

## SHAKESPEARE AND THE LAW\*

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William Shakespeare was born in a litigious age. His own father was concerned in "more than fifty lawsuits in the course of forty years"—and besides renting, buying, and mortgaging lands and houses, served as a member of the Municipal Council of Stratford-upon-Avon, and as a juror, an assessor of fines, an arbitrator, and as High Bailiff of the town. William Shakespeare, in turn, bought and mortgaged lands and houses, and was witness or party to several legal actions. He therefore had first-hand knowledge of the administration of law during his life-time.

In addition, the substance of his plays concerned the state, society, and the family, and gave him reason to ponder upon the organization of civil life. Further, in Elizabethan days legal trials were more a matter of public interest than they are now when movies, radio, and TV offer rival amusements. Whereas our public goes to see football, baseball, or hockey games, or enjoys the refined pleasure of "lady" wrestlers, the Elizabethan public could see not only cock-fighting and bear-baiting, but public executions in some frequency. As there were several hundred crimes for which a guilty person could be put to death, these executions took a most pleasing and entertaining variety of forms. A man might be simply "hanged by the neck until dead," or he might be hanged, drawn through the streets behind horses, and cut into easily discoverable quarters. Or he might have his head chopped off. This spectacle gave the satisfying thrill of blood spurting some distance from the headless trunk. But I should think that burning at the stake was perhaps the most enjoyable of these executions, for we all love a bonfire—that is to say, a bone-fire.

Lesser punishments were also public. A fishmonger who had sold fish unfit for human consumption might sit in the stocks all day with some of his stinking wares so attached to him that he could not breathe pure air. A woman scold could be strapped in a chair and repeatedly ducked in a pond so as to reduce the asperity of her tongue. Our ancestors showed a commendable desire to make the punishment fit the crime. I would not be taken to say that all punishments were public; some were private. An insane person, for example, would be bound and laid on the floor of a dark room. As he was possessed of the Devil, his guardians would from time to time beat the Devil out of him. This was a private matter, except that Bethlehem House, where many of these unfortunates were kept, was audible at some distance, and has given us the modern word Bedlam from the uproar that went on in it. The torture chamber was also private. There men

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\*This is an address given to the 1958 Graduating Class at their Graduating Banquet, held at the Macdonald Hotel on the 24th day of February 1958.

could be stretched—that is, a man of five foot six would find himself drawn out to a length of six or seven feet, or even pulled apart. Or a man could be bound to a whirling drum of spikes which peeled him—sometimes he was peeled right down to the bony framework of the body—and I have no doubt by that time he would have resolved to commit no more crimes. On the whole, however, the administration of justice was a public matter, and one which inspired wide-spread, if not universal, interest, so that one would expect the “gentle Shakespeare” to have some ideas on the subject.

First of all, then, Shakespeare did not believe in Democracy, although some quite distinguished modern scholars have tried to prove that he did. He could hardly believe in Democracy before Democracy was born. What might with many pass for Democracy in ancient Greece and Rome, especially if they teach Latin or Greek, was to him mere mob rule and corruption. That is the precise picture he paints of the Roman Republic in *Titus Andronicus*, *Julius Caesar*, and *Coriolanus*.

Curiously enough, it is in the Greek-and-Trojan play, *Troilus and Cressida*, that we find Shakespeare’s most complete statement of the necessity of degree or of classes in society, a hierarchical system. The statement is made by Ulysses:

