

LAW AS A PROBLEMATIC ISSUE
IN THE SHAKESPEARE TEXT.
ANALYZING DISCOURSES ON
LAW IN *RICHARD II* AND *HENRY V*

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LAW AS A PROBLEMATIC CONCEPT IN THE SHAKESPEAREAN TEXT. ANALYZING DISCOURSES ON LAW IN *RICHARD II* AND *HENRY V*

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Abstract

This paper examines two of Shakespeare's history plays: *Richard II* and *Henry V*. It argues that Shakespeare attempts to counter the view that the law is a relatively stable set of principles that can be seen persisting indifferently through turbulent and peaceful times, and develops this argument in three thematic sections. It analyzes concepts of law and justice, as well as the relationship between power and political divisions among entrenched legal or constitutional principles, on the one hand, and popular politics, on the other, and demonstrates how their interaction reflects the relative instability of any political and legal system.

Keywords: Shakespeare, law, law and literature, justice, power, politics.

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LA LEY COMO CONCEPTO PROBLEMÁTICO EN EL TEXTO SHAKESPERIANO. ANÁLISIS DE LOS DISCURSOS SOBRE DERECHO EN *RICARDO II* Y *ENRIQUE V*

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Resumen

Este artículo examina dos de las obras históricas de Shakespeare: *Richard II* y *Henry V*. Argumenta que Shakespeare intenta contrarrestar la opinión de que la ley es un conjunto de principios relativamente estables que pueden verse persistiendo indistintamente en tiempos turbulentos y pacíficos, y desarrolla este argumento en tres secciones temáticas. Analiza los conceptos de ley y justicia, así como la relación entre el poder y las divisiones políticas entre los principios legales o constitucionales arraigados, por un lado, y la política popular, por el otro, y demuestra cómo su interacción refleja la inestabilidad relativa de cualquier sistema político y jurídico.

Palabras clave: Shakespeare, derecho, derecho y literatura, poder, política.

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Introduction

Traditional jurisprudence, with its roots in the seventeenth century, has been preoccupied with questions of legal legitimacy and the composition of law. In Shakespeare's history plays, one finds a parallel legal discourse. Shakespeare does not seem persuaded by the ideas of a perfect legal order as much as he does by the problematics of law itself. This essay examines two of Shakespeare's history plays: *Richard II*¹ and *Henry V*.² These plays are positioned at the extremes of what scholars call the "second tetralogy." Their narratives are also formulated in contrasting terms: the first is built on the image of a beleaguered monarchy, while the second, as it appears, on a more powerful and united polity. Taken together, the range offered by these texts lay the ground to investigate the positions and indications of a legal order.

This essay's main argument is that Shakespeare attempts to counter the view that law is a relatively stable set of principles that can persist indifferently through turbulent and peaceful times. The argument is developed through three thematic sections. The first section, with two subsections, explores the meaning and implications of justice. Friedrich Nietzsche's aetiological descriptions of justice are applied to the action of both plays. It is argued that justice is an inherently fractured concept, lending itself to divisive tendencies far more than to order and unity. The law's supposed orientation towards justice, it follows, perils it with the same attributes. The second section, also divided into two subsections, looks at history, ceremony, and power, and demonstrates how these themes are used in the plays to complicate the image of law as a predictable, stable, and unifying device. The third section examines entrenched legal or constitutional principles, on the one hand, and popular politics, on the other, and demonstrates how their interaction reflects the inherent instability of a legal order. The final section presents the conclusions.

The observations in this essay are rooted in the plays' texts. Therefore, while conclusions about broad themes like 'law' or 'justice' are stated in general terms, it is helpful to view them in light of both plays and their specific narratives, before they are considered as broad inferences.

¹ William Shakespeare, *King Richard II*. Charles R. Forker, ed. (The Arden Shakespeare: The Third Series, 2002).

² William Shakespeare, *King Henry V*. T. W. Craik, ed. (The Arden Shakespeare: The Third Series, 1995).

Justice in Crisis

Referring to the Pre-Elizabethan age, Jonathan Dollimore and Alan Sinfield argue that “the laws of degree and order inferred from nature” were “construed as having been put there by God.”³ Around four centuries earlier, Richard Hooker, in his influential work, *Of the Laws of Ecclesiastical Polity*,⁴ reflected on this history and theorised it. Fusing Aristotelian and Thomist perspectives, he situates both the subject and the sovereign of the English commonwealth within the common law.⁵ The common law, to Hooker, is grounded in reason, political reason. Reason, he elaborates, must be construed through its entrenchment in and evolution through history. Hooker argues that though the sovereign is God’s deputy on earth, he is limited by the common law—a sense of “historical rationality” that has pervaded the English kingdom since antiquity. It is with historical rationality that kings ought to discover and enforce God’s natural laws.⁶ Subjects submit to the sovereign’s authority in order that the latter may administer—with “historical rationality”—the “greater good.”

Shakespeare appears to directly address Hooker’s ideal in the *Henriad*,⁷ an important example of which can be found in Act II of *Richard II*. The dying John of Gaunt, reciting his vision of England, refers to the land as a “royal throne of kings,” an “earth of majesty,” the “seat of Mars,” an “other Eden,” a “demi-paradise,” etc.⁸ The import of his speech, it is argued, is that “against the temporary man who appears to be king this England stands in majestic permanence.”⁹ When Gaunt says, “This nurse, this teeming womb of royal kings, / Fear’d by their breed, and famous by their birth,”¹⁰ he is reinstating that England is a land that “breeds” kings, but these kings are only a symbol of its glory. England, inevitably, comes first. One does not know what “other Eden” or “demi-paradise” he is talking about. Looking at this speech with Hooker’s ideas in mind, Gaunt is arguably seen as referring to a historical ideal, held together by laws, or a “fortress,” which was “built by Nature herself” (note the capital “N”), one which a king had to live up to and uphold.

³ Jonathan Dollimore and Alan Sinfield, “History and Ideology,” in *Alternative Shakespeares*, ed. John Drakakis (New York: Routledge, 2002), 216.

