice, which dealt with both law and equity. Walker, *supra* n. 23, at 203–204, 567.

28. William Schwenck Gilbert & Arthur Seymour Sullivan, *Trial by Jury*, in *The Complete Annotated Gilbert and Sullivan*, *supra* n. 1, at 1 [hereinafter *Trial by Jury*]; *infra* nn. 39, 47 and accompanying text (describing Edwin's pleas).

29. *Infra* nn. 54–57 and accompanying text (describing Strephon's pleas and The Lord Chancellor's replies).

30. At no point does Gilbert indicate why Edwin appears without counsel, nor does

to the jury in a sequence of arias.³¹ At first, Edwin appeals to the “good old boy” in the jurors, stressing that the vagaries of love compelled him—like all men—to leave the affections of one lady for those of another.³² The jurors, although admitting that when younger they acted in the same way, reject Edwin’s argument as they have now become respectable.³³

Angelina’s counsel makes his opening argument to the jury.³⁴ He makes an emotional argument, but immediately ties it together with the legal elements needed to prove Angelina’s case.³⁵ After a somewhat extended discussion of the courtship and emotional ties between Angelina and Edwin, Angelina’s counsel neatly sums up his opening argument by presenting the elements of breach of marital contract saying:

*Picture, then, my client naming,
And insisting on the day:*

Bradley offer an explanation.

31. *Trial by Jury*, *supra* n. 28, at 11 ll. 45–49.

32. Edwin recounts to the jury:

*With fitful glimmer burnt my flame,
And I grew cold and coy,
At last, one morning, I became
Another’s love-sick boy.*

Id. at 11 ll. 70–74.

33. The jurors respond:

*Oh, I was like that when a lad!
A shocking young scamp of a rover,
I behaved like a regular cad;
But that sort of thing is all over.
I am now a respectable chap
And shine with a virtue resplendent
And, therefore, I haven’t a scrap
Of sympathy with the defendant!*

Id. at 13 ll. 75–82. Of course the Jury’s respectability does not interfere with the emotional sway of Angelina’s beauty as they respond to Angelina’s coy batting of her eyes by saying, “We love you fondly and would make you ours!” *Id.* at 23 l. 225.

34. *Id.* at 25, 27 ll. 246–251, 253–258, 260–265. On *Trial by Jury*’s opening night, the actor playing Angelina’s attorney “was made up to look exactly like [George] Lewis,” a well-known and recognizable solicitor of the day. John Juxon, *Lewis and Lewis*, 155 (Ticknor & Fields 1984).

35. See *Trial by Jury*, *supra* n. 28, at 25 ll. 237–238 (stating that Angelina’s counsel opens his arguments stating that he approaches the “painful case” with “a sense of deep emotion”). Such an emotional argument would be a breach of contemporary ethical standards. See *e.g.* R. Regulating Fla. Bar 4–3.4(e) (stating that a lawyer may not “[i]n trial . . . state a personal opinion as to the justness of a cause . . . [or] the culpability of a civil litigant”).

*Picture him excuses framing—
Going from her far away.*³⁶

Angelina's counsel has presented all the elements of Angelina's case in chief: Edwin, having offered Angelina his hand in marriage, has now withdrawn it after Angelina's acceptance.³⁷ As Angelina's counsel has married emotion with legal elements, the jurors respond positively.³⁸

At the conclusion of Angelina's counsel's opening argument, Edwin realizes that he must change his approach, so he launches into his second argument—that his actions merely reflect “the laws of nature,” which have compelled him to act.³⁹ Unfortunately, Edwin realizes he has made no headway with the jury,⁴⁰ so he shifts to a settlement, offering to marry Angelina that day and his new love the next.⁴¹ Even though the judge considers this “a reasonable proposition,”⁴² Angelina's attorney points out that

36. *Trial by Jury*, *supra* n. 28, at 27 ll. 260–263; *but see* Anthony John Hunter Morris, *WS Gilbert and Sir Arthur Sullivan's Trial by Jury—A Legal Commentary*, <http://www.lexscripta.com/articles/trialbyjury.html> (last updated Jan. 27, 2004) (discussing emergent legal themes in *Trial by Jury* including how Edwin could win over the jurors because of legal practices and reasoning during the time period).

37. According to the English law of the time, the legal elements for damages for breach of contract in a promise to marry included “[w]hen a man and a woman agree to marry and subsequently either one refuses, the other may bring suit for damages, such suits being called breach of promise suits.” John Bouvier, *Bouvier's Law Dictionary and Concise Encyclopedia* 2741 (Francis Rawle ed., 8th ed., West Publ. Co. 1914). In his commentary on personal wrongs under English law of the period, Sir William Blackstone does not specifically address breach of promise to marry, although he discusses the existence of breach of contract in private matters. William Blackstone, *Commentaries on the Laws of England* vol. 3, 117 (3d rev. ed., Callaghan & Co. 1884) (contrasting contracts with torts or wrongs in his discussion of wrongs and their remedies).

38. Once counsel has concluded, the jury sings to Angelina:

Cheer up, cheer up, we love you!

Trial by Jury, *supra* n. 28, at 27 l. 268.

39. Edwin states:

*Of nature the laws I obey,
For nature is constantly changing.*

Id. at 31 l. 296.

40. An example of the jurors' sympathy toward Angelina includes when, after Angelina appears to feel faint, the jurors point their fingers at Edwin and cry:

*Monster, dread our fury—
There's the Judge, and we're the Jury!*

Id. at 29 ll. 289–290.

41. *Id.* at 31 ll. 317–318.

42. *Id.* at l. 320.

the law forbids such a resolution.⁴³ The jury responds positively to Angelina's counsel's defense and lauds him as a learned man.⁴⁴ The law, however basic, holds sway even when the judge later declares it to be fudge.⁴⁵

Seeing her advantage, Angelina decides to make the next step and, after pleading her undying love for Edwin, urges the jurors

43. Angelina's attorney states:

*But, I submit, m'lud, with all submission,
To marry two at once is Burglaree!*

Id. at ll. 323–324. As Bradley points out in the accompanying annotation, the offense would be bigamy and not burglary. *Id.* at 30 l. 323 (annotating *id.* at 31 ll. 323–324). Bigamy was a very serious offense during this time period in England. “In England [bigamy] was punishable by the stat. 24 & 25 Vict. c. 100, § 57, which made the offence felony.” Bouvier, *supra* n. 37, at 343. Bigamy is also one of the oldest crimes, as Plaintiff's counsel in *Trial by Jury* notes after consulting his dusty law book:

*In the reign of James the Second,
It was generally reckoned
As a rather serious crime
To marry two wives at one time.*

Trial by Jury, *supra* n. 28, at 31, 33 ll. 325–328. The actual statute dates back to James the First of England when it was declared “[a]n act to restrain all persons from marriage until their former wives and former husbands be dead.” 1 Jac. I, c. 11 (1603) (available in *The Statutes at Large, from the Thirty-Ninth Year of Q. Elizabeth, to the Twelfth Year of K. Charles II. Inclusive*, vol. VII, ch. XI, 88 (Danby Pickering ed., Bentham 1763)). To explore the typical legal reasoning and application of law used in an early bigamy case, see *Porter's Case* (1625) 12 Car. 461, 463; 79 ER 1000 (stating that a woman with a questionable divorce, whose former husband still lived, should not remarry but rather should “procure a pardon to avoid the danger” because the second marriage would be a felony). For a thorough discussion of the history of bigamy in England, see *Finlay v. Chirney* (1888) 20 QB 494, 504 (CA).

44. *Trial by Jury*, *supra* n. 28, at 33 l. 330. Perhaps Gilbert intended the mistake of “burglaree” for “bigamy” as a further satire on the pomposity of an attorney who could not identify even the simplest criminal offense. Certainly, even if counsel had identified the proper (and obvious to all in the courtroom) crime, it would hardly rate such effusive praise. In the license copy, the satire continued even more effectively, where the usher comments:

*His lordship's always quits
In points like this contesting.
This keen exchange of wits
Is always interesting.*

Id. at 32 l. 330.

45. The judge states:

*Though all my law be fudge,
Yet I'll never, never budge,
But I'll live and die a Judge!*

Id. at 19 ll. 160–162. All in the courtroom then reply,

And a good Judge too!

Id. at 19 l. 163.

to award her huge damages.⁴⁶ In turn, Edwin falls back on his final argument—that the jury should award Angelina virtually no damages because, since marriage to him would be a horror, Angelina has lost nothing in his refusal to marry her.⁴⁷ This argument of abatement appeals to the jury because, as a legal body, they can comprehend it.⁴⁸

Seeking to bolster Edwin's seemingly successful abatement argument, the judge insists on evidence that Edwin truly would brutalize his young fiancée.⁴⁹ As the trial then erupts into a sequence of objections and general chaos, the judge throws up his hands and arrives at the final resolution:

*I will marry her myself!*⁵⁰

Gilbert similarly satirizes the legal system in *Iolanthe*.⁵¹ Strephon approaches The Lord Chancellor⁵² seeking to marry

46. Angelina pleads with the jury:

*When you I'm addressing, are busy assessing
The damages Edwin must pay!*

Id. at 33 ll. 347–348.

47. According to Edwin, the vices that would make him an undesirable husband include:

*I smoke like a furnace—I'm always in liquor,
A ruffian—a bully—a sot;
I'm sure I should thrash her, perhaps I should kick her,
I am such a very bad lot!*

Id. at 35 ll. 350–353.

48. The jury states:

*If, when in liquor, he would kick her,
That is an abatement.*

Id. at ll. 363–364. “A plea in abatement was a plea which, before . . . 1875, the defendant, without admitting or denying the cause of action, set up some matter of fact the legal effect of which was to preclude the plaintiff from recovering upon the writ and declaration (i.e., statement of claim) as then framed. . . .” 36 *Halsbury's Laws of England* ¶ 51, n. 1 (4th ed. 1980).

49. The judge proposes:

*He says, when tipsy, he would thrash and kick her,
Let's make him tipsy, gentlemen, and try!*

Trial by Jury, *supra* n. 28, at 35 ll. 368–369.

50. *Id.* at 37 l. 385.

51. *Iolanthe*, *supra* n. 17 at 360.