Degree being vizarded,

The unworthiest shows as fairly in the mask.  
 The heavens themselves, the planets, and this centre  
 Observe degree, priority, and place,  
 Insisture, course, proportion, season, form,  
 Office, and custom, in all line of order;  
 And therefore is the glorious planet Sol  
 In noble eminence enthron’d and spher’d  
 Amidst the other; whose med’cinable eye  
 Corrects the ill aspects of planets evil,  
 And posts, like the commandment of a king,  
 Sans check, to good and bad. But when the planets  
 In evil mixture to disorder wander,  
 What plagues and what portents, what mutiny,  
 What raging of the sea, shaking of earth,  
 Commotion in the winds; frights, changes, horrors  
 Divert and crack, rend and deracinate  
 The unity and married calm of states  
 Quite from their fixture! O, when degree is shak’d,  
 Which is the ladder to all high designs,  
 Then enterprise is sick! How could communities,  
 Degrees in schools, and brotherhoods in cities,  
 Peaceful commerce from dividable shores,  
 The primogenitive and due of birth,  
 Prerogative of age, crowns, sceptres, laurels,  
 But by degree, stand in authentic place?  
 Take but degree away, untune that string,  
 And hark what discord follows! Each thing meets  
 In mere oppugnancy. The bounded waters  
 Should lift their bosoms higher than the shores  
 And make a sop of all this solid globe.  
 Strength should be lord of imbecility,  
 And the rude son should strike his father dead.  
 Force should be right; or rather, right and wrong  
 Between whose endless jar justice resides,  
 Should lose their names, and so should justice too.  
 Then everything includes itself in power,  
 Power into will, will into appetite;  
 And appetite, an universal wolf,  
 So doubly seconded with will and power,

Must make perforce an universal prey,  
And last eat up itself. . . .  
This chaos, when degree is suffocate,  
Follows the choking.

*Troilus and Cressida,*  
I, iii, 83-126.

These ideas, this insistence upon a necessary class system in society, are probably the last ideas that would ever have occurred to an actual, Grecian Ulysses; but they were good Tudor social philosophy. We find them again expressed in *Henry V* by the Archbishop of Canterbury:

Therefore doth Heaven divide  
The state of man in divers 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 to a peopled kingdom.  
They have a king and officers of sorts,  
Where some, like magistrates, correct at home,  
Others, like merchants, venture trade abroad.  
Others, like soldiers, armed in their stings,  
Make boot upon the summer's velvet buds,  
Which pillage they with merry march bring home  
To the tent-royal of their emperor;  
Who, busied in his majesty, surveys  
The singing masons building roofs of gold,  
The civil citizens kneading up the honey,  
The poor mechanic porters crowding in  
Their heavy burdens at his narrow gate,  
The sad-eyed justice, with his surly hum,  
Delivering o'er to executors pale  
The lazy, yawning drone.

*Henry V*, I, ii, 183-204.

It is not only in two speeches, however, that we find a picture of a necessarily stratified or hierarchical society in Shakespeare; the same implications lie everywhere behind his plays, and there is never any suggestion that any other type of social structure is desirable.

All classes of society are held together by the necessary chain of obedience leading up to the king himself, throned, like the glorious planet Sol, in high pre-eminence. The King is God's sacred vice-roy upon earth. He derives his authority from God and from his birth, not from the people. It is his duty to administer the law, to which he is himself subject. But there is a weakness in this system, of which Shakespeare was fully aware. Suppose that the king is wicked—what is to be done?

This problem you will find debated in one of the first problem plays in our language, *Richard II*. Richard is a profligate and a murderer. John of Gaunt, whose brother, Thomas of Woodstock, has been murdered, knows that the King is the murderer, but says:

. . . since correction lieth in those hands  
Which made the fault that we cannot correct,  
Put we our quarrel to the will of Heaven;  
Who, when they see the hours ripe on earth,  
Will rain hot vengeance on offenders' heads.

*Richard II*, I, ii, 4-8.

And again:

God's is the quarrel; for God's substitute,  
His deputy anointed in His sight,

Hath caus'd his death; the which if wrongfully,  
Let Heaven revenge; for I may never lift  
An angry arm against His minister..

I, ii, 37-41.

Gaunt's son, however, who has been unjustly banished to France, gathers an army and returns in open rebellion. He seizes the person of the King, who abdicates. There are two attitudes in this play toward the central problem—and that problem is well posed in the words of King John in another play, "What earthy name to interrogatories, Can task the free breath of a sacred king?" [III, i, 147-8]. If the King is a villain, what can his subjects do about it? He is sacred, God's vice-roy, and from God he derives his authority. Is he not beyond human judgment?