⁴ Richard Hooker, *Of the Laws of Ecclesiastical Polity* (Cambridge: Cambridge University Press, 1989), 70.

⁵ Ian Ward, *Shakespeare and the Legal Imagination* (London: Butterworths, 1999), 20-44.

⁶ For a more thorough discussion on this point, see Ward, *Shakespeare*, chapter 1.

⁷ Ward, *Shakespeare*, 55.

⁸ *King Richard II*, II. i. 40-60.

⁹ Alexander Leggatt, *Shakespeare’s Political Drama. The History Plays and the Roman Plays* (New York: Routledge, 1988), 55-56.

¹⁰ *King Richard II*, II. i. 51-52.

Accordingly, historical rationality ought to be the king's principal aid in identifying and administering the law. Eric Heinze contributes interestingly to this argument.¹¹ To him, Gaunt's possible suggestion is that in order that God's laws be enforced, the king's "divine right bestows a duty of just rule."¹² "Reason" and "justice" find a correlation in this scheme. Both terms are conventionally used in connection with law. An aetiological investigation into the terms could help understand their relationship. More importantly, it could reveal certain features and limits of the law. For this investigation, I turn to a thinker whose "echo,"¹³ from more than two centuries after Shakespeare, can be felt in the latter's historical imagination.

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Friedrich Nietzsche, in his triptych of essays, *On the Genealogy of Morality*,¹⁴ attempts to give a historical genesis of morals. One may not take Nietzsche to be a historian, but the *Genealogy* commands attention in its psychological, philological, and aetiological exploration into the mind of human society. In the second essay—and arguably the most important of the three—he meditates on the concepts of law, justice, community, and the state in his larger moral schema.¹⁵ Parts of this essay will inform the forthcoming analysis.

Nietzsche begins with his picture of the ancient man. Such a man conceived of the need to make *promises*. Keeping a promise ensured that his existence was not arbitrary, it assumed his continuity into the future, and set him apart from the wild.¹⁶ The collectivity of promissory relationships formed society. Not only did man enter into promises with one another, but each man was also in a contract with society (or the state). Man had to live by certain promises to enjoy the "benefits of society."¹⁷ In a promise, there were also present the initial notions of *justice*. The idea that "everything has its price" allowed the ancient man to measure another by a certain standard or "value."¹⁸

¹¹ Eric Heinze, "Heir, Celebrity, Martyr, Monster: Legal and Political Legitimacy in Shakespeare and Beyond." *Law and Critique* 20, No. 1 (2009).

¹² Heinze, "Heir, Celebrity," 81.

¹³ Eric Heinze, *The Concept of Injustice* (New York: Routledge, 2014). The word is borrowed from the title of the introductory chapter in this book.

¹⁴ Friedrich Nietzsche, *On the Genealogy of Morality*, ed. K. Ansell-Pearson (Cambridge: Cambridge University Press, 2011).

¹⁵ Nietzsche, *Genealogy*, Essay II, 38-71.

¹⁶ Nietzsche, *Genealogy*, Essay II, 38-39.

¹⁷ Nietzsche, *Genealogy*, Essay II, 39-42.

¹⁸ Nietzsche, *Genealogy*, Essay II, 46.

The preceding and “opposing force” to promise-keeping was *forgetfulness*—the quality that allowed man to be oblivious. Nietzsche characterised it as the “doorkeeper or guardian of mental order, rest and etiquette.”¹⁹ Shutting out the “noise and battle” of the inner and outer worlds, the ancient man recognised what he called “happiness, cheerfulness, hope, pride.”²⁰ Nietzsche points to a sort of derogation in the original man who, in order to keep promises, cultivated *memory*, which allowed him to temporarily suspend his forgetfulness. Memory, however, did not come about by the mere desire for it.²¹ When looked at collectively, repeated *pain*, as a penalty for not keeping one’s promises to society, instilled in the mind a set of “I-don’t-want-to’s” in relation to a promise that had been made. These imprints formed an impulse, which required man to reflect, to calculate, to assess. Nietzsche calls this ability *reason*.²² Justice, therefore, was seen as fulfilling a promise, and reason was the principal tool in this effort. This offers a possible connection between Hooker’s “rationality” and Heinze’s allusion to the imperative of “just rule.”

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A picture of the ideal state is expressed early on in *Henry V* through Canterbury’s winding speech on the commonwealth of bees: “Therefore doth heaven divide / The state of men in diverse functions, / Setting endeavour in continual motion; / To which is fixed, as an aim or butt, / *Obedience*: for so work the honey-bees, / Creatures that *by a rule in nature* teach / The act of *order* in a peopled kingdom”²³ (emphasis added).

As the speech progresses, the emphasis remains on action. “Order” in a “peopled kingdom” requires that each is *doing* a designated action, fulfilling their promise (like in Nietzsche’s theory).²⁴ Action, though, is not brought to the level of slavery, but is cultivated into an imagined unity: “So many a thousand actions, once afoot, / End in one purpose.”²⁵ This “purpose”, seen to spring from “a rule in nature,” suggests that it is administered by God.²⁶ While, in Nietzsche’s theory, predictability

¹⁹ Nietzsche, *Genealogy*, Essay II, 38-42.

²⁰ Nietzsche, *Genealogy*, Essay II, 38-42.

²¹ Nietzsche, *Genealogy*, Essay II, 38-42.

²² Nietzsche, *Genealogy*, Essay II, 42.

²³ *King Henry V*, I. ii. 183-189.

²⁴ Leggatt, *Shakespeare’s Political Drama*, 120.

²⁵ *King Henry V*, I. ii. 211-12.

²⁶ Dollimore and Sinfield, “History and Ideology,” 217.

comes from promise-keeping, in the present case it comes through *obedience* (i.e. to a “regulative structuring” ordained by God).