52. The character of The Lord Chancellor of *Iolanthe* has had a lasting effect in the real legal world. See Douglas W. Kmiec, *Young Mr. Rehnquist's Theory of Moral Rights—Mostly Observed*, 58 *Stan. L. Rev.* 1827, 1868 (2006) (stating that, in addition to incorporating a passage from *Iolanthe* in a dissent, the late Chief Justice Rehnquist “adorned his

Phyllis, a ward of court.⁵³ An Arcadian shepherd, Strephon first attempts to argue by singing Arcadian songs in open court, but The Lord Chancellor has Strephon removed.⁵⁴ Undaunted, Strephon continues his attempts to marry Phyllis only to find himself once again before The Lord Chancellor, this time to face the equivalent of an order to show cause why he should not be held in contempt.⁵⁵ Strephon begins his defense by challenging the jurisdiction of the Court of Chancery, arguing that Nature herself has insisted that he marry Phyllis.⁵⁶ Momentarily nonplussed, The Lord Chancellor quickly recovers by falling back on the rules of law in observing that Strephon has presented no evidence to support his jurisdictional defense.⁵⁷ When Strephon claims that Nature herself spoke to him, The Lord Chancellor refuses to give this credence since the evidence is hearsay and, thus, inadmissible.⁵⁸ Strephon's final effort falls on deaf ears when he asks The Lord

judicial robe in the manner of the costume of [T]he Lord Chancellor in the operetta *Iolanthe*. . . . The stripes upon Rhenquist's robe may have reminded him in each sitting of the hubris of [The Lord Chancellor's] remarks. They are the antithesis of Rehnquist's theory of moral right and his jurisprudence which, with some exception, was consistent").

53. *Iolanthe*, *supra* n. 17, at 369 ll. 143–145.

54. Strephon explains, "At first he seemed amused, so did the Bar; but quickly wearying of my song and pipe, bade me get out." *Id.* at ll. 146–147.

55. The Lord Chancellor asks, "Now, sir, what excuse have you to offer for having disobeyed an order of the Court of Chancery?" *Id.* at 385 ll. 440–441.

56. Throwing down the gauntlet, he argues to The Lord Chancellor, "Sir, you are England's Lord High Chancellor, but are you Chancellor of birds and trees, King of the winds and Prince of thunderclouds?" *Id.* at 385–387 ll. 449–451.

57. The Lord Chancellor admits, "But my difficulty is that at present there's no evidence before the Court that chorused Nature has interested herself in the matter." *Id.* at 387 ll. 453–454.

58. In objecting to the hearsay evidence that Strephon attempted to admit, The Lord Chancellor states, "[I]t's not evidence. Now an affidavit from a thunderstorm, or a few words on oath from a heavy shower, would meet with all the attention they deserve." *Id.* at ll. 458–459. Note that similar to Angelina's counsel in *Trial by Jury* mistaking burglary for bigamy, The Lord Chancellor, also a legal figure, has made an error of law. *Trial by Jury*, *supra* n. 28, at 33 l. 330; *Iolanthe*, *supra* n. 17, at 387 ll. 458–459. While Strephon's statement constituted hearsay, in Gilbert's day it still could be considered evidence—albeit inadmissible evidence. See Blackstone, *supra* n. 37, at 366 (stating "[e]vidence signifies that which demonstrates, makes clear, or ascertains the truth of the very fact or point in issue"); John Henry Wigmore, *A Treatise on the Anglo-American System of Evidence in Trials at Common Law* vol. 1, § 1, 3 (2d ed., Little, Brown & Co. 1923) (defining evidence as "[a]ny knowable fact . . . considered with a view to its being offered before a legal tribunal"). However, The Lord Chancellor correctly notes that Strephon's submission could not be admitted into evidence before the court. See Blackstone, *supra* n. 37, at 368 (stating "no evidence of a discourse with another will be admitted, but the man himself must be produced").

Chancellor, “And have you the heart to apply the prosaic rules of evidence to a case which bubbles over with poetical emotion?” to which The Lord Chancellor replies, “Distinctly.”⁵⁹

The Lord Chancellor’s strict application of the rule of law extends to his own life, but with a favorable outcome. The Lord Chancellor wishes to marry Phyllis, but as her “constitutional guardian,” he cannot grant his own request since to do so would create a conflict of interest.⁶⁰ The Lord Chancellor then applies the rule of law for suitors to his own situation, self-arguing:

At first I wouldn’t hear of it—it was out of the question. But I took heart. I pointed out to myself that I was no stranger to myself; that, in point of fact, I had been personally acquainted with myself for some years. This had its effect. I admitted that I had watched my professional advancement with considerable interest, and I handsomely added that I yielded to no one in admiration for my private and professional virtues. This was a great point gained. I then endeavoured to work upon my feelings. Conceive my joy when I distinctly perceived a tear glistening in my own eye! Eventually, after a severe struggle with myself, I reluctantly—most reluctantly—consented.⁶¹

The Lord Chancellor’s application of the rule of law to Strephon’s situation does not have as sympathetic a result, and not

59. *Iolanthe*, *supra* n. 17, at 387 l. 462. See *supra* n. 22 (quoting the exchange between Strephon and The Lord Chancellor as they discuss the application of the prosaic rules of evidence).

60. *Iolanthe*, *supra* n. 17, at 375–376 ll. 263–295 (bemoaning his role as “constitutional guardian” of many desirable young women because he desires to remarry, and he would not be able to do so with any of his wards).

61. *Id.* at 441 ll. 489–498. The Lord Chancellor’s self-argument in this passage is similar to other pseudo soul-searching characters exhibited in other of Gilbert’s operettas. For example, Pooh-Bah in *The Mikado* attempts to align the views of the many municipal offices which he holds during a discussion with Ko-Ko the Executioner regarding payment for an upcoming event. *The Mikado*, *supra* n. 11, at 575 ll. 279–309; see Dennis F. Thompson, *The Institutional Turn in Professional Ethics*, *Ethics & Behavior*, 9 (2), 109, 112 (1999) (stating that Pooh-Bah is an excellent example of how not to ethically resolve conflicts of interest). Similarly, in *Ruddigore*, Richard Dauntless appears to profess only the purest of logical motives and argument when revealing that his foster-brother is the true recipient of a witch’s curse when, in reality, if his foster-brother is not available to interfere, Richard has a clear path to marry his desired Rose Maybud. William Schwenck Gilbert & Arthur Seymour Sullivan, *Ruddigore*, in *The Complete Annotated Gilbert and Sullivan*, *supra* n. 1, at 653, 703 ll. 813–818 [hereinafter *Ruddigore*].

even the powerful emotional argument by Strephon's mother, Iolanthe, sways The Lord Chancellor from the decision he makes in accordance with the law's strict demands.⁶² When Iolanthe then reveals herself as The Lord Chancellor's long-lost wife and a fairy, The Lord Chancellor realizes he can no longer marry Phyllis under the strict rule of law.⁶³ Furthermore, Iolanthe's revelation carries with it a death sentence under strict fairy law, for "every fairy must die who marries a mortal."⁶⁴ The Lord Chancellor, then realizing that the strict application of law is not always equitable, notes that "[t]he subtleties of the legal mind are equal to the emergency."⁶⁵ He subsequently suggests changing the text of the fairy statute to read "who *doesn't* marry a mortal" to legitimize Iolanthe's act—and the marriages of virtually all the opera's female characters.⁶⁶ Where emotion could not trump The Lord Chancellor's legal argumentation in Strephon's case, he allows it to govern his own situation.⁶⁷

Neither Edwin nor Strephon could succeed with an argument based on compassion, fairness, or the laws of nature. When Edwin abandons his appeal to human nature,⁶⁸ he reaches the jury through his legalistic plea in abatement.⁶⁹ None of Strephon's arguments based on nature prevail,⁷⁰ and only when The Lord Chancellor finds himself confronting the possibility of bigamy does he abandon his plan to wed Phyllis.⁷¹

62. "The song was, of course, 'He Loves,' which is one of the saddest and most moving in all the Savoy Operas." *Iolanthe*, *supra* n. 17, at 440 (annotating *id.* at 441 ll. 505–520).

63. *Id.* at 443 ll. 534–535. Once again, The Lord Chancellor appears to have misinterpreted the law. The Fairy Queen had banished Iolanthe twenty-five years prior for marrying a mortal. *Id.* at 363 ll. 30–39. Therefore, had The Lord Chancellor married Phyllis, he would not have committed the felony of bigamy because the statute criminalizing bigamy contained within it an exception for remarriage by those whose spouse was absent for more than seven years. I Jac. I, c. 11; *see supra* n. 43 (discussing the felony of bigamy under English law during the time period of Gilbert and Sullivan's operettas).

64. *Iolanthe*, *supra* n. 17, at ll. 559–560.

65. *Id.* at ll. 562.

66. *Id.* at 445 l. 564 (emphasis in original).

67. The character's inconsistency is intentional. *See infra* n. 131 and accompanying text (observing that Gilbert wrote *Iolanthe* to mock the British House of Lords).

68. *Supra* n. 39 and accompanying text (discussing Edwin's appeal to the jury's human nature).

69. *Supra* n. 47 and accompanying text (discussing Edwin's plea of abatement in *Trial by Jury*).

70. *Iolanthe*, *supra* n. 17, at 385–387 ll. 449–464.

71. *Id.* at 443 ll. 533–540; *see supra* n. 63 and accompanying text (discussing The Lord Chancellor's conclusion that to marry Phyllis would be bigamy despite the existing excep-

Gilbert's satire of legal reasoning continues in *The Grand Duke*, where the Notary⁷² comments, "It is always amusing to the legal mind to see a parcel of laymen bothering themselves about a matter which to a trained lawyer presents no difficulty whatever."⁷³ The Notary's "trained lawyer" mind, however, devises a solution to a problem that creates a much worse crisis, upon which the entire operetta is based. The Notary suggests that two adversaries resolve their differences through a statutory duel,⁷⁴ with the loser remaining alive but forfeiting all identity and the Grand Duke pardoning the winner.⁷⁵ The characters can find happy resolution to the Notary's failed strict application of the law only through further strained legal reasoning.⁷⁶ At the heart of Gilbert's nonsense is the dilemma that there is no justice with-

tion in the bigamy laws of the time period for absent spouses).