This is a problem Shakespeare never solved. In this play, he leaves the answer open, except that he gives a very pregnant prophesy to the Bishop of Carlisle during the abdication scene. Carlisle begins:

What subject can give sentence on his king?  
And who sits here that is not Richard's subject?  
*Richard II, IV, i, 121-2.*

He objects, also, that Richard is not present:

Thieves are not judg'd but they are by to hear,  
Although apparent guilt be seen in them;  
And shall the figure of God's majesty,  
His captain, steward, deputy elect,  
Anointed, crowned, planted many years,  
Be judg'd by subject and inferior breath,  
And he himself not present? O, forbend it, God,  
That in a Christian climate souls refin'd  
Should show so heinous, black, obscene a deed!  
I speak to subjects, and a subject speaks,  
Stirr'd up by God, thus boldly for his king.  
My Lord of Hereford here, whom you call king,  
Is a foul traitor to proud Hereford's king;  
And if you crown him, let me prophesy:  
The blood of English shall manure the ground,  
And future ages groan for this foul act.  
Peace shall go sleep with Turks and infidels,  
And in this seat of peace tumultuous wars  
Shall kin with kin and kind with kind confound.  
Disorder, horror, fear, and mutiny  
Shall here inhabit, and this land be call'd  
The field of Golgotha and dead men's skulls.  
O, if you raise this house against this house,  
It will the woofullest division prove  
That ever fell upon this cursed earth.

IV, i, 123-47.

In the succeeding plays, Shakespeare shows civil wars plaguing the kingdom, and he shows Henry IV, who had been Hereford, continually care-worn, miserable and conscience-ridden. It would seem, then, that Shakespeare really sympathized with John of Gaunt, and that he would have been opposed to the deposition of any king, however evil.

Nevertheless, he continually insists that the King must be subject to the law, as in that passage from *Hamlet* which Mr. Baldwin used at the time of the abdication of Edward VIII:

His greatness weigh'd, his will is not his own;  
For he himself is subject to his birth.

*Hamlet, I, iii, 17-18*

And, so far as marriage is concerned,

He may not, as unvalu'd persons do,  
Carve for himself, for on his choice depends  
The sanity and health of the whole state;  
And therefore must his choice be circumscrib'd  
Unto the voice and yielding of that body  
Whereof he is the head.

I, iii, 19-24.

Actually, in this matter, Shakespears has got himself into the dilemma of Dogberry and Verges, officers of the King's watch in *Much Ado About Nothing*. When they swear in the special constables, Dogberry instructs them:

This is your charge: you shall comprehend all vagrom men; you are to bid any man stand, in the Prince's name.

*Much Ado about Nothing*, III, ii, 24-5.

The Second Watchman chooses to be difficult. "How if 'a will not stand?" he asks. Dogberry replies:

Why, then, take no note of him, but let him go; and presently call the rest of the watch together and thank God you are rid of a knave.

Verges adds: "If he will not stand when he is bidden, he is none of the Prince's subjects." "True," says Dogberry, "And they are to meddle with none but the Prince's subjects." Dogberry continues his instructions: "Well, you are to call at all ale-houses, and bid those that are drunk get them to bed." "How if they will not?" asks the Second Watchman. Dogberry is equal to this emergency also: "Why, then, let them alone till they are sober."

Shakespeare's King, in the same way, is subject to the law; but he cannot be judged by subject and inferior breath. Therefore if he does not choose to abide by the laws, we must wait until he does choose to do so. Or, what may not amount to quite the same thing, we must leave him to the "will of Heaven, Who when they see the hours ripe on earth, Will rain hot vengeance on offenders' heads."

Shakespeare's conception of the family is exactly parallel to his conception of the state. The father is the king to whom all owe allegiance and obedience. But even here we run into a curious inconsistency in that Shakespeare seems invariably to sympathize with disobedient daughters. His loveliest heroines—like Juliet, Desdemona, Cordelia, Celia and Rosalind belong to this group; and, as if to emphasize the point, there is one obedient daughter, Ophelia, who ends in insanity and suicide. There is also a startling exception to the obedient and submissive wife—Portia of *Julius Caesar*. The entire world of Shakespeare's time believed that a woman should "love, honor, and obey" her husband. Othello can say to his wife, "Get thee to bed on th' instant," and be quietly obeyed. Such an order would give a modern wife grounds for divorce. In a day when women acknowledged inferiority to men, Portia actually claims equality and partnership. She says:

Within the bond of marriage, tell me, Brutus,  
Is it excepted I should know no secrets  
That appertain to you? Am I yourself  
But, as it were, in sort or limitation  
To keep with you at meals, comfort your bed,

And talk with you sometimes? Dwell I but in the suburbs  
Of your good pleasure? If it be no more,  
Portia is Brutus' harlot, not his wife.