Contrast this speech with Richard’s pronouncement: “Not all the water in the rough rude sea / Can wash the balm from an anointed king; / The breath of worldly men cannot depose / The deputy elected by the Lord.”²⁷ Richard expresses himself as the “deputy” of God, the mirror of divinity. Henry’s authority, on the other hand, is expressed through a divine ordaining, of which he is only a part. Some audiences would be tempted to assume that Henry resonates, far more than Richard, with the concept of *primus inter pares* (i.e. that the king is but *one among equals*). This, I argue, is not true. Shakespeare, between both characters, seems to problematize the position of the sovereign. It is crucial to note that the king’s action, in Canterbury’s scheme, is not described. He is merely positioned at the centre of the social structure. Hence, it matters little if obedience to the sovereign is demanded as God’s will, or as characterising his person as God’s image. One description may be cleverer than the other, but the assertion remains the same: the king is above the law and beyond any obligation to the societal hive. He simply commands, and consent to his will is considered a furtherance of the greater good.²⁸ This, indeed, is unsurprising, given the absolutist character of the Tudor monarch. Looking at it through a Nietzschean lens, however, renders this principle structurally self-defeating.

The English commonwealth is presided over by the monarch. His purpose, as Hooker puts it, is to uphold the “greater good.”²⁹ Nietzsche would call this an obligation of the sovereign towards society—i.e. an obligation in response to having been installed as a sovereign ruler. The “greater good” is a problematic word. It is abstract. Each constituent in a polity would view it differently, including the king himself. Consider Pistol and his band of companions. They participate in the war for their own ends: “I shall sutler be / Unto the camp, and profits shall accrue.”³⁰ Or, “Let us to France; like horse-leeches, my boys, / To suck, to suck, the very blood to suck.”³¹ Pistol is a petty thief, one may argue, and does not speak for the polity. For a more compelling illustration, then, we may turn to Henry’s conversation with John Bates, Alexander Court, and Michael Williams. Williams is sceptical about the virtue of war. He places its cause and consequences entirely

²⁷ *King Richard II*, III. ii. 50-53.

²⁸ Ward, *Shakespeare*, 53.

²⁹ Ward, *Shakespeare*, 53.

³⁰ *King Henry V*, II. i. 111-112.

³¹ *King Henry V*, II. iii. 56-57.

on the king: “if the cause be not good, the king himself hath a heavy reckoning to make.”³² Facing the challenge the three soldiers pose, Henry fails to answer them. He launches into a protracted speech that emphasises an empty exhortation: “Every subject’s duty is the king’s; but every subject’s soul is his own.”³³ Citing an earlier scene in the play, where Henry is refuted by Nym,³⁴ Warren Chernaik observes the employment of a device, which he calls “negative capability,” where the soldiers are not seen persuaded by heroism.³⁵ In the confrontation between “patriotism” and “self-preservation,” Chernaik sees Shakespeare asserting the truth of both positions, “according to the speaker’s separate perspectives.”³⁶

Consider further Richard’s usurpation of the Lancastrian estate on Gaunt’s death. He does not do so without an explanation. He takes Bolingbroke’s inheritance, he says, to fund the Irish wars.³⁷ Dissonance between the king’s perception of the greater good and those of his subjects follow in York’s intervention: “Seek you to seize the gripe into your hands / The royalties and rights of banished Hereford? / Is not Gaunt dead? And doth not Hereford live? / Was not Gaunt just? And is not Harry true?”³⁸ Before the impending deposition of Richard, Bolingbroke says he comes “but for mine own.”³⁹ Sensing that he seeks much more than his “own,” York, in an earlier moment, warned the king-to-be: “Take not, good cousin, further than you should, / Lest you mis-take: the heavens are o’er our heads.”⁴⁰

The perils that grip the “greater good” are therefore clear. *Divinity*, in these circumstances, appears to have a clever effect. It organises obedience (as seen in the honey-bees speech) by obfuscating the sovereign’s incapacity to oblige an end, which escapes definition. When Gaunt describes “the royal throne of kings” as “other Eden,” a “blessed plot of earth,” he is utterly vague.⁴¹ *Divinity* is justified through poetry and eloquence, rather than through history and evidence. Also observe Canterbury’s attempt to endorse Henry’s desire for war through Biblical authority. The speech *sounds* so confusing and tortuous that Leggatt finds the

³² *King Henry V*, IV. i. 135-136.

³³ *King Henry V*, IV. ii. 3-4, 8, 12-13.

³⁴ *King Henry V*, III. i. 182-185.

³⁵ Warren Chernaik, *The Cambridge Introduction to Shakespeare's History Plays* (Cambridge: Cambridge University Press, 2007), 145.

³⁶ Chernaik, *Cambridge Introduction*, 145.

³⁷ *King Richard II*, II, i. 153-162.

³⁸ *King Richard II*, II, i. 189-192.

³⁹ *King Richard II*, III, iii. 197.

⁴⁰ *King Richard II*, III, iii. 16-17.

⁴¹ *King Richard II*, II, i. 40-60.

Archbishop's description of his exposition—that it is “as clear as this summer's sun”⁴²—comical.⁴³ To stress the divine character of the monarchy is, therefore, to fight one abstraction (divinity) against another (greater good).

This battle of abstractions, in Nietzsche's framework, does not yield. By blurring the king's contract with his subjects, his obligation does not subside. The desire for the “greater good” will prevail, and so will the myriad conflicts that come with it. Rationality as a concept does not—and cannot—reconcile dissonant meanings of the “greater good.” The promise of justice, hence, is a vacant aspiration.

Shakespeare's point, viewed more broadly, is not restricted to the Tudor monarchy. As long as society is made of myriad interests, the “authority” of law, wherever it be situated, will be under stress. The problem here is that the “greater good” is a notion that is always sought through differing terms and textures. When justice is demanded in different ways through this term, it always falls short depending on whose “greater good” one is referring to. The movement of law, in this sense, nurtures, and even furthers, division and dissatisfaction.