72. The position of notary finds its roots in an "ancient legal office whose chief function [was] to draw up, attest and certify deeds and documents." William Schwenck Gilbert & Arthur Seymour Sullivan, *The Sorcerer*, in *The Complete Annotated Gilbert and Sullivan*, *supra* n. 1, at 41, 62 (annotating *id.* at 63 l. 287) [hereinafter *The Sorcerer*]. Acknowledging the position's roots, throughout the operettas Gilbert identifies notaries as legal officers. *See e.g. id.* at 63 ll. 288–289 (the Notary asks if a contract has been prepared for signing and sealing). For a thorough analysis of the Notary's role in Gilbert's operas, see generally Burgess, *supra* n. 18.

73. William Schwenck Gilbert & Arthur Seymour Sullivan, *The Grand Duke*, in *The Complete Annotated Gilbert and Sullivan*, *supra* n. 1, at 1018, 1107 l. 388 [hereinafter *The Grand Duke*].

74. *Id.* at 1109 ll. 423–435 (describing a statutory duel as an alternative to a physical duel where persons engaged in a quarrel would each draw a card and whomever drew the lowest card would become a legal ghost, losing his or her identity entirely to the winner).

75. *Id.* at 1107 ll. 394–397. Neither of the adversaries had heard of the statutory duel, and the Notary explained that the law creating the practice was passed one hundred years prior and was about to expire the following day, so the adversaries were just in time to use it. *Id.* at ll. 398–403. However, if the adversaries used the statutory duel that day, the law expired the following day and, thus, the penalty the duel imposes should end the following day. Burgess, *supra* n. 18, at 173, 175.

The logic of [the plot] is hard to follow: it seems odd that a penalty imposed during the period of a law's validity terminates when that law expires. But such legal oddities are rife and provide substantial and well-earned fees for those lawyers called upon to deal with them and in this instance the notary's twofold ingenuity rescues two parties. . . .

Id. at 175.

76. One of the twins draws an ace, believes himself the winner, and only at the end discovers that all were acting under an erroneous assumption—that for the purposes of the statutory duel as the Notary states, "Well, the fact is, there's been a little mistake here. On reference to the Act that regulates Statutory Duels, I find it is expressly laid down that the Ace shall count invariably as lowest!" *The Grand Duke*, *supra* n. 73, at 1195 ll. 831–833; *see supra* n. 74 (describing the statutory duel process).

out law, but laws may be unjust—a problem for which he devises fantastic, legal solutions.⁷⁷

No matter how convoluted legal logic may seem, Gilbert manages to resolve all the problems without reverting to non-legal methods.⁷⁸ A clear example of this is Ko-Ko the Executioner's argument in *The Mikado*.⁷⁹ The bloodthirsty Mikado seeks an explanation of why Ko-Ko did not carry out an execution and relents only when confronted by Ko-Ko's utterly illogical, but apparently unassailable, logic:

When your Majesty says, "Let a thing be done," it's as good as done—practically, it *is* done—because your Majesty's will is law. Your Majesty says, "Kill a gentleman," and a gentleman is told off to be killed. Consequently, that gentleman is as good as dead—practically, he *is* dead—and if he is dead, why not say so?⁸⁰

With these words, Gilbert propels the audience into the operetta's whirling finale⁸¹ before it has a chance to dwell on the irrationality of what it has just heard.

III. LAY ARGUMENTATION OUT OF COURT

*We've quips and quibbles heard in flocks,
But none to beat this paradox!*⁸²

Given Gilbert's legal background, even lay rationale in the operettas revolves around legal issues. These, too, often lead to humorous results. The most amusing instances occur when non-lawyers manage to find legal loopholes to use to their advantage.

77. Kertzer, *supra* n. 13, at 11.

78. For Gilbert, the law "is a tangle of restrictions supervised by punctilious officials who hinder love and freedom. . . . On the other hand, his dilemmas are resolved within the law." *Id.* at 7.

79. *The Mikado*, *supra* n. 11, at 647 ll. 809–812. The Mikado rushes to start the executions after they have enjoyed a "capital lunch," but Ko-Ko manages to dissuade him. *Id.* at l. 810.

80. *Id.* at 649 ll. 840–844. The Mikado finds this logic satisfactory. *Id.* at l. 845.

81. For the finale to *The Mikado*, see *id.* at 649–651 ll. 846–877.

82. William Schwenck Gilbert & Arthur Seymour Sullivan, *The Pirates of Penzance*, in *The Complete Annotated Gilbert and Sullivan*, *supra* n. 1, at 187, 237 ll. 167–168 [hereinafter *Pirates*].

As with the legal argumentation in court, Gilbert attacks the illogical results that stem from the application of pure logic.

Indentured to a pirate until his twenty-first birthday in *The Pirates of Penzance*,⁸³ Frederic leaps at the opportunity to leave his indentures and wreak havoc on the pirates themselves.⁸⁴ Yet just as Frederic prepares to attack the pirates in their lair,⁸⁵ the pirate king confronts him with a minor problem.⁸⁶ Although Frederic has lived for twenty-one years, his apprenticeship will end only on his twenty-first *birthday*, and, born on February 29, he has many more years to go on his contract because his birthday comes only once every four years.⁸⁷ Even though the pirate king does not insist on the letter of the contract, Frederic feels compelled by his sense of duty to honor it to the letter.⁸⁸

83. *Id.* at 187.

84. Frederic states, “such is my sense of duty that, once out of my indentures, I shall feel myself bound to devote myself heart and soul to your extermination!” *Id.* at 197 ll. 68–69.

85. *Id.* at 237 ll. 137–150. Frederic stands outside the pirates’ lair, declaring that he has already doomed them to extermination. *Id.*

86. *Id.* at ll. 161–163. The Pirate King and Ruth, Frederic’s former nursemaid, claimed that, upon consideration of Frederic’s situation and pirate customs, they had come upon a “startling paradox.” *Id.*

87. *Id.* at 241 ll. 217–224. The Pirate King is not without some support in law. In one English case during this time period, a man hired a pauper to serve him from October 13, 1807 through October 11, 1808. *R v Inhabitants of Worminghall* (1817) 6 M&S 350, 350–351, 105 ER 1274. A suit arose because 1808 was a leap year and, therefore, the pauper had completed only 365 days of service and not a full year. Lord Ellenborough stated, “[i]n those years which consist of 366 days, a hiring and service for a year must be for that same number of days.” *Id.* The court agreed with Lord Ellenborough and held the pauper had not served the full term of his contract. *Id.*

88. Gilbert apparently felt the Pirate King’s argument did not adhere to the letter of law because Mabel, Frederic’s love interest, argues:

*They have no legal claim,
No shadow of a shame
Will fall upon thy name.*

Pirates, *supra* n. 82, at 245 ll. 297–299. Mabel’s conclusion is correct. The apprenticeship to a pirate was illegal since piracy was a crime. Barry H. Dubner, *The Law of International Sea Piracy* 94 (Martinus Nijhoff Publishers 1980). “Courts will not enforce an agreement which has as its object the deliberate commission of a criminal offence.” J. Beatson, *Anson’s Law of Contract* 353–354 (28th ed., Oxford U. Press 2002). Frederic agrees as to the law but feels compelled by duty to honor the literal wording of the contract, declaring:

*The thought my soul appals,
But when stern Duty calls,
I must obey.*

Pirates, *supra* n. 82, at 245 ll. 303–305. “Gilbert’s characters feel duty-bound to follow stultifying laws whose authority they trust absolutely but whose value they cannot ex-

The policemen in *Pirates of Penzance* likewise use emotion tied with law to succeed in their endeavors. The policemen are charged with eliminating the pirates, but they do not particularly relish their task.⁸⁹ Their sergeant tries to justify his officers' unwillingness by arguing that even the most diabolical villain has a soft side.⁹⁰ After the pirates defeat the policemen in a short battle, the police turn the tide by insisting the pirates yield in the name of the Queen—a request to which the pirates concede.⁹¹ The policemen's urging here has no logic, but rather a call to patriotism which transcends all else. Still, patriotism carries with it the force of law.⁹² Just as the Mikado's word had the binding effect of law,⁹³ so does Queen Victoria's, and her police agents' pronouncements legally command obedience.⁹⁴ The pirates' relinquishment of their calling creates an impossibility of performance, legally releasing Frederic from his indenture.⁹⁵

plain." Kertzer, *supra* n. 13, at 7.

89. The policemen confess that they are only "timidly inclined" in their bodies and minds to pursue the task at hand. *Pirates*, *supra* n. 82, at 247 ll. 346–348.

90. The song, best known by the title of "A Policeman's Lot" contains several examples of the soft side of criminals, including:

*When the coster's finished jumping on his mother—
On his mother,
He loves to lie a-basking in the sun—
In the sun.*

Id. at 251 l. 414–417. For the entire song, see *id.* at 249–251 ll. 387–424.

91. The pirates surrender claiming, "with all our faults, we love our Queen." *Id.* at 261 l. 575.

92. A few lines earlier, the Sergeant had appealed to this sense of patriotism by calling to the pirates:

*On your allegiance we've a stronger claim—
We charge you yield, in Queen Victoria's name!*

Id. at ll. 568–569.

93. See *supra* n. 80 and accompanying text (explaining that when the Mikado wishes something accomplished, the task is as good as accomplished because his word as king was the law).

94. For additional information regarding the power inherent in police, see J.W. Cecil Turner, *Russell on Crime* vol. 1, 660 (12th ed., Stevens and Sons, Ltd. 1964) (Rothman Legal Reprint Series 1986) (stating "in order [to] better . . . enable peace officers to preserve the peace[,] they have authority to command all other persons to assist them in endeavouring to appease such disturbances as take place in their presence").

95. See John M. Vogel, *Impossibility of Performance—A Closer Look*, 9 Pub. Cont. L.J. 110, 111 (1977) (observing that, although, under English common law, courts originally held that promisors could not ever be released from their contracts, courts gradually began releasing promisors from their obligations if the fact finder found that the contract completion was absolutely impossible). During this time period, a servant could also be released from his or her obligation "by showing a license to depart, which could be quite informal.