This is an amazing fore-shadowing of modern marriage partnership.

There are two plays of Shakespeare which turn on the question of divorce: *Henry VIII* and *The Winter's Tale*. Ordinarily it is said that trial scenes are scenes which every dramatist wants to write and which no dramatist can write successfully. The trial scenes in these plays, however, are highly dramatic—I will not say that they are precisely correct in legal procedure. But there is one legal case concerning the family which has astonished me. It occurs in *King John*. In the first scene of the play, the younger son of Sir Robert Faulconbridge claims the estate of his deceased father on the ground that his elder brother is illegitimate. Moreover, the father has left his lands by will to the younger son, on the same ground. The younger son claims that if his elder brother was true begot, he was born "full fourteen weeks" before he should have been, since the father had been out of the country. The alleged father of the elder son is Richard Coeur de Lion, deceased brother of the King. The decision given by King John is that neither the father's will, nor the apparent impossibility of the elder son's being true begot can dispossess that elder son. He says:

Sirrah, your brother is legitimate.  
Your father's wife did after wedlock bear him.

.....  
..... Tell me, how if my brother,  
Who, as you say, took pains to get this son,  
Had of your father claim'd this son for his?  
In sooth, good friend, your father might have kept  
This calf bred from his cow from all the world;  
In sooth he might; then, if he were my brother's,  
My brother might not claim him, nor your father,  
Being none of his, refuse him. This concludes:  
My mother's son did get your father's heir;  
Your father's heir must have your father's land.

*King John*, I, i, 116129.

This seems a strange verdict, but Dean Bowker has assured me that it is correct. There are several reasons: primogeniture carries with it such great privileges that a court would be reluctant, except on the strongest possible grounds, to deprive a man of these privileges. The second reason is the difficulty of disproving the husband's own access to his wife. And, actually, I believe Charlie Chaplin brought in the evidence of blood tests to prove that two children of his divorced wife were not his children; but the Court nevertheless declared him responsible for their upbringing. However, seeing that Faulconbridge senior was out of the country at the time when his elder son was presumably begotten, and that, after this point in the play, the Bastard is universally assumed to be the son of Coeur de Lion, I have not been happy with the King's verdict. It really makes no difference, for the Bastard resigns his lands to his younger half-brother, and enters the service of King John, his uncle; but the verdict still bothers me. But when such eminent authorities as G. W. Keeton, Sir Dunbar Plunket Barton, Lord Campbell, and Dean Wilbur F. Bowker say that the decision is correct, I can only comfort myself with the common man's opinion that the law and lawyers are crazy.

Perhaps I should not say that they are crazy, but that they are fond of a type of reasoning which sane people cannot follow. Let me exemplify. The Gravediggers in *Hamlet* learnedly discuss the suicide of Ophelia and whether she should be buried in holy ground. Let me read the scene:

- 1 Clown: Is she to be buried in Christian burial that wilfully seeks her own salvation?  
 2 Clown: I tell thee she is, and therefore make her grave straight. The crowner hath sat on her, and finds it Christian burial.  
 1 Clown: How can that be, unless she drown'd herself in her own defence?  
 2 Clown: Why, 'tis found so.  
 1 Clown: It must be "se offendendo," it cannot be else. For here lies the point: if I drown myself wittingly, it argues an act, and an act hath three branches; it is to act, to do, and to perform; argal, she drown'd herself wittingly.  
 2 Clown: Nay, but hear you, goodman delver—  
 1 Clown: Give me leave. Here lies the water; good. Here stands the man; good. If the man go to this water and drown himself, it is, will he, nill he, he goes—mark you that? But if the water come to him and drown him, he drowns not himself; argal, he that is not guilty of his own death shortens not his own life.  
 2 Clown: But is this the law?  
 1 Clown: Ay, marry, is't, crowner's quest law.  
 2 Clown: Will you ha' the truth on't? If this had not been a gentlewoman, she should have been buried out of Christian burial.  
 1 Clown: Why, there thou say'st; and the more pity that great folk should have countenance in this world to drown or hang themselves, more than their even Christian.