Further Problematic Justice

The notion that “everything has its price” is one perspective from which Nietzsche describes “justice.” He identifies another ground in *ressentiment*. *Ressentiment* is a psychological condition of hatred and envy that has not been satisfied.⁴⁴ The *original* man, to Nietzsche, affirmed his own condition of strength and power as “good.”⁴⁵ Those qualities that were unlike him were discarded as “bad.” The weaker man, on the other hand, who was subjected to the power of the strong man, developed a sense of resentment towards the latter. Resentment prompted the weaker category to define “justice” as the opposite of everything that the powerful stood for. The weaker man, therefore, characterised as “evil” the qualities of aggression, appetite, nobility, strength, and so on.⁴⁶ The essential difference between these notions of justice is that one is self-affirming, while the other is vengeful; while one is *active*, the other is *reactionary*. Nietzsche rails against *ressentiment* as a corruption, but he, nevertheless, accepts it as an existing territory occupied by the “spirit of justice.”⁴⁷

⁴² *King Henry V*, I. ii. 86.

⁴³ Leggatt, *Shakespeare's Political Drama*, 122.

⁴⁴ Nietzsche, *Genealogy*, Essay II, 52-54.

⁴⁵ Nietzsche, *Genealogy*, Essay I, 12-20.

⁴⁶ Nietzsche, *Genealogy*, Essay I, 12-20.

⁴⁷ Nietzsche, *Genealogy*, Essay II, 52-54.

The tension between these notions in the *Henriad* underscores Shakespeare's possible attempt to problematize, even further, the claim that law is oriented towards a single and identifiable concept called "justice." It will be evident as this analysis proceeds that neither notion of justice emerges more compellingly over the other.

The two concepts of justice are contrasted clearly in Richard's famous pronouncement, cited above: "Not all the water in the *rough rude sea* / Can wash the *balm* off from an anointed king" (emphasis added). The "boisterous" might of the "rough rude sea" is contrasted with the "gentle emollient caress" of the sacramental "balm," the oil of Chrism used to "anoint" a king at his coronation.⁴⁸ Richard proceeds to draw a distinction between the "golden crown"⁴⁹ of the divine king and the "shrewd steel"⁵⁰ of Bolingbroke's raw power, between men "press'd,"⁵¹ as if coerced, into insurrection, and the army of angels who loyally protect the deputy appointed by their Lord.⁵² Such reiterations of "discordant textures," Graham Holderness argues, presents a wedge between the divine and natural worlds.⁵³ Richard's attempt is to impose the values of the former onto the latter.⁵⁴ The heavenly world of angels, in its very imagery, is feminine. Bolingbroke's world of "shrewd steel," armies and weapons, is masculine and assertive. In the latter's world, those who rely on divine intervention are weak, and must invariably fall. The former's world is parasitic upon the latter, couching its retorts on qualities opposite to the other.⁵⁵

The confrontation between the assertive, Machiavellian concept of justice, and the more transcendental, reactionary idea reaches a dramatic moment in the deposition. Bolingbroke seeks "surrender" in "common view" so that he may proceed "without suspicion."⁵⁶ Richard, as Leggatt shows, makes sure that the effect is plainly the opposite.⁵⁷ To show how the crown is demeaned by its transfer "from hand to hand," Richard says, "Here, Cousin, seize the crown."⁵⁸ Bolingbroke evidently hesitates, and Richard repeats the invitation. The scene reaches its climax in an "unforgettable and disturbing stage picture," when each man's hand is on the crown, but none wears

⁴⁸ Graham Holderness, *Shakespeare: The Histories* (New York: St. Martin's Press, 2000), 195.

⁴⁹ *King Richard II*, III. ii. 59.

⁵⁰ *King Richard II*, III. ii. 59.

⁵¹ *King Richard II*, III. ii. 58.

⁵² *King Richard II*, III. ii. 58-62.

⁵³ Holderness, *The Histories*, 194-195.

⁵⁴ Holderness, *The Histories*, 194-195.

⁵⁵ Holderness, *The Histories*, 194-195.

⁵⁶ *King Richard II*, IV. i. 155-157.

⁵⁷ Leggatt, *Shakespeare's Political Drama*, 68.

⁵⁸ *King Richard II*, IV. i. 181.

it. Are there two kings? Or is there no king at all? Are there two legitimate, and separate, ideas of justice? Or is there no such thing as justice at all? Shakespeare appears to present this dilemma intentionally.⁵⁹ At different points in the play, Phyllis Rackin carefully details Shakespeare's attempt to invoke contrasting emotions from the audience. From emotions of frustration against Richard and support for Bolingbroke in the trial and subsequent scenes,⁶⁰ to sympathy for Richard, and a sense of "guilt" in siding with Bolingbroke, in the deposition scene,⁶¹ the audience is left torn between positions, each of which seems both right and vile.

Having established the tension between affirmative justice and *ressentiment*, Nietzsche puts another spoke in the justice wheel. He suggests that "true" notions of justice resurfaced when the strong man developed a *legal system* to counter forces of *ressentiment*.⁶² The presence of a code, which determines in clear terms the distinction between permissible and impermissible behaviour, reinstates justice as affirmative and *impersonal*.⁶³ References to the Bible are copious in both plays. Resorting to the biblical *code* helps mask the self-centred face of revenge, especially when its image appears incompatible with a broader (i.e. more communal) sense of "justice." Henry seems to have appreciated this point. Examining Canterbury's speech in Act I of *Henry V*, the main thrust is vengeance. France is not seen to be the Salic land. Canterbury argues that Salic law allows inheritance to pass through the female line and the French had not honoured this principle—for if they had, France would rightly come under the English throne. The French monarch's power, therefore, is characterised in terms of "borrow'd glories," "custom," and "mettle... bred out."⁶⁴ To avenge, here, is construed as just. Vengeance, however, is articulated in personal terms. Henry must avenge in the name of his bloodline, his ancestors, not for the sake of England at large.⁶⁵ However, the costs of war are immense, and the kingdom is aware and cautious of this fact.⁶⁶ The kingdom's eyes must be turned away from Henry's ambitiousness and desire for personal vengeance. Canterbury's reference to the Bible and to Salic law gives the useful effect of confirming the justness of war through a legal and divine code.