In *Ruddigore*,⁹⁶ a bizarre curse gives rise to a paradoxical solution. Whomever holds the title of Baronet of Ruddigore must commit one horrible crime daily or die a gruesome death.⁹⁷ The kindly hero, Sir Ruthven Murgatroyd, having succeeded to the title, attempts to minimize his criminal behavior by committing minor offenses.⁹⁸ Nevertheless, the ghosts of his ancestors refuse to accept these peccadilloes and proceed to torture him into agreeing to attempt more horrid crimes.⁹⁹ Ruthven soon acquiesces and faced with a horrid demise, conceives a solution that will allow him to live without harming a soul¹⁰⁰—he refuses to committing further criminal acts, but “to refuse to commit a daily crime is tantamount to suicide! . . . But suicide is, itself, a crime . . .”¹⁰¹ Ironically, each day Ruthven refuses to commit a crime, he commits the crime of suicide instead.¹⁰²

Although Ruthven’s reasoning is logical, its legal merit is faulty. Since he would not immediately die through failing to commit criminal acts against others, Ruthven would not be committing suicide, but rather attempted suicide. Still, although a misdemeanor rather than a felony, attempt to commit suicide was a crime under British law during Gilbert’s time.¹⁰³ Even so, Ruth-

He could also plead that he had a lawful excuse for his departure—for example, that his salary was in arrear, or that his master beat him, or refused him meat and drink.” A.W. Brian Simpson, *A History of the Common Law of Contract: The Rise of the Action of Assumpsit* 51–52 (Oxford U. Press 1975).

96. *Ruddigore*, *supra* n. 61, at 653.

97. *Id.* at 673 ll. 252–253.

98. Within the course of a week, Ruthven files a false tax return, forges his own will, shoots a fox, forges a check on a non-existent account, and disinherits his non-existent son. *Id.* at 729 ll. 216, 223, 235–236, 240, 244–248.

99. *Id.* at 731 ll. 255–282.

100. *Id.* at 747 ll. 577–579.

101. *Id.* at ll. 581–584. The topic of suicide has arisen in other operettas such as *The Mikado*, where Ko-Ko observes that “suicide is a capital offence.” *The Mikado*, *supra* n. 11, at 589, 1. 560. Nevertheless, Japanese law would have governed *The Mikado* as it took place in Japan. *Id.* at 554.

102. However, if the operetta were to take place after 1961, Ruthven’s failure to act would not have been any crime as suicide is no longer a crime in England or Wales. Suicide Act 1961 (9 & 10 Eliz 2 c 60) (available at *Halsbury’s Statutes of England and Wales: Criminal Law*, vol. 12(1), 324 (LexisNexis Butterworths 2005 Reissue)) (stating that “[t]he rule of law whereby it is a crime to commit suicide is hereby abrogated”).

103. See *Regina v. Burgess* (1862) LE&CA 258, 259; 169 ER 1387, 1388 (citing “the common law misdemeanor of attempting to commit suicide”); see also Glanville Williams, *The Sanctity of Life & the Criminal Law* 248–253 (Alfred A. Knopf 1957) (describing in-depth, the prohibition of suicide, including its religious and non-religious roots).

ven may have committed no crime at all because a successful conviction of attempted suicide requires *mens rea*,¹⁰⁴ and by choosing to refrain from committing crimes to properly live, Ruthven did not intend to commit suicide. Instead, Ruthven's situation suggests duress¹⁰⁵ because he was committing the crimes under the threat of excruciating force.¹⁰⁶ A later English case has held that when one acts under duress, one cannot have intended the act;¹⁰⁷ therefore, Ruthven lacked *mens rea* and so was not guilty of attempted suicide.

Gilbert's delight in the absurd results of law on life surfaces in many other places throughout the operettas. In *The Gondoliers*,¹⁰⁸ the elder of two twins stands to gain the throne of Barataria.¹⁰⁹ Unfortunately, as neither knows which was born first, the kingdom decides that "until it is decided which . . . is the actual King, [they] are to act as one person."¹¹⁰ But, a problem exists because Barataria has budgeted for only one portion of regal rations.¹¹¹ This prompts a typically bureaucratic response that

104. To successfully prosecute a defendant for an attempted crime, the prosecution carries the burden to prove that the defendant acted with "the intention (the *mens rea*) to go further and to achieve a definite end[,] which is a specific crime (i.e., which is another *actus reus*)." Turner, *supra* n. 94, at 177.

105. The Model Penal Code indicates that one acts under duress if he "engaged in the conduct charged to constitute an offense because he was coerced to do so by the use of, or threat to use, unlawful force against his person." Model Penal Code § 2.09 (ALI 1985).

106. *Ruddigore*, *supra* n. 61, at 751 ll. 255–282; see *supra* n. 99 and accompanying text (describing how the ghosts of Ruthven's ancestors tortured him into agreeing to commit more horrid offences to avoid certain death due to the curse his title carried).

107. *Rex v. Steane*, [1947] 1 KB 997 (CA). *Rex* involves a man, Steane, who assisted the Germans during World War II once under threat of violence and then provided continued assistance only after the Germans threatened to beat him and send his family to a concentration camp. *Id.* at 1000. The court held that the threats against Steane negated Steane's intent to assist the Germans and, thus, Steane had committed no crime. *Id.* at 1006. However, in his commentary on criminal law, Glanville Williams questions the legal conclusion of the court in *Rex*, arguing that duress does not negate an element of the prosecution's case but rather presents an affirmative defense. Glanville Williams, *Criminal Law: The General Law* § 18, 40–41 (2d ed., Stevens & Sons Ltd. 1961); accord Model Penal Code § 2.09(1) (1985) (stating, "[i]t is an affirmative defense that the actor engaged in the conduct charged to constitute an offense because he was coerced to do so by the use of, or a threat to use, unlawful force against his person").

108. William Schwenck Gilbert & Arthur Seymour Sullivan, *The Gondoliers*, in *The Complete Annotated Gilbert and Sullivan*, *supra* n. 1, at 859 [hereinafter *The Gondoliers*].

109. *Id.* at 901 ll. 691–695; see *id.* at 909 ll. 855–862 (duet by Marco and Giuseppe about being chosen king).

110. *Id.* at 921 ll. 34–35. Two people acting as one person is "a legal fiction, and legal fictions are solemn things." *Id.* at ll. 39–40.

111. *Id.* at ll. 39–41. Annibale states that the kingdom is unable to recognize "two inde-

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the kingdom could order double rations if the twins indemnify the kingdom “in the event of an adverse decision.”¹¹²

An equally perplexing application of the law exists in *The Mikado* when an imperial decree imposing the death sentence against flirting lands the character Ko-Ko on death row.¹¹³ However, the Town of Titipu evades this vastly unpopular law by promoting Ko-Ko to the post of Lord High Executioner¹¹⁴ under the rationale that:

*Who's next to be decapited
Cannot cut off another's head
Until he's cut his own off.*¹¹⁵

While the solution pleases the citizens of Titipu, it seriously disturbs the Mikado.¹¹⁶ Titipu's logical solution fails to consider the will of a Mikado who did not relish seeing his edicts circumvented.¹¹⁷ However preposterous the citizens of Titipu's legal fiction is, it saves Ko-Ko's life.¹¹⁸

In *Patience*,¹¹⁹ the law can also resolve Reginald Bunthorne's complicated situation. A flock of adoring women pine after Bunthorne, but the one woman he most adores, Patience, spurns

pendent responsibilities” and, therefore, is treating the two brothers as one person for everything, including meals. *Id.* Giuseppe responds to Annibale stating, “I should describe [this treatment] as a legal fiction carried a little too far.” *Id.* at l. 44.

112. *Id.* at ll. 49–51.

113. *The Mikado*, *supra* n. 11, at 563 ll. 80–81 (stating that Ko-Ko had received the death penalty for engaging in flirting); *Id.* at ll. 91–94 (describing the imperial decree prohibiting flirting).

114. *Id.* at ll. 84–85.

115. *Id.* at 565 ll. 124–126.

116. Ko-Ko observed that “[t]he Mikado is struck by the fact that no executions have taken place in Titipu for a year, and decrees that unless somebody is beheaded within one month the post of Lord High Executioner shall be abolished, and the city reduced to the rank of a village!” *Id.* at 587 ll. 547–550.

117. The license copy of *The Mikado* has the Tipitu nobles' cry:

*We have made a serious blunder!
Chopped asunder,
Statute under. . . .*

Id. at 586 (annotating *id.* at 587 l. 537).

118. *The Mikado*, *supra* n. 11, at 565 ll. 124–126; *see supra* n. 115 and accompanying text (describing the citizens' logic used to justify releasing Ko-Ko from jail).

119. William Schwenck Gilbert & Arthur Seymour Sullivan, *Patience*, in *The Complete Annotated Gilbert and Sullivan*, *supra* n. 1, at 265 [hereinafter *Patience*].

him,¹²⁰ so he seeks his solicitor's advice.¹²¹ He receives the advice to raffle himself off to the highest bidder.¹²² This advice causes the lovesick maidens to bless the solicitor, but their fiancés in the army curse him.¹²³ The raffle falls apart when Patience agrees to marry Bunthorne.¹²⁴

In none of these instances does pure reason lead to satisfactory solutions. Only convoluted twists and turns—topsy-turvy rationales—allow the heroes to succeed. Frederic leaves his indentures only when the pirates relinquish piracy;¹²⁵ Ruthven¹²⁶ and Ko-Ko¹²⁷ avoid death through bizarre legal arguments; the Baratarian twins, as new kings, receive food rations only after agreeing to indemnify the country;¹²⁸ and Bunthorne's raffle fails

120. *Id.* at 273 ll. 34–36, 45–54 (observing that Reginald Bunthorne pines after Patience, the village milkmaid, who says that she has never loved); *Id.* at 295 ll. 460. After Bunthorne expresses his love for her, Patience responds, “I only ask that you will leave me and never renew the subject.” *Id.* at 295, l. 460.

121. *Id.* at 307 ll. 657–660. The character of Reginald Bunthorne was a parody of Oscar Wilde, who “came to the theatre, and was identified at once with the absurd Bunthorne in the play: splendid publicity!” Juxon, *supra* n. 34, at 181; see *Patience*, *supra* n. 119, at 269 (stating that the poet Oscar Wilde followed a schedule to appear in each city shortly before the opera was about to open and “[t]he Midwesterners must have wondered just who was imitating whom between the fleshly poet Bunthorne and the fleshly poet Wilde”).

122. Bunthorne reports:

*By the advice of my solicitor . . . ,
In aid—in aid of a deserving charity,
I've put myself up to be raffled for!*

Id. at 307 ll. 657–660.