*Hamlet*, V, i, 1-33.

Now, except for the Communistic remarks at the end to the effect that great folk have privileges denied to the poor, anyone would say that we have in this passage nothing but insane reasoning. But the fact is that Shakespeare gives the first gravedigger an exact parallel to the reasoning of a lawyer and judge in a famous sixteenth century case which resulted from the suicide of Sir James Hales who had walked into a river. Walsh, one of the counsel, said:

The Act [of self-destruction] consists of three Parts. The first is the Imagination, which is a Reflection or Meditation of the Mind, whether or not is convenient for him to destroy himself, and what Way it can be done. The second is the Resolution, which is a Determination of the Mind to destroy himself, and to do it in this or that particular Way. The third is the Perfection, which is the Execution of what the Mind has resolved to do. And this Perfection consists of two Parts, viz., the Beginning and the End. The Beginning is the doing of the Act which causes the Death, and the End is the Death, which is only a Sequel to the Act.

75 E.R.P. 387 at p. 397.

In summing up, the Judge declared:

Sir James Hales was dead, and how came he to his Death? It may be answered, by drowning; and who drowned him? Sir James Hales. And when did he drown him? In his Lifetime. So that Sir James Hales being alive caused Sir James to die; the act of the Living was the Death of the dead Man. And for this Offence it is reasonable to punish the living Man who committed the Offence, not the dead Man.

*Ibid.*, p. 401.

No doubt this sort of thing is meat and drink to students of the Law; but I must confess it gives me a warm sympathy with Dick the Butcher, one of Jack Cade's supporters in the Peasants' Revolt of 2 *Henry VI*. Dick says to Cade, "The first thing we do, let's kill all the lawyers."

Jack Cade's answer is memorable also:

"Nay, that I mean to do. Is not this a lamentable thing, that of the skin of an

innocent sheep should be made parchment? that parchment, being scribbled o'er, should undo a man? Some say the bee stings; but I say, 'Tis the bee's wax; for I did not seal once to a thing, and I was never mine own man since."

2 *Henry VI*, IV, ii, 83-90.

Lest you should say that I am painting a portrait of the Elizabethan lawyer and, by insinuation, of the modern one, from the sole testimony of stupid and ignorant characters, let me read a comment from the Philosopher-Prince of Denmark, as he holds a skull in his hand, just tossed up by the gravedigger:

Why might not that be the skull of a lawyer? Where be his quiddits now, his quillets, his cases, his tenures, and his tricks? Why does he suffer this rude knave now to knock him about the sconce with a dirty shovel, and will not tell him of his action of battery? Hum! This fellow might be in's time a great buyer of land, with his statutes, his recognizances, his fines, his double vouchers, his recoveries. Is this the fine of his fines, and the recovery of his recoveries, to have his fine pate full of fine dirt? Will his vouchers vouch him no more of his purchases, and double ones too, than the length and breadth of a pair of indentures? The very conveyances of his lands will hardly lie in this box, and must the inheritor himself have no more, ha?

*Hamlet*, V, i, 106-21.

I might stop and comment upon Mr. Justice Shallow, and other such caricatures as uphold the dignity of law and justice in Shakespeare's plays; but I am afraid you will already consider me a death's head at this banquet. I shall therefore present for your emulation Shakespeare's portrait of a very eminent jurist, Sir William Gascoigne. The tradition is that Prince Hal struck him as he sat on the bench, and that Sir William promptly committed the Prince to prison. Prince Hal has now become King Henry V, and he says to the eminent Justice:

May this be wash'd in Lethe, and forgotten?  
You are, I think, assur'd I love you not.