⁵⁹ Chernaik, *Cambridge Introduction*, 93. He cites this scene as another instance of "negative capability."

⁶⁰ Phyllis Rackin, *Stages of History: Shakespeare's English Chronicles* (Ithaca: Cornell University Press, 1990), 126-129.

⁶¹ Rackin, *Stages of History*, 130-135.

⁶² Nietzsche, *Genealogy*, Essay II, 52-54.

⁶³ Nietzsche, *Genealogy*, Essay II, 52-54.

⁶⁴ *King Henry V*, II. iv. 79, 83; III. v. 29.

⁶⁵ *King Henry V*, I. ii. 104-107.

⁶⁶ *King Henry V*, IV. i. 135-136; ii. 3-4, 8, 12-13.

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Based on the extracts discussed above, Shakespeare does not seem to point to the *abuse* of law as much as he does to its conflicting employment. Abuse implies a set standard from which law deviates. Where justice is normally taken to be this standard, the term is problematized in the *Henriad*. Each instance cited in this discussion demonstrates a position of law that seems as *justified* as it is problematic. It follows, therefore, that law can often be made to give the *appearance* of unity and order; disunity and disorder, however, will always lurk on its flipside.

Ceremony: The Site of Law

In October 2016, former historian and sitting judge of the U.K. Supreme Court, Lord Sumption, referred to the study of common law as “an intensely historical process.”⁶⁷ The common law is a system that depends on precedent. Relying on precedent, he found that the application of law is an exercise to legitimate the present with the past.⁶⁸

The courts of *Richard II* and *Henry V* were filled with pomp and ceremony. Much like the plays themselves, a ceremony is an invocation to history. The difference between the two is that the former *re-enacts* history, while the latter *enacts* the presence of the past in the present. “A ceremony, properly conducted, enacts and affirms the shared values of a community.”⁶⁹ These are values crystallised through time and they guide a society’s normative impulses and systems. “It is therefore predictable, and meant to be predictable.”⁷⁰ For its predictability and reliance on history, a ceremony can also be seen as a site of law. To honour a ceremony is to apply precedents and to engage with the historical process.

The beginning of Richard’s descent was clear in his disruption of a time-honoured chivalric ceremony.⁷¹ Holderness sees the royal intervention as “an emasculation of the combatants and their chivalric culture.”⁷² When Richard is later overthrown, in a manner that is against the sacred ceremony of kingly appointments, ceremony

⁶⁷ Lord Sumption, *The Historian as Judge*, The Supreme Court of the United Kingdom. Available from: <https://www.supremecourt.uk/docs/speech-161006.pdf> (Accessed March 29, 2018).

⁶⁸ Lord Sumption, *The Historian as Judge*.

⁶⁹ Leggatt, *Shakespeare’s Political Drama*, 65.

⁷⁰ Leggatt, *Shakespeare’s Political Drama*, 65.

⁷¹ *King Richard II*, I, ii. 117-123.

⁷² Holderness, *The Histories*, 183.

could be his main rescue. Nevertheless, his early contempt for ceremony denies him this chance and all he can do is offer a desperate performance.⁷³ It is clear, therefore, that the disruption of a ceremony by a sovereign king jeopardises his legal authority. Looking at Shakespeare's illustration of the ceremonial process, however, it appears compelling that a ceremony—and therefore law—lends itself to disruption more readily than it does otherwise. Of immediate interest is the particular ceremony involved in the opening scenes and the subsequent trial by combat in *Richard II*.

Mowbray and Bolingbroke represent the "heroic tradition of military manliness."⁷⁴ The instrument of justice is located in the chivalric and antique process of trial by combat: "what I speak / My blood shall make good upon this earth, / Or my divine soul answer it in heaven."⁷⁵ Mowbray expresses his remonstrance against the use of words—referring obliquely to the formal hearing presided over by Richard—and similarly seeks justice in chivalric battle.⁷⁶ However, the participants in this ceremony refer the trial to differing histories. In accusing Mowbray (and indirectly Richard) of murdering Gloucester, Bolingbroke makes a reference to the Old Testament story of Cain and Abel. As Abel's death was avenged by God, Bolingbroke claims that Gloucester's "cries," from the "tongueless caverns of the earth," turn to him for "justice and rough chastisement."⁷⁷ To protest his innocence, Mowbray counterpoises the Old Testament code of revenge and blood-sacrifice with the "blood of the new testament (Mark, XIV.24) shed in the Passion of Christ":⁷⁸ "ere I last received the sacrament / I did confess it"⁷⁹ (emphasis added). Citing the sacrament of Eucharist invites a different historical presence in the trial—i.e. one of *forgiveness*, as opposed to Bolingbroke's Old Testament *revenge*.⁸⁰ The subsequent conversation between Gaunt and the Duchess of Gloucester sustains the confrontation between these histories. The Duchess's promptings of "true chivalry"⁸¹ to avenge her husband's death is contrasted with a Christian position taken by Gaunt: correction "lieth in those hands / Which made the fault that we cannot correct"⁸² (i.e. the Original

⁷³ *King Richard II*, III. ii. 54-63.

⁷⁴ Holderness, *The Histories*, 176.

⁷⁵ *King Richard II*, I. i. 36-38.

⁷⁶ *King Richard II*, I. i. 47-51.

⁷⁷ *King Richard II*, I. i. 100-106.

⁷⁸ Holderness, *The Histories*, 179.

⁷⁹ *King Richard II*, I. i. 139-140.

⁸⁰ Holderness, *The Histories*, 179.

⁸¹ *King Richard II*, II. i. 54.

⁸² *King Richard II*, I. ii. 4-5.

Sin). He is reluctant to raise an “angry arm”⁸³ against the deputy appointed by God. Holderness observes this “manufacturing” of history by the characters as an attempt to “preconfigure” the trial ceremony “in line with their own interpretive strategies.”⁸⁴ Therefore, when Richard stops the trial, citing “peace,” he disrupts only one historical strain in the ceremony—i.e. the strain favoured by Bolingbroke. Dismissing the “grating shock of wrathful iron arms”⁸⁵ is rather consistent with the opposing Christian ideal cited above.