123. *Id.* at ll. 665–666. This is an example of when, even if attempting to provide neutral advice, a lawyer normally will please one side while annoying another. When the soldiers call down a “hideous curse” on the Solicitor's head for providing Bunthorne with the raffle advice, the Solicitor flees the stage. *Id.* at ll. 667. Interestingly, the Solicitor does not have a single line to speak in the play. *Id.* at ll. 664–667.

124. *Id.* at 311 ll. 741–742.

125. *Pirates*, *supra* n. 82, at 261 ll. 574–575; see *supra* n. 95 and accompanying text (discussing the impossibility of performance of Frederic's indenture because of the pirates' relinquishment of their piracy).

126. *Ruddigore*, *supra* n. 61, at 747 ll. 581–585; see *supra* nn. 98–99 and accompanying text (describing Ruthven's need to commit crimes or face certain death due to a curse on his position's title).

127. *The Mikado*, *supra* n. 11, at 565 ll. 124–126; see *supra* n. 115 and accompanying text (discussing how Ko-Ko avoided death because the townspeople reasoned that the next person to be decapitated, Ko-Ko, could not carry out the next execution until he lost his own head).

128. *The Gondoliers*, *supra* n. 108, at 921 ll. 49–51; see *supra* nn. 109–111 (describing how Marco and Giuseppe both held the position of king until the town could determine which one was rightfully king, and, therefore, the town treated them as one person although they were truly two).

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when his desired love, Patience, agrees to marry him, thus eliminating the raffle's purpose.¹²⁹

IV. POLITICIANS AND THEIR LEGISLATION

*The Fool of an Act*¹³⁰

Analogous to Gilbert's satiric portrayal of lawyers' and lay persons' legal reasoning, Gilbert portrays politicians as vapid fools with little ability to reason, who blindly follow the dictates of their parties. Thus, Gilbert treats the resulting legislation as a product of feeble minds. Although *Iolanthe* has the most prolonged and direct attack on lawmakers,¹³¹ several of the other operettas also contain their own satiric jabs.

At the end of *Iolanthe*, a member of the House of Lords comments, "Well, now that the Peers are to be recruited entirely from persons of intelligence, I really don't see what use *we* are, down here . . . ?"¹³² These words skirt the outside boundaries of satire,¹³³ but the Prime Minister, William Gladstone, praised *Iolanthe* stating that he "would have relished the portrayal of the House of Lords as a House of Numskulls";¹³⁴ and Gilbert already

129. *Patience*, *supra* n. 119, at 311 ll. 741–742; *see supra* nn. 122–124 and accompanying text (describing how Bunthorne raffles himself to the highest female bidder, but then the raffle backfires when Bunthorne's love, Patience, agrees to marry him).

130. *The Mikado*, *supra* n. 11, at 633 l. 536. For the full quote *see infra* note 171.

131. *See Iolanthe*, *supra* n. 17, at 357 (stating that the entire opera was devoted to the mockery of the British House of Lords).

132. *Id.* at 445 ll. 578–580.

133. Gilbert and Sullivan's operettas were satirical of their contemporary British society. Christian Kirkpatrick, *The Comic World of Gilbert & Sullivan*, 27 *British Heritage* 34, 35 (Sept. 2006) (stating that when the Gilbert and Sullivan operas opened, they "were topical as well as charming, like rhyming episodes of *The Simpsons*" that gamboled through contemporary topics, "laughing at the latest crazes and poking fun at pillars of the British empire"). English precedent would seem to have insulated Gilbert from liability for libel for the satire. In *Merivale v. Carson*, a playwright sued the reviewer of his theatrical production and lost. [1887] 20 QB 275 (CA). Having been instructed as to fair comment, the jury found for the critic and the Court of Appeals affirmed. *Id.* at 276–277. Lord Esher commented that "[m]ere exaggeration, or even gross exaggeration, would not make the comment unfair." *Id.* at 281. L.J. Bowen agreed, commenting, "[i]n the case of literary criticism it is not easy to conceive what would be outside that region [of fair criticism], unless the writer went out of his way to make a personal attack on the character of the author of the work which he was criticising." *Id.* at 284. Sauce for the goose being sauce for the gander, if critics can claim fair comment so can satirists.

134. Ffinch, *supra* n. 3, at 117.

had portrayed it as such. Earlier, The Lord Chancellor in *Iolanthe* criticized the legislature by stating that things have not changed since the days of Queen Elizabeth.¹³⁵ Similarly, in *Utopia, Limited*, when the Utopian king announces that the legislature has remodeled the government based on intellect, the chorus replies,

*We are going to remodel it in England.*¹³⁶

With the exception of Queen Victoria, Gilbert's satire of British politics extends to its rulers as well. Some Gilbertian rulers are highly unqualified for their positions,¹³⁷ and Gilbert goes so far as to liken one to his own theater producer.¹³⁸ Some rulers are so ineffective that their support staff voices a poor opinion of them.¹³⁹ Some rulers despise their own national culture and identity enough to banish the culture and identity for more desirable ones.¹⁴⁰ Some rulers reach their position despite lacking ethics, competence, or both.¹⁴¹ Finally, some rulers pursue despotic and, at times, inhumane reigns.¹⁴²

135. He comments:

*The House of Peers made no pretence
To intellectual eminence,
Or scholarship sublime.*

Iolanthe, *supra* n. 17, at 417 ll. 88–90.

136. The Utopian king announces:

*Our Peerage we've remodelled on an intellectual basis,
Which certainly is rough on our hereditary races[.]*

Utopia, *supra* n. 14, at 1051 ll. 160–162.

137. When Ernest Dummkopf, manager of a theatrical company, stands to become ruler of a Grand Duchy, he comments, "Rule a Grand Duchy? Why, my good girl, for ten years past I've ruled a theatrical company! A man who can do that can rule anything!" *The Grand Duke*, *supra* n. 73, at 1095 ll. 152–153.

138. At the time, D'Oyly Carte was struggling to keep the company performing at the Savoy afloat. Ffinch, *supra* n. 3, at 239.

139. The Grand Duke's chamberlains describe their ruler as

*The good Grand Duke of Pfennig Halbpennig,
Though, in his own opinion, very very big,
In point of fact he's nothing but a miserable prig
Is the good Grand Duke of Pfennig Halbpennig!*

The Grand Duke, *supra* n. 73, at 1115 ll. 548–551.

140. King Paramount in *Utopia, Limited* has abjured all things Utopian in an attempt to emulate England. *Utopia*, *supra* n. 14, at 1077 ll. 635–638.

141. The judge in *Trial by Jury* gained his position by courting and overthrowing a Solicitor's daughter. *Trial by Jury*, *supra* n. 28, at 17 ll. 147–154. Also, the First Lord of the Admiralty in *H.M.S. Pinafore* kept advancing because of an ability to do nothing other than what others ordered. See William Schwenck Gilbert & Arthur Seymour Sullivan,

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Not content with questioning the mental acuity of the Peerage or the qualifications of the rulers, Gilbert also attacks the House of Commons as an ineffective tool of the party system. Standing before the Houses of Parliament in *Iolanthe*, a sentry comments:

*When in that House M.P.s divide,
If they've a brain and cerebellum, too,
They've got to leave that brain outside,
And vote just as their leaders tell 'em to.*¹⁴³

In the Gilbertian world, the members of Parliament must vote in lockstep with their party leaders and not exercise their own intellect or judgment.

Utopia, Limited echoes this attack on the party system.¹⁴⁴ *Utopia's* attempts to change itself to mirror the English system have succeeded too well because the society is so prosperous that the doctors, lawyers, and members of the military are all out of jobs.¹⁴⁵ King Paramount considers this “a very unpleasant state of

H.M.S. Pinafore, in *The Complete Annotated Gilbert and Sullivan*, *supra* n. 1, at 113, 137 ll. 333–340 (Sir Joseph advises the landsmen that to advance in the Royal Navy they should remain close to their desks and “never go to sea.”) [hereinafter *H.M.S. Pinafore*].

142. In *The Mikado*, the king takes fiendish glee in punishing criminals. See *The Mikado*, *supra* n. 11, at 625 ll. 391–405 (The Mikado takes a great interest in Ko-Ko's recent execution, lamenting not being able to witness the event.). Also, King Gama in *Princess Ida* is by his own words a nasty and sarcastic person, while his brutish sons show martial prowess but little intellect. William Schwenck Gilbert & Arthur Seymour Sullivan, *Princess Ida*, in *The Complete Annotated Gilbert and Sullivan*, *supra* n. 1, at 449, 535 ll. 159–162, 180–185 [hereinafter *Princess Ida*].

143. *Iolanthe*, *supra* n. 17, at 413 ll. 18–21. The sentry continues:

*But then the prospect of a lot
Of dull M.P.s in close proximity,
All thinking for themselves, is what
No man can face with equanimity.*

Id. at ll. 22–25.

144. Bradley comments that, like *The Mikado*, the operetta *Utopia, Limited* is “a satire on thoroughly English institutions like the law, local government and party politics.” *Utopia*, *supra* n. 14, at 972.

145. The character Scaphio observes:

*The laws, remodelled by Sir Bailey Barre,
Have quite extinguished crime and litigation:
The lawyers starve, and all the jails are let
As model lodgings for the working-classes!*

Id. at 1077 ll. 635–638.

things.”¹⁴⁶ Only then do the characters realize that they have failed to import an integral element of the English system to Utopia—the party system.¹⁴⁷ Upon successful implementation, “all will be well! No political measures will endure, because one Party will assuredly undo all that the other Party has done; and . . . the legislative action of the country will be at a standstill.”¹⁴⁸

Gilbert satirizes other legal and political figures. Both the judge in *Trial by Jury*¹⁴⁹ and The Lord Chancellor in *Iolanthe*¹⁵⁰ are hypocrites of the highest degree and hardly serve as paragons of justice. No better than the judge,¹⁵¹ the jurymen¹⁵² in *Trial by Jury* fail miserably to heed the Usher’s stern warning to remain unbiased.¹⁵³ The judge ultimately describes the overtly pompous Usher as gentle and simple-minded.¹⁵⁴ Likewise, in *H.M.S. Pina-*

146. *Id.* at l. 644.

147. *Id.* at ll. 650–653.

148. *Id.* at 1077–1079 ll. 654–657.

149. “In *Trial by Jury* the judge’s revelation only serves to disrobe him and expose his unsuitability to be a judge at all, particularly of a matrimonial case.” Finch, *supra* n. 3, at 50.