Gascoigne replies:

I am assur'd, if I be measur'd rightly,  
Your Majesty hath no just cause to hate me.

Henry: No?

How might a prince of my great hopes forget  
So great indignities you laid upon me?  
What! rate, rebuke, and roughly send to prison  
The immediate heir of England? Was this easy?

Justice: I then did use the person of your father;  
The image of his power lay then in me;  
And, in th' administration of his law,  
Whiles I was busy for the commonwealth,  
Your Highness pleased to forget my place,  
The majesty and power of law and justice,  
The image of the King whom I presented,  
And struck me in my very seat of judgment;  
Whereon, as an offender to your father,  
I gave bold way to my authority  
And did commit you. If the deed were ill,  
Be you contented, wearing now the garland,  
To have a son set your decrees at nought,  
To pluck down justice from your awful bench,  
To trip the course of law and blunt the sword  
That guards the peace and safety of your person,  
Nay, more, to spurn at your most royal image  
And mock your workings in a second body.  
Question your royal thoughts, make the case yours:  
Be now a father and propose a son,  
Hear your own dignity so much profan'd,  
See your most dreadful laws so loosely slighted,  
Behold yourself so by a son disdain'd;



And then imagine me taking your part  
And in your power soft silencing your son.  
After this cold consideration, sentence me;  
And, as you are a king, speak in your state  
What I have done that misbecame my place,  
My person, or my liege's sovereignty.

2 *Henry IV*, V, ii, 64-101.

After this bold and noble speech, everyone in the audience must be happy when the new King commits again to the hands of the Chief Justice "the balance and [unstained] sword."

I cannot leave behind Shakespeare's lawyers without a glance at a lady advocate, Portia in the *Merchant of Venice*. Portia calls herself "an unlesson'd girl," and we know that women received very slender schooling in Shakespeare's time. Portia spends one evening with her Uncle who is learned in the law, and the next day does a masterful job in court. I mention these facts only to indicate how much training a successful lawyer really needs.

The great message of Portia as pleader is that "earthly power doth then show likest God's When mercy seasons justice" [IV, i, 196-7]. But it is not really Portia who says so. Actually, the speech is not in character with Portia; it is not the kind of thing Portia, as we see her throughout the play, would say. It is Shakespeare who makes this statement. It is a statement which he makes over and over in various connections throughout his work; and it appears in the very last play from his pen. In *The Tempest* Prospero has been shamefully wronged by his kinsman and others. At the end of the action he has all his ancient enemies in his power, and he says:

Though with their high wrongs I am struck to th' quick,  
Yet with my nobler reason 'gainst my fury  
Do I take part. The rarer action is  
In virtue than in vengeance. They being penitent,  
The sole drift of my purpose doth extend  
Not a frown further.

*The Tempest*, V, i, 25-30.

But there is one play which I should like to see studied by every person who administers justice—and that is *Measure for Measure*. The whole purport of this play, the message it communicates, is simply Portia's principle that "Earthly power doth then show likest God's When mercy seasons justice."

The one word which his contemporaries always applied to Shakespeare was "gentle." It does not mean meek and mild; it means that he had the qualities of a gentleman. He lived in a brutal age, an age when officers of the courts could properly be named Snare and Fang. His plays were popular with students at the Inns of Court, and he had friends who lived there. He understood the age in which he lived; and he reflected upon the life he saw around him as he walked his gentle way among men. The upshot of what he has to say about the law of the land may be found in the words of Isabella to the wicked judge of *Measure for Measure*:

No ceremony that to great ones longs,  
Not the king's crown, nor the deputed sword,  
The marshall's truncheon, nor the judge's robe,  
Become them with one half so good a grace  
As mercy does.

*Measure for Measure*, II, ii, 59-63.

When I have read of the debates in the British Parliament concerning the abolition of the death penalty, I have felt that perhaps Shakespeare has had a part in the great humanizing of the English-speaking world that has taken place since his time. Notwithstanding this improvement, when one remembers the sadistic tendencies always present in the House of Lords, and among our best people generally, one may feel that he has a message for our time, as well as for his own.