Shakespeare appears to suggest that history presides with multiple heads over any ceremonial action. The implication is extended to the common law, where several precedents are seen as available in justifying a legal action. The law is predictable and stable to the extent it resonates with the *particular* precedent cited to legitimate it. Looked at from the position of precedents that were not followed, the law can seem rather abrupt and unstable.

The Performance of Kingship

The previous section opened by comparing a history play with ceremony. The idea that history is being re-enacted is made obvious in *Henry V*, where the Prologue affirms that the performance presents a “kingdom for a stage, princes to act.”⁸⁶ Kingship, therefore, becomes a performative enterprise. In *Richard II*, history as law was located in the chivalric ceremony. The emphasis on the king as actor in *Henry V* shifts our attention to ceremony as a *performance* of kingship. Henry is aware of the “performative and imaginative art” in kingship,⁸⁷ which, he acknowledges, creates “awe and fear in other men.”⁸⁸ In Henry’s role as king, therefore, Shakespeare seems to supply further insights into the nature and limits of law.

Henry’s kingship is essentially ahistorical. Bolingbroke’s usurpation of the crown blotted not only the legitimacy of his kingship, but of Henry’s too, who took the crown through him. It is precisely at the beginning of the play, therefore, that the historicity of Henry’s rule is sought to be corrected. This is achieved in a ceremonial statement of his kingship. Ely echoes Canterbury’s reference to Henry’s “mighty ancestors,” but does not examine his bloodline in much detail: “You are their heir,

⁸³ *King Richard II*, I. ii. 41.

⁸⁴ Holderness, *The Histories*, 183.

⁸⁵ *King Richard II*, I. iii. 123-39.

⁸⁶ *King Richard II*, Prologue, 3.

⁸⁷ Ward, *Shakespeare*, 60.

⁸⁸ *King Henry V*, IV. i. 245-246, 253.

you sit upon their throne, / The blood and courage that renowned them / Runs in your veins.”⁸⁹ The continuity—or historical legitimacy—of Henry’s kingship is shifted from inheritance to the “office and the tradition of valour” to which Henry’s blood belongs.⁹⁰ The power of the kingly performance is heightened by Canterbury’s call to action.⁹¹ The performative action of the king is strengthened to a point of elation, where the hearts of Henry’s fans “have left their bodies here in England / And lie pavillion’d in the fields of France.”⁹² However, the stress to *perform* continues in Henry’s character, emphasising a sustained threat to the legitimacy of his law.

The role of the chorus and the emphasis on propaganda have led new historicists to suggest that *Henry V* is enacted against a fractured polity, as opposed to some sense of imagined unity.⁹³ This becomes evident in the scene at Southampton, where three members of the nobility are found conspiring against the king. Henry uses trickery in this scene to underscore his sense of mercy. Turning to mercy appears frequent in Henry’s behaviour. Responding to the Dauphin’s insult of a “gift” of tennis-balls, he is evidently angry, but he ends by admitting the rights of ambassadors: “So get you hence in peace.”⁹⁴ His infamous threat at Harfleur, in which his fighting soldiers of “Once more unto the breach” turn into brutal hoodlums who threaten rape and destruction, ends with a command to Exeter: “Use mercy to them all.”⁹⁵ The reference to mercy by a king is interesting because it points to a performative strategy that both acknowledges and masks political divisions. To explain this point, I turn to Nietzsche once again.

Nietzsche finds that as the state is seen to grow in power, it ceases to take offences as seriously as it did before. This is because “these [offences] do not seem to be as dangerous and destabilising for the survival of the whole, as they did earlier.”⁹⁶ This point speaks to *Henry V*. Henry, even before the war began, ensured that he was seen at the height of his power. Dollimore and Sinfield argue that the Archbishop’s keenness to sanction the King’s claim to France, in order to safeguard the Church’s interests, diminishes both him and the Church. However, Henry’s invitation to act

⁸⁹ *King Henry V*, IV. ii. 117-119.

⁹⁰ Leggatt, *Shakespeare’s Political Drama*, 115-116.

⁹¹ See note 21.

⁹² *King Henry V*, I. ii. 128-129.

⁹³ Stephen Greenblatt, “Invisible Bullets: Renaissance Authority and Subversion in Henry VI and Henry V,” in Jonathan Dollimore and Alan Sinfield, eds. *Political Shakespeare: New Essays in Cultural Materialism* (Manchester: Manchester University Press, 1985), 30.

⁹⁴ *King Henry V*, I. ii. 294.

⁹⁵ *King Henry V*, III. iii. 54.

⁹⁶ Nietzsche, *Genealogy*, Essay II, 51-52.

on this interest⁹⁷ only allows him to “appropriate their authority.”⁹⁸ The authors note that this consolidated sacred and secular authority in the king so completely that, after Act I, the clergy were not needed to appear at all.⁹⁹ They go on to interpret Henry’s speech on the eve of Agincourt—“Every subject’s duty is his king’s...”¹⁰⁰—as the king giving “priestly counsel” to his soldiers.¹⁰¹ However, this power is only apparent. It is part of Henry’s performative project to give the appearance of power. Therefore, when faced with real political divisions like in the Southampton scene, or with threats of war and destruction, he must keep the performance up to ensure that the emptiness of his authority is not revealed. A great tool to achieve this end, according to Nietzsche, is “mercy.” At the heart of justice, as he had earlier said, is the notion that “everything can be paid off, everything must be paid off.” The king can ignore the imperative of justice by “turning a blind eye” and letting go of those who cannot pay.¹⁰² The power to “sublimate” justice bears two implications: firstly, that only the most powerful man (the king) can do it, and, secondly, to sublimate the law is to demonstrate that one is *above* it.¹⁰³ Reiterating qualities of mercy, Henry was able to reinforce the appearance of power and his control over the law. However, his *use* of mercy, it is instructive to note, is a tacit acceptance that there *are* real political divisions that threaten his legitimacy.