150. Compare *supra* n. 22 and accompanying text (citing The Lord Chancellor as saying that he always has his duty strictly before his eyes to which he owes his advancement) with *infra* n. 198 and accompanying text (describing The Lord Chancellor’s desire to marry one of the wards, contradicting his charge as her guardian); see Burgess, *supra* n. 18, at 132 (noting that Gilbert does ultimately allow The Lord Chancellor to rise above his lecherous nature, commenting, “Gilbert made [T]he Lord Chancellor a very rich character and not the least of the richness is the pathos with which he is endowed at the conclusion”).

151. *Trial by Jury*, *supra* n. 28, at 23 ll. 215–220 (showing the judge paying close attention to Angelina, the plaintiff, and sending her a private note which she reads, kisses, and places in her bosom, after which the judge comments that he has never seen such an “exquisitely fair face”).

152. During the trial, the jury calls out to Angelina, “We love you fondly and would make you ours!” *Id.* at ll. 225.

153. The Usher warns:

*Now, Jurymen, hear my advice—
All kinds of vulgar prejudice
I pray you set aside:
With stern judicial frame of mind
From bias free of every kind,
This trial must be tried.*

Id. at 7 ll. 12–17. Nevertheless, the Usher continues on in his song to suggest that the jury ignore the Defendant’s argument and favor the plaintiffs—advice which they are inclined to follow. *Id.* at 9 ll. 21–33 (citing the Usher’s recommendation to the jury of bias towards Angelina); *supra* n. 152 (quoting the jury’s expression of bias toward Angelina).

154. *Id.* at 37, l. 382. See *supra* n. 153 and accompanying text (describing the Usher’s hypocrisy in demanding unbiased decisions in the jury in one breath and then recommending they favor Angelina in the next breath).

fore, Sir Joseph Porter, First Lord of the Admiralty, shows no particular qualifications for his position, obtaining it through slavishly following orders.¹⁵⁵ Gilbert continues his satire by portraying both the Solicitor in *Patience*¹⁵⁶ and the Notary in *The Sorcerer*¹⁵⁷ as little more than comic figures, while the judges in *Utopia, Limited* plot the violent overthrow of the government.¹⁵⁸ Finally, the Notary in *The Grand Duke*, who introduces the concept of a statutory duel, neglects to mention a critical aspect of the statute in question.¹⁵⁹ No legal or political position is safe from Gilbert's satire.

Having attacked the intellect of rulers, the ineffectiveness of members of legislatures, and the ethics and knowledge of other legal and political figures, Gilbert quite naturally also rejects the legislation they produce and defend. By criticizing the entire concept of corporate existence in *Utopia, Limited*, Gilbert emphasizes the general turmoil in Parliament during the passage of the first limited liability statute in 1855.¹⁶⁰ Gilbert could hardly pass up

155. *H.M.S. Pinafore*, *supra* n. 141, at 135–137, ll. 293–339 (describing Sir Joseph's advancement to ruler of the Queen's Navy having successfully cleaned windows, swept floors, served writs, copied letters, worn clean collars and a brand-new suit, participated in a junior partnership, and worked in Parliament—always voting his party's call without thinking for himself); Ffinch, *supra* n. 3, at 75 (noting that Sir Joseph rose “unctuously from obscurity”). Sir Joseph's career seems to have mirrored that of W. H. Smith, who rose up from a middle class background and became the actual First Lord of the Admiralty about the time that the *H.M.S. Pinafore* debuted. See Caryl Brahms, *Gilbert and Sullivan: Lost Chords and Discords* 83 (Little, Brown & Co. 1975) (stating that W. H. Smith's beginnings as a newspaper boy and his controversial appointment as Lord High Admiral of Queen Victoria's Navy was so similar to the character of Sir Joseph that the Prime Minister of England began referring to W. H. Smith as “Pinafore Smith”).

156. *Patience*, *supra* n. 119, at 307 ll. 665–667 (noting that the raffle thrilled the maidens, who bless him but dismays the Dragoons, who curse him).

157. *The Sorcerer*, *supra* n. 72, at 89 ll. 79–92 (reciting the many insults that Constance hurls at her older husband, in which she describes him as ill-tempered, weak, ugly, absurdly dressed, and “everything that I detest”).

158. The Judge, Scaphio, calls out, “The King has defied us, and, as matters stand, we are helpless. So are you. We must devise some plot at once to bring the people about his ears.” *Utopia*, *supra* n. 14, at 1061 ll. 327–329. The satire in *Utopia, Limited* “is far more searing than anything Gilbert had written before. . . . For the first time, with Scaphio and Phantis, he had presented really evil, merciless people.” Ffinch, *supra* n. 3, at 237. Nevertheless, how much harm Gilbert intended to cause with his satire is under debate. See Hibbert, *supra* n. 8, at 248 (stating, “[n]one of Gilbert's darts in *Utopia, Limited* was intended to inflict more than a scratch”).

159. See *supra* nn. 74–76 (describing the statutory duel in *The Grand Duke* and the chaos the Notary's poorly thought-out suggestion causes).

160. Limited Liability Act 1855 (18 & 19 Vict c 133); Jassmine Girgis, *Deepening Insolvency in Canada?* 53 McGill L.J. 167, 176 n. 36 (2008) (commenting that the Limited Li-

the opportunity to comment on a system whereby those engaged in business would not incur liability beyond the money they wished to invest, penning the following song:¹⁶¹

*Some seven men form an Association,
(If possible, all Peers and Baronets)
They start off with a public declaration
To what extent they mean to pay their debts.
That's called their Capital: if they are wary
They will not quote it at a sum immense.*

• • •

*They then proceed to trade with all who'll trust 'em,
Quite irrespective of their capital
(It's shady, but it's sanctified by custom);
Bank, Railway, Loan, or Panama Canal.
You can't embark on trading too tremendous—
It's strictly fair, and based on common sense—
If you succeed, your profits are stupendous—
And if you fail, pop goes your eighteenpence.*

• • •

*If you come to grief, and creditors are craving, . . .
Do you suppose that signifies perdition?
If so you're but a monetary dunce—
You merely file a Winding-Up Petition,
And start another Company at once!¹⁶²*

ability Act of 1855 first conferred limited liability in the United Kingdom). Parliament engaged in a “heated battle” when it considered whether to adopt the doctrine of limited liability. Tom Hadden, *Company Law and Capitalism* 21 (Robert Stevens & William Twining eds., 2d ed., Weidenfeld & Nicolson 1977). The passage of the act came with “dire warnings of the more conservative commentators, who gloomily forecast that any [such provisions] in the law would merely serve to encourage recklessness and fraud on the part of company promoters and directors.” *Id.* at 21. A later judicial humorist would liken unlicensed bookies to stockbrokers, having one of his satirical characters compare the two, “one is assisting the citizens to bet on racehorses with money which they possess and the other is assisting them to bet with money which they do not possess (in many cases) upon the prosperity and health of the nation’s industries.” A.P. Herbert, *Uncommon Law* 193 (Methuen Ltd. 1935). For a history and analysis of limited liability companies, see generally Paul Halpern, Michael Trebilcock & Stuart Turnbull, *An Economic Analysis of Limited Liability in Corporation Law*, 30 U. Toronto L.J. 117 (1980).

161. Gilbert even wrote the title of the later “Joint Stock Company’s Act of [Eighteen] Sixty Two” into the text of a recitative. *Utopia*, *supra* n. 14, at 1039 l. 1278. Bradley comments, “[t]his must count as one of the most amazing lines in the world of light opera—imagine having to set it to music!” *Id.* at 1038 (annotating *id.* at 1039 l. 1278).

Although the Utopian king, upon hearing the concept, comments, “Well, at first sight it strikes us as dishonest,”¹⁶³ he overcomes his misgivings and decides to incorporate the entire country. Every citizen of Utopia, thinking this a capital idea,¹⁶⁴ then incorporates himself or herself. Many problems result, but none more difficult than maintaining meaningful commerce because everyone hides behind his or her limited liability.¹⁶⁵

Gilbert’s satire attacks criminal law most keenly. The absurdity of criminalizing offenses without a *mens rea* requirement came under Gilbert’s scrutiny in *The Mikado*.¹⁶⁶ One of Gilbert’s multifarious schemes seems to backfire when Ko-Ko the executioner and Poo-Bah, another character, falsely claim to have executed a wandering minstrel named Nanki-Poo, only to learn from the Mikado that they have killed the Mikado’s son.¹⁶⁷ Shocked, they protest that they “hadn’t the least notion,”¹⁶⁸ and the Mikado sympathizes, acknowledging that he does not consider them at fault.¹⁶⁹ Nevertheless, the law contains a “punishment for compassing the death of the Heir Apparent,”¹⁷⁰ and the actor must face the very gruesome punishment despite his utter lack of intent.¹⁷¹ Of

162. *Id.* at 1035–1037 ll. 1218–1255.

163. *Id.* at 1037 l. 1263.

164. Forgive your author, dear reader, this one atrocious pun.

165. One character laments, “But perhaps you do *not* know that, when we send in our bills, our customers plead liability limited to a declared capital of eighteenpence, and apply to be dealt with under the Winding-up Act . . . ?” *Utopia*, *supra* n. 14, at 1057 ll. 275–278.

166. *The Mikado*, *supra* n. 11, at 633 ll. 524–525; *see infra* nn. 171–172 (describing how, in *The Mikado*, there is no *mens rea* requirement under the act prohibiting killing the Heir Apparent to the Japanese throne, and, therefore, mistake is not an affirmative defense).

167. The Mikado states, “My poor fellow, in your anxiety to carry out my wishes you have beheaded the heir to the throne of Japan!” *The Mikado*, *supra* n. 11, at 631 ll. 506–507.

168. *Id.* at l. 510.

169. The Mikado states, “If a man of exalted rank chooses to disguise himself as a Second Trombone, he must take the consequences. It really distresses me to see you take on so. I’ve no doubt he thoroughly deserved all he got.” *Id.* at ll. 512–515.

170. *Id.* at 633 ll. 524–525.

171. The Mikado comments:

That’s the pathetic part of it. Unfortunately, the fool of an Act says ‘compassing the death of the Heir Apparent.’ There’s not a word about a mistake—

. . .

Or not knowing—

. . .

Or having no notion—

. . .

course, Gilbert twists the topsy-turvy plot one further time to avoid the execution—but why give away a dandy ending?