Even at the height of his project, the awareness that his power is illusory does not evade Henry.¹⁰⁴ Talking of the “hard condition / Twin born with greatness,”¹⁰⁵ he acknowledges the fear of “deceptive obedience.” It masks “actual antagonism.” The loneliness of power is such that the king has nobody to share his responsibilities with. As the soliloquy progresses, the underlying theme in his confrontation with Williams and Bates re-emerges: the fear of disobedient subjects. His “greatness,” he sees, is “subject to the breath / Of every fool.”¹⁰⁶ He experiences “poisn’d flattery” “instead of homage sweet,” and he sees the subjects as “happy” in fearing him, because they do not have to confront the fear of being disobeyed.¹⁰⁷ The soliloquy reveals the precarious dependence of power on the performative idiom. As Dollimore

⁹⁷ *King Henry V*, I. ii. 9-32.

⁹⁸ Dollimore and Sinfield, “History and Ideology,” 225-227.

⁹⁹ Dollimore and Sinfield, “History and Ideology,” 225-227.

¹⁰⁰ *King Henry V*, I. ii. 294.

¹⁰¹ Dollimore and Sinfield, “History and Ideology,” 225-227.

¹⁰² Nietzsche, *Genealogy*, Essay II, 51-52.

¹⁰³ Nietzsche, *Genealogy*, Essay II, 51-52.

¹⁰⁴ *King Henry V*, IV. i. 242-245.

¹⁰⁵ *King Henry V*, IV. i. 230-231.

¹⁰⁶ *King Henry V*, IV. i. 240-241.

¹⁰⁷ *King Henry V*, IV. i. 256-257.

and Sinfield summarise: “His problem is structural, since the same ceremonies or role-playing which constitute kingship are means by which actual antagonisms can masquerade as obedience.”¹⁰⁸ The power that wields the law is a threat to itself.

The Precarious Position of Law

Tests, procedural steps or a framework of rules, established by precedent, are called legal principles in common law. The currency (or legality) of a legal principle lies in its *acceptance* in historical precedent. Acceptance, or the notion of being legally obligated, features in several jurisprudential theories, the most famous among them being H. L. A. Hart’s theory.¹⁰⁹ The general sense is that the presence of legal principles provides stability and order to a legal system. Shakespeare, however, appears to play with this idea. He seems to suggest that acceptance (or the appearance of legality) can be secured in different ways. If a legal principle is accepted for its historical value, acceptance, or the legitimation of a new legal proposition, can be established through popular support. This is precisely contrasted in Richard’s reliance on the principle of divine right as opposed to Bolingbroke’s more plebeian sensibilities. As Katharine Eisaman Maus puts it: “Whereas Bolingbroke thinks of power as emanating from ‘below’—from the king’s subjects, from the deployment of material resources—Richard thinks of it as descending from ‘above,’ from God whose representative on earth he was born to be.”¹¹⁰ The overthrow of Richard demonstrates that the very substance that orders a legal system—i.e. acceptance—can be used to disrupt it. This section explores this point in closer detail.

Harry Berger reads the principle of “‘natural’ or jural fatherhood,” its positioning in aristocratic configuration and in the person of the king as a deputy of ‘God’ (the ultimate Father), as infusing the *Henriad* with a patriarchal ideology.¹¹¹ He traces this on two axes of “descent”: the vertical axis of substitution (hierarchy) and the horizontal axis of succession (heraldic genealogy). Along both axes, the “formal cause” is mimesis, but in the first, descent is configured in decreasing likeness to the Father, and in the second, “the Father ideally achieves genealogical immortality by reproducing its image in progenial replicas.”¹¹²

¹⁰⁸ Dollimore and Sinfield, “History and Ideology,” 222.

¹⁰⁹ H. L. A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 1961), 79-88.

¹¹⁰ Katharine Eisaman Maus, “Introductory Remarks to Richard the Second,” in Stephen Greenblatt, ed. *The Norton Shakespeare*. 3rd ed. (New York: W. W. Norton and Company, 2015), 888.

¹¹¹ Harry Berger, “Psychoanalysing the Shakespeare Text,” in Emma Smith, ed. *Shakespeare’s Histories* (Oxford: Blackwell Publishing, 2004), 103-123.

¹¹² Berger, “Psychoanalyzing,” 104.

Though Bolingbroke is, in the action of the play, the heir to the throne, his soon-to-come ascension to it will violate both axes. On the vertical axis, he is lower in hierarchy to the king, who sits at its very top. On the horizontal axis, while Richard is still alive, Bolingbroke, as a mere heir apparent, cannot legitimately unseat the sitting image of God, the Father. Before marshalling public support to overthrow Richard, Bolingbroke had to first dismiss the principle that kept Richard as king. The deposition had to be *justified*. Berger, through a psychoanalytic reading of Bolingbroke's opening lines, skilfully demonstrates how he attempts to discredit Richard's paternal institution. Richard, in interrupting the hearing of Mowbray and Bolingbroke, by asking Gaunt to calm "[his] son,"¹¹³ makes Gaunt share the onus of this arbitrary intervention. The arbitrary interruption of ceremony, as we have seen, is bad in law. Gaunt acquiesces and this gives Bolingbroke the chance to use his father's image to play a subtler game. Berger reads the response¹¹⁴—namely, its first four lines—as implying a crucial action. He sees the prepositional phrases with which both questions in lines 118 and 120 end as placing Mowbray and Gaunt in the same position.¹¹⁵ The result of this reading is interesting. If the abuse is seen towards Gaunt, perhaps it is for his role in frustrating Bolingbroke's fight for justice. Since Gaunt acted at Richard's behest, the abuse, it can be argued, is ultimately directed at Richard. Further, the unsaid allegation in the play is that Richard secretly commanded Mowbray to kill the Duke of Gloucester, Richard's and Bolingbroke's uncle.¹¹⁶ Seen towards Mowbray, the abuse can also be ultimately directed at Richard himself.

Subtly attacking Richard for the murder of Gloucester, Bolingbroke alleges that the king has betrayed the same noble blood that gave him his royalty. Richard's reliance on the paternal principle was effectively discredited. This was a necessary step to take before Bolingbroke could muster support to depose the king. The legality of the king's rule had to be dislodged in order that his overthrow could *seem* lawful.

On two prominent occasions in *The Prince*, Niccolò Machiavelli asserts that the king must enjoy the confidence of the commons.¹¹⁷ In moments of rebellion or crisis, public support, he says, will keep royal authority afloat. In this sense, Bolingbroke and Henry were classic Machiavels. In his St. Crispin's Day oration,¹¹⁸ Henry said

¹¹³ *King Richard II*, I. i. 158-159.

¹¹⁴ *King Richard II*, I. i. 187-195.

¹¹⁵ Berger, "Psychoanalyzing," 110-11.

¹¹⁶ Maus, "Introductory Remarks," 885.

¹¹⁷ Niccolò Machiavelli, *The Prince*. T. Parks, trans. (London: Penguin Classics, 2009), 6-7, 87-91.

¹¹⁸ *King Henry V*, IV. iii. 60-63.

that those who go to battle with him will, by that act, become gentlemen, joined with him as one in the “bond of brotherhood, united in blood.”¹¹⁹ As soon as the war ends, while reading out the list of casualties, hierarchy was resumed. “Princes, barons, lords, knights, squires / And gentlemen of blood and quality” were allowed names, in descending order of rank, and those of “good sort” were kept distinct from “common men.”¹²⁰ Indeed, one could argue this to be hypocrisy, but the allure of Henry’s St. Crispin’s Day speech is almost undeniable. Before the king orders a charge into the battlefield, he likens a “common man” to his “brother,” calls him a sharer in his “blood” (sacred, kingly blood). This would have created an extraordinary sense of loyalty towards the king and an enthusiasm towards his cause, both of which are crucial to give the king’s actions the sheen of legality and acceptance. Richard, on the other hand, scoffs at Bolingbroke for his “courtship of the common people.”¹²¹ Yet, it was the latter who had the last laugh while Richard was left deserted.

That Bolingbroke successfully robs the king of his royalty becomes apparent in the deposition scene. Richard asks for a mirror as he wants to see the “unking’d Richard.” He notes, by giving a powerful metaphor, that kingship is always a reflection of “brittle glass.”¹²² The *appearance* of kingship, his legitimate claim to the sovereign office, was lost. This points not merely to the uncertainties of politics and kingship, but also to “the imaginative status of any constitutional authority.”¹²³

Bolingbroke’s violation of a constitutional principle, however, haunted his reign as king and affected even his son’s. In *Henry V*, the king, in his soliloquy after encountering Bates, Court, and Williams, links his dismay at his soldiers’ statements with his inherited guilt over Richard’s deposition. While he does not explain this connection, Leggatt interprets it as an acknowledgement that kingship can never again be the sacred institution it once was.¹²⁴ The highest it can be is an office to achieve worldly glory. In these limited terms, Henry is determined to win the war and “undo the damage his father did.”¹²⁵

¹¹⁹ Chernaik, *The Cambridge Introduction*, 164-7.

¹²⁰ *King Henry V*, IV. viii. 76, 80, 90-91, 104-107.

¹²¹ *King Richard II*, I. iv. 20-36.

¹²² *King Richard II*, IV. i. 276-291.

¹²³ Ward, *Shakespeare*, 37.

¹²⁴ Leggatt, *Shakespeare’s Political Drama*, 68.

¹²⁵ Leggatt, *Shakespeare’s Political Drama*, 68.

Shakespeare's point, through these illustrations, appears to be that legal principles, however inviolable they may seem, are essentially fictions. Stories are told, they achieve the status of myth, and lord over the imagination of present times. As creatures of discourse, stories can be altered, and even done away with, by new narratives. Contemporary debates that look at the tension between democracy and the rule of law sustain the questions seen in *Richard II*. To what extent can constitutions become playthings in the hands of legislative majorities? Is it preferable that laws be accepted merely because they are democratically enacted, or must they meet a standard that resonates with the rule of law?¹²⁶ These questions have not led to straight answers. The point remains, though, that to view the law and legal systems as embedded with an inherent sense of stability, is certainly problematic.

Conclusion

This paper aimed to offer, from the action of both plays, insights that would problematize law and question its assumed attributes of stability, order, and unity. The essay began with a look at justice. Justice, it was found, is a dangerously deceptive aspiration in a polity oriented towards multiple interests. It was also found that the concept can take many conflicting avatars, each of which can seem as justified as it can seem problematic. The relationship between history, ceremony, and law were then considered. It was found that ceremony, as a site of law, is presided over by multiple histories, each of which can invoke and justify law in conflicting ways. The argument followed that law does not draw uniformly from the past, and stutters, therefore, in the present. Turning to the ceremony or performance of kingship, the motions and implications of sovereign power were explored. The relationship between power and political divisions became apparent and the argument was made that the power that wields the law often contains its own undoing. The third and final section examined entrenched legal or constitutional principles, on the one hand, and popular politics, on the other, and demonstrated how their interaction reflects a legal order's inherent instability.

The arguments in this paper drew from a line of dissenting scholarship that has expressed its discomfort with the older and more idealistic readings of Shakespeare's histories. My intention has not been to present these as definitive or correct readings of the history plays. Instead, I kept in mind Roland Barthes's urging that the "birth

¹²⁶ For a useful discussion on this subject see Wei Pan, "Towards a Consultative Rule of Law Regime in China," in Zhao S, ed. *Debating political reform in China* (New York: Armonk, 2006), 3-20.

of the reader” is the “death of the author.”¹²⁷ Through the plays and the supporting literature that guided me through them, I developed my own reading, one which I hope has been conveyed through this essay.

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¹²⁷ Roland Barthes, *Image Music Text* (London: Fontana Press, 1987).

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