The Mikado's use of bizarre punishments for minor offenders forms the basis of one of Gilbert's most frequently cited songs, appearing in numerous cases and law review articles.¹⁷² In this song, the Mikado wishes

*to let the punishment fit the crime,*¹⁷³

as social bores, poor singers, women with excessive makeup, graffiti artists, advertising writers, and pool sharks have all fallen

Or not being there—

. . .

There should be, of course—

. . .

But there isn't.

. . .

That's the slovenly way in which these Acts are always drawn. However, cheer up, it'll be all right. I'll have it altered next session. Now, let's see about your execution. . . .

Id. at ll. 536–552.

172. Citing to Gilbert and Sullivan works is not unusual in case law. For example, a January 23, 2010, terms and connectors search conducted in the LexisNexis “Federal & State Cases, Combined” database using the search “mikado & gilbert” yielded seventy-nine cases citing to Gilbert and Sullivan's *The Mikado*. See e.g. *Ward v. Brown*, 22 F.3d 516, 517 (2d Cir. 1994) (characterizing one party's objective as similar to Gilbert and Sullivan's in *The Mikado*, arguing that the punishment should fit the crime). A January 23, 2010, terms and connectors search conducted in the LexisNexis “Federal & State Cases, Combined” database using the search “penzance & gilbert” yielded forty-seven cases citing to Gilbert and Sullivan's *The Pirates of Penzance*. See e.g. *Manale v. City of New Orleans, Dept. of Police*, 673 F.2d 122, 123 (5th Cir. 1982) (commenting that the plaintiff, Manale, appeared to have modeled himself after Gilbert and Sullivan's “model of a modern police officer”). A January 23, 2010, terms and connectors search conducted in the LexisNexis “Federal & State Cases, Combined” database using the search “h.m.s. pinafore” yielded twenty-two cases that cited to Gilbert and Sullivan's *H.M.S. Pinafore*. See e.g. *Hernandez v. O'Malley*, 98 F.3d 293, 296 (7th Cir. 1996) (finding that the political credentials of an appointee matter because the office requires discretionary decision making and it would be inappropriate to appoint someone who would not think of thinking independently). A January 23, 2010, terms and connectors search conducted in the LexisNexis “Federal & State Cases, Combined” database using the search “iolanthe & gilbert & sullivan” yielded nineteen cases citing to Gilbert and Sullivan's *Iolanthe*. See e.g. *U.S. v. Berg*, 178 F.3d 976, 987 (8th Cir. 1999) (Bright, J., dissenting) (referring to the situation as a “sad kettle of fish”). Even criminal defendants have cited to Gilbert and Sullivan during their cases. See *Mayberry v. Pa.*, 400 U.S. 455, 457 (1971) (quoting the criminal defendant as saying to the trial judge: “You ought to be Gilbert and Sullivan the way you sustain the district attorney every time he objects to the questions”).

173. *The Mikado*, *supra* n. 11, at 623 l. 340.

prey to heavy-handed punishments for seemingly innocent offenses.¹⁷⁴ On Ko-Ko's execution list are people who, although irritating, hardly have committed criminal offenses.¹⁷⁵

The question of which crimes warrant a death sentence seems to have intrigued Gilbert. In addition to the Mikado's imposition of the sentence of death for flirting,¹⁷⁶ the fairy law in *Iolanthe* imposes a death sentence for a fairy who marries a mortal,¹⁷⁷ and Colonel Fairfax in the *Yeoman of the Guard* begins the play locked in the Tower of London, awaiting execution¹⁷⁸ for "dealings with the devil."¹⁷⁹ In *The Sorcerer*, a person must sacrifice another to reverse a curse, so the residents of a town vote to determine who must die.¹⁸⁰ Also, in 1866, Gilbert penned *The Yarn of the Nancy Bell*, in which a shipwrecked sailor recounts cannibalizing six of his shipmates.¹⁸¹ Gilbert's fascination with death and capi-

174. *Id.* at ll. 337–364.

175. *Id.* at 571–573 ll. 239–272. Some of the people on the list include

[a]ll people who have flabby hands and irritating laughs" and "all children who are up in dates, and floor you with 'em flat.

Id. at 573 ll. 244–245.

176. *Id.* at 563 ll. 86–94.

177. *Iolanthe*, *supra* n. 17, at 443 ll. 559–560; *see supra* n. 62 and accompanying text (discussing the fairy law's prohibition on marrying mortals in *Iolanthe*).

178. However, Colonel Fairfax wins a reprieve and the conspirators aiding his escape barley avoid punishment through a hasty wedding. *Yeomen*, *supra* n. 1, at 849 ll. 671–685. Gilbert used a similar plot device in *The Mikado* when conspirators escape death only upon Ko-Ko's courting and agreeing to marry Katisha. *The Mikado*, *supra* n. 11, at 637–639 ll. 614–651. Nanki-Poo and Ko-Ko describe Katisha as:

*A most unattractive old thing . . .
With a caricature of a face.*

Id. at 639 ll. 649, 651.

179. *Yeomen*, *supra* n. 1, at 761 ll. 38–39.

180. *The Sorcerer*, *supra* n. 72, at 109 ll. 427–440.

181. Gilbert wrote:

*'For a month we'd neither wittles nor drink,
Till a-hungry we did feel,
So we drewed a lot, and, accordin' shot
The captain for our meal.*

Sir William Schwenck Gilbert, *The Yarn of the Nancy Bell* in *Plays & Poems of W.S. Gilbert* 957, 959 (Deems Taylor ed., Random House 1932) (available at <http://www.victorianweb.org/mt/gilbert/yarn.html>). The song recounts that, after the captain, the crew ate the *Nancy's* mate, then the singer ate the petty officer, the crew, and finally the cook. The sailor singing the song was the last survivor of the ship. *Id.* Due to his cannibalistic acts, the sailor describes himself:

*Oh, I am a cook and a captain bold,
And the mate of the Nancy brig,*

tal punishment may have resulted from a hanging he witnessed early in his legal career.¹⁸² However, despite the possible roots in Gilbert's personal history, a series of cases and statutory modifications to the death penalty in England called the appropriateness of capital punishment to the forefront of public debate during Gilbert's time.¹⁸³ For example, Gilbert certainly must have heard of the notorious 1884 case of *Regina v. Dudley & Stephens*,¹⁸⁴ in which shipwrecked sailors killed and cannibalized their cabin boy to survive,¹⁸⁵ only to later receive a death sentence for their actions.¹⁸⁶ At least in part due to public concern, the Queen of England later commuted the defendants' sentences to six months' imprisonment.¹⁸⁷

*And a bo'sun tight, and a midshipmite,
And the crew of the captain's gig.*

Id. at 957.

182. "Gilbert was in practice at the Bar when over 50,000 people packed Old Bailey and Smithfield to witness in 1864 the execution by hanging of the first railway murderer, Franz Muller." Andrew Goodman, *Gilbert and Sullivan's London* 112 (Robert Hardcastle ed., Hippocrene Bks. 1988).

183. Many disagreed with the curtailment of capital punishment, including one of the leading textbook authors of the era.

If a man commits a brutal murder, or if he does his best to do so and fails only by accident, or if he ravishes his own daughter (I have known several such cases), or if several men acting together ravish any woman, using cruel violence to effect their object, I think they should be destroyed, partly in order to gratify the indignation which such crimes produce . . . and partly in order to make the world wholesomer than it would otherwise be by ridding it of people as much misplaced in civilized society as wolves or tigers would be in a populous country.

Sir James Fitzjames Stephen, *A History of the Criminal Law of England* vol. 1, 478 (MacMillan & Co. 1883). Yet Stephen continues to concede that "these views are at present unpopular and peculiar." *Id.* at 479.

184. [1884] QB 273 (QB).

185. Cannibalism on the high seas amongst shipwrecked sailors as a means of survival was not an unheard of event during Gilbert's time. See generally A.W. Brian Simpson, *Cannibalism & the Common Law: The Story of the Tragic Last Voyage of the Mignonette and the Strange Legal Proceedings to Which It Gave Rise* (U. Chi. Press 1984) (providing a larger historical context of the ship *Mignonette* on which Dudley and Stephens were traveling took place—including additional examples of survival cannibalism during that time period). One scholar even argues that survival cannibalism was a custom of the sea. See *id.* at 271 (stating that the *Mignonette*—or Dudley and Stephen's—case highlights "the conflict between the old custom of the sea and the comfortable morality of the common law").

186. *Id.* at 288. For further analysis of whether situational duress—such as choosing to kill the weakest person in a group to save the lives of the remaining members of the group—should be an affirmative defense, see Joshua Dressler, *Understanding Criminal Law* § 23.06[A] (3d ed., Lexis Publg. 2001).

187. *Dudley & Stephens* [1884] QB 273 (QB) [n2]; Kate E. Bloch & Kevin C. McMunigal, *Criminal Law: A Contemporary Approach* 535 n. 2 (Aspen Publishers 2005).

In addition to the question of capital punishment, Gilbert presents instances in which the punishment does not necessarily fit the crime in several operettas. In *H.M.S. Pinafore*,¹⁸⁸ Captain Corcoran claps a sailor in irons for having the audacity to run off with his daughter.¹⁸⁹ As the absolute law on his ship,¹⁹⁰ the Captain has the ability to punish a minor infraction with imprisonment or even flogging.¹⁹¹ *The Pirates of Penzance* deals with the crime of piracy,¹⁹² but Gilbert's pirates hardly reflect the stereotypical seafaring terrors flying the skull and crossbones¹⁹³ because they are "are too tender-hearted"¹⁹⁴ and hardly warrant harsh punishment for their actions. Finally, in *Princess Ida*, the ladies of Castle Adamant are under an absurd regulation that

188. *H.M.S. Pinafore*, *supra* n. 141, at 177, ll. 407–408.

189. The sailor laments:

*For crime unknown
I go to a dungeon cell.*

Id.

190. *S. Steamship Co. v. Natl. Lab. Rel. Bd.*, 316 U.S. 31, 38 (1942) (observing that "[e]ver since men have gone to sea, the relationship of master to seaman has been entirely different from that of employer to employee on land. The lives of passengers and crew, as well as the safety of ship and cargo, are entrusted to the master's care. Every one and every thing depend on him. He must command and the crew must obey"); *Plummer v. Webb*, 19 F. Cas. 894, 897 (D. Me. 1825) (commenting that the captain is "intrusted by the law with the supreme power on board of his ship").

191. For an analogous story of life on the high seas during the Gilbert and Sullivan time period, see Herman Melville, *Billy Budd, Sailor (An Inside Narrative)* 41–132 (Harrison Hayford & Merton M. Sealts, Jr., eds., U. Chi. Press 1962).

192. *Supra* n. 88 and accompanying text (discussing the treatment of the crime of piracy in *The Pirates of Penzance*). As of 1998, the crime of piracy is no longer punishable by death in England. Crime and Disorder Act 1998 s 36(5) (substituting life imprisonment for capital punishment in the Piracy Act 1837 s 2).

193. Piracy continues to exist today, with far more dire results than those which attended Gilbert's buccaneers. At the time of the writing of this article, the United States Navy Seals had successfully recovered a hostage taken by pirates off the coast of Somalia, killing three pirates in the process. Their action ended "a five-day standoff between United States naval forces and a small band of brigands in a covered orange lifeboat off the Horn of Africa." Robert D. McFadden & Scott Shane, *In Rescue of Captain, Navy Kills 3 Pirates*, N.Y. Times A1 (Apr. 13, 2009).

194. An observer describes the pirates saying, "For instance, you make a point of never attacking a weaker party than yourselves, and when you attack a stronger party you invariably get thrashed." *Pirates*, *supra* n. 82, at 197 l. 82. The Pirate King does appear to have motives for his piracy no more criminal than those in the business world as he sings:

*Away to the cheating world go you,
Where pirates all are well-to-do . . .*

Id. at 199 ll. 140–141.

demands the expulsion of any resident who brings a man on the premises—even a chessman!¹⁹⁵

Gilbert also attacks many other areas of substantive law, including the legal guardianship of minors and contract law. While salutary in purpose, guardianship turns nasty when The Lord Chancellor in *Iolanthe* laments his responsibility as Chancellor of many agreeable young women¹⁹⁶ and then proceeds to attempt to marry one of his wards himself—clearly contradicting the objective of guardianship!¹⁹⁷ The concept of a contract, focal to *Trial by Jury*,¹⁹⁸ also emerges in *The Sorcerer*.¹⁹⁹ Gilbert has the contract drafter, the Notary,²⁰⁰ mock his work by calling a young couple to formally sign the contract “with all due mock solemnity and not a little unctuousness.”²⁰¹ Gilbert further mocks contracts when the Sorcerer refuses to guarantee his products, confusing²⁰² a guarantee²⁰³ with puffing.²⁰⁴

195. *Princess Ida*, *supra* n. 142, at 481 ll. 50–54.

196. He laments:

*The constitutional guardian I
Of pretty young Wards in Chancery,
All very agreeable girls—and none
Are over the age of twenty-one.
A pleasant occupation for
A rather susceptible Chancellor!*

Iolanthe, *supra* n. 17, at 375 ll. 263–272.

197. *Iolanthe*, *supra* n. 17, at 431–433 ll. 331–362; *supra* n. 61 and accompanying text (describing The Lord Chancellor’s desire to marry one of his wards and bemoaning the challenges of being a guardian to many desirable young women).

198. *Trial by Jury*, *supra* n. 28, at 11 ll. 57–74 (establishing the basis of the trial, which was brought against a man who proposed to marry Angelina, but then rescinded his offer).

199. *The Sorcerer*, *supra* n. 72, at 63 ll. 287–310 (describing Alex and Aline’s execution of a marriage contract).

200. Gilbert further mocks the Notary by having him appear later as the subject of uncharitable laughter, mismatched with a much younger woman due to the effects of a love potion. His new bride then comments:

*He’s dry and snuffy, deaf and slow,
Ill-tempered, weak, and poorly!
He’s ugly, and absurdly dressed,
And sixty-seven nearly. . . .*

The Sorcerer, *supra* n. 72, at 89 ll. 81–84.

201. Burgess, *supra* n. 18, at 66–67.

202. *The Sorcerer*, *supra* n. 72, at 73 ll. 497–501.

203. See Kathryn Dean Checchi, *Federal Procurement and Commercial Procurement under the U.C.C.—A Comparison*, 11 Pub. Cont. L.J. 358, 374 (1980) (defining types of warranties, or guarantees, under the Uniform Commercial Code and the United States Government’s contract law).

204. Puffing or exaggeration would not have constituted misrepresentation, but the

V. CONCLUSION

Gilbert twists his plots in knots more convoluted than the logic he mocks: twins confused at birth by dotty nurses,²⁰⁵ mock executions,²⁰⁶ disaster avoided by awkward weddings,²⁰⁷ and changed or misunderstood laws²⁰⁸ are devices Gilbert uses—no matter how improbable. For more than a hundred years, audiences have roared with laughter²⁰⁹ at Gilbert's absurd devices²¹⁰ and satire.²¹¹

finest firms of Gilbert's day simply did not engage in the practice. See Lord Mackay of Clashfern, *Halsbury's Laws of England* vol. 31, ¶ 715 (4th ed., LexisNexis UK 2003) (stating that “[m]ere praise by a person of his own goods, inventions, projects, undertakings, or other marketable commodities or rights, if confined to indiscriminate puffing and pushing, and not related to particulars, is not representation”).

205. See *H.M.S. Pinafore*, *supra* n. 141, at 179 ll. 449–468 (explaining how Buttercup switched Ralph and the Captain at birth); *The Gondoliers*, *supra* n. 108, at 891 ll. 503–520 (describing how Don Alhambra left the young Prince with a gondolier to raise with his own young son).

206. See *The Mikado*, *supra* n. 11, at 627–628 ll. 406–468 (trio describing the execution of Nanki-Poo in detail—even though it never took place); *Yeomen*, *supra* n. 1, at 845–855, ll. 603–782 (observing Phoebe and Wilfred discussing that they thought Colonel Fairfax had been killed but, in reality, he still lives).

207. See *The Mikado*, *supra* n. 11, at 647–649 ll. 818–852 (relaying how the Mikado decides that Ko-Ko should marry Katisha since Nanki-Poo is alive, but married to someone else); *Yeomen*, *supra* n. 1, at 855 ll. 765–782 (finding Fairfax alive and well, he and Elsie marry). As one spouse could not testify against the other for offenses against third parties, the marriage effectively sealed the witness' lips. See Jeremy Bentham, *Rationale of Judicial Evidence* vol. 5, 327–349 (Garland Publishing, Inc. 1978) (describing the limitations regarding testimony by a spouse). Perhaps in one case the marriage created potential disaster despite resolving the issues in the operetta. As Edwin ponders regarding the judge and Angelina in *Trial by Jury*:

*I wonder whether
They'll live together
In marriage tether
In manner true?*

Trial by Jury, *supra* n. 28, at 37 ll. 396–399.

208. See *e.g.* *supra* n. 58 and accompanying text (describing The Lord Chancellor's misunderstanding of the definition of evidence in *Iolanthe* and Angelina's counsel's mistaking bigamy for burglary in *Trial by Jury*); *supra* n. 63 and accompanying text (describing The Lord Chancellor's poor knowledge of the British law of bigamy and its exceptions in *Iolanthe*).

209. Gilbert's operettas are comedic in a classic sense in that they all end with a wedding—or at least an engagement. See George Noel Gordon & Lord Byron, *Don Juan*, in John Bartlett, *Familiar Quotations* 359 (Christopher Morley & Louella D. Everett eds., 11th ed., Little, Brown & Co. 1937) (distinguishing all comedies as “ended by a marriage”).

210. Gilbert wrote in the Victorian era, when melodrama flourished; therefore, his audiences knew melodramatic plot devices well. Cyrus Henry Hoy, *Comedy*, <http://www.britannica.com/EBchecked/topic/127459/comedy/> (accessed Aug. 9, 2009). Some of these plot devices include when “[t]he distresses that the hero and heroine suffer are . . . raised

Gilbert heavily criticizes all laws through his characters' ridiculous fulfillment of their obligations. Gilbert's satire on law and society continues to hold a message for the twenty-first-century world. For example, contemporary courts might do well to heed the Mikado's advice²¹² when confronted by absurd cases. Consider the Austrian court that fined a mother only €360 for calling her son as many as forty-nine times a day for two and a half years.²¹³ A Gilbertian judge would likely have sentenced her instead to distribute her home and cell phone numbers to every telemarketer in the world to receive only phone calls from telemarketers for two and a half years. That would truly make her punishment fit the crime!

to a more than comic urgency, but the means of deliverance have the familiar comic stamp: the secret at last made known, the long-lost child identified, the hard heart made suddenly capable of pity." *Id.*

211. Not all of Gilbert's characters find happiness at the end of his operettas as the sorcerer sacrifices himself to reverse an unwelcomed cursing in *The Sorcerer*, and the heartbroken Jester of *The Yeomen of the Guard* falls "insensible" at his beloved's feet as she embraces her new husband. *The Sorcerer*, *supra* n. 72, at 109 ll. 427–441; *Yeomen*, *supra* n. 1, at 857 l. 821. "The question of whether [the Jester] is meant to die at the end of the opera, or merely to faint, is one that has long exercised Savoyards, and no doubt it always will." *Id.* at 856 (annotating *Id.* at 587 l. 821). Finch explains the vagueness of the ending as suggesting that "a jester traditionally combined humour with pathos." Finch, *supra* n. 3, at 179. Perhaps the ambivalence came from Gilbert and Sullivan's producer's hope that *The Yeomen of the Guard* would be "a serious opera for the opening [of the Savoy Theater], with Gilbert's words. Sullivan agreed; Gilbert didn't." Leslie Baily, *Gilbert and Sullivan, Their Lives and Times* 97 (Viking 1974). Evidence of this possible disagreement exists in a letter written by Gilbert to Sullivan, in which Gilbert complains of the excessively and somber music and adds, "[t]hus it is that a professedly comic opera commences." Hibbert, *supra* n. 8, at 218.

212. See *The Mikado*, *supra* n. 11, at 623 ll. 337–339 where the Mikado sings:

*My object all sublime
I shall achieve in time—
To let the punishment fit the crime . . .*

213. DPA, *Too Many Phone Calls: Austrian Mother Fined for Stalking Son*, <http://www.earthtimes.org/articles/show/263806,too-many-phone-calls-austrian-mother-fined-for-stalking-son.html> (posted Apr. 9, 2009).