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‘Where be his quiddities now?’ Law and
Language in *Hamlet*

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[T]o die: to sleep—
 No more, and by a sleep to say we end
 The heartache and the thousand natural shocks
 That flesh is heir to: tis a consummation
 Devoutly to be wished. [...] For who would bear the whips and scorns of time,
 Th’oppressor’s wrong, the proud man’s contumely,
 The pangs of despised love, the law’s delay,
 The insolence of office and the spurns
 That patient merit of th’unworthy takes,
 When he himself might his quietus make
 With a bare bodkin? (*Ham.* 3.1.59–63, 65–75)

In world literature’s most famous speech, ‘To be or not to be’ (*Ham.* 3.1.55–87), Hamlet ponders whether suicide would cure what he calls the ‘natural’, as well as the social ills that grieve us. He never itemizes the natural ones. Their afflictions are too obvious and too numerous. Whether they be a ‘gout’, or a ‘pox’, or an ‘ague’, pain is pain. Suffice it to hate collectively those ‘thousand natural shocks/That flesh is heir to’¹ (*Ham.* 3.1.61–2).

Hamlet has no such equivocal view of the indignities caused by humans. He enumerates six,

- (1) ‘[t]h’oppressor’s wrong’,
- (2) ‘the proud man’s contumely’,

* Unless otherwise indicated, citations to *Hamlet* are to the Arden Shakespeare Third Series edition (gen. eds Richard Proudfoot et al.) [hereafter ARD3]. Other textual references, when not otherwise indicated, are to The Oxford Shakespeare (gen. ed. Stanley Wells) (individual plays) [OXF4]. The other editions cited are *New Cambridge Shakespeare*, Philip Brockbank et al., eds, 1984– [CAM4]; *Revised Arden Shakespeare*, U. Ellis-Fermor et al., gen. eds, 1951– [ARD2]; *New Penguin Shakespeare*, T.J.B. Spencer, gen. ed., from 1967 [PEN2]; and *The Norton Shakespeare*, Stephen Greenblatt et al., eds. (New York, NY: Norton & Co., 2nd edn, 2008) [NOR2]. Abbreviations of Shakespeare titles and editions follow Modern Language Association, *Shakespeare Variorum Handbook* (Richard Knowles, ed., 2nd edn, web publication, 2003). I would like to thank Paul Raffield and Leif Dahlberg for their comments, as well as Michael Freeman, Fiona Smith, Emma Brady, and all other UCL and OUP staff for their generous support. I would also like to thank Elspeth Graham for inviting me to present a version of this chapter at the Liverpool John Moores University School of Humanities & Social Science in December 2012.

¹ Given Hamlet’s troubled sexuality (e.g., *Ham.* 2.2.274–80), notably in relation to Ophelia (e.g., *Ham.* 3.1.114–27), those ‘shocks’ might certainly include sexual urges. (Note also his questionable belief that such urges reach their ‘heyday’ in youth (*Ham.* 3.4.66–8)). If that is the case, then the entire arena of ‘problematical sexuality’ (whose isn’t?) reminds us of that the division between ‘natural’ and ‘social’ afflictions remains fluid, as suggested also by the third of the social ills Hamlet mentions.

- (3) '[t]he pangs of despised love',
- (4) 'the law's delay',
- (5) '[t]he insolence of office',
- (6) 'the spurns/That patient merit of th'unworthy takes'.

One puzzling item on that list is 'the law's delay'. Does sheer 'delay' really equate with, say, the 'oppressor's wrong'? Or even with 'the proud man's contumely'? Might it not betoken justice itself—the care and attention with which all sides of a dispute are heard, all facts investigated, and hasty results avoided? Shakespeare never tires of exposing abuses of power by kings, aristocrats, churchmen, or merchants. Law is merely another face, or tool, of that power structure. And yet Shakespeare's depictions of law's abuses, throughout the corpus, retain a distinct quality.

During the famous *memento mori* in the graveyard, Hamlet picks up the first skull, imagining it to have belonged either to a 'politician' (*Ham.* 5.1.74), not in the more recent sense of candidate or holder of government office, but in the earlier sense of 'schemer, intriguer, plotter'²; or to a 'courtier' (*Ham.* 5.1.77), whose use of language scarcely surpasses flattery. Yet, having tossed out some stock remarks about such persons, remarks familiar elsewhere in the corpus, he has little more to say about them. By contrast, turning to a second one, wondering 'may not that be the skull of a lawyer?' (*Ham.* 5.1.93–4), Hamlet launches into a curious tirade against law and its practitioners,

'Where be his quiddities 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?' (*Ham.* 5.1.94–106 [OXF4])

Why anyone would find a lawyer more irksome than a politician or a court mandarin is a puzzle. But more so in Hamlet's case. Certainly, the hints about manipulated land law remind us that Claudius has removed Hamlet from any prospect of direct succession from Hamlet's father³ (*Ham.* 3.2.331). In so doing, however, Claudius had played far more the 'politician' than anything like a practitioner of ordinary land law. More generally, it would seem at first glance that, for a prince, the web of palace officials like Polonius or Osric would prove more irksome than the machinery of everyday, common law, which remains more burdensome for subjects than for an otherwise comfortable prince. At most, it would seem, law no more embodies power than do monarchy, aristocracy, the church, or the emerging bourgeoisie. What is it about law that prompts Hamlet to single it out for singular treatment?

In this article, I shall suggest that, in *Hamlet*, law's oppressive character emerges largely through its linguistic qualities. *Hamlet* represents Shakespeare's most original statement on legal language as the essence of all that is manipulative and duplicitous in

² 'Here, as always in Shakespeare, the word carries a pejorative sense—unprincipled schemer.' (OXF4, p. 324; cf. PEN2, p. 294). See David Crystal and Ben Crystal, *Shakespeare's Words* (London: Penguin, 2002), p. 337.

³ Whilst the Danish monarchy is elective (*Ham.* 5.2.339–40; cf. 4.5.102–8), much suggests that Hamlet would have enjoyed popular support for succession (*Ham.* 4.3.4; cf. 3.1.150–3). In that case, Claudius has effectively cut off both father and son (cf., ironically, *Ham.* 1.2.64, 109–12, 117), a reality incessantly reinforced by the shared name of 'Hamlet'.

law's norms, institutions, guardians, and practitioners—a culmination of insights progressively developed earlier in the corpus. Before returning to *Hamlet*, I shall begin, in section 1, by examining law and language in one of Shakespeare's early works, the history play *Henry VI, Part Two*, which partly anticipates, but partly also diverges from *Hamlet*'s portrayal of law. That play's famous peasant rebellion includes a mock trial of the leading jurist Lord Saye, whose humanist view of law is challenged precisely on grounds of law's propensity to manipulate power through language.

I then, in section 2, examine *Hamlet*'s broader political context. Even more overtly than the nominally medieval setting of the early history plays, *Hamlet*'s world anticipates the modern surveillance state, in which the 'literacy' of power—far from overcoming the sheer, brute force correlated to the Renaissance stereotype of medieval law—merely dresses it in that same manipulable language which is put on trial in the *Henry VI* trilogy. In section 3, I argue that law in *Hamlet* is distinct not in the sense of existing separately from other forms of power, but because, again through its linguistic element, it becomes the paradigm for the oppressive tendencies of power generally as exercised within the modern state.

1. What does the law Saye?

'The first thing we do, let's kill all the lawyers.' Few passages in Shakespeare so predictably stoke giggles, even among lawyers who lack any clue about where or why the quip is uttered. Hearing it in performance, proclaimed by a cohort of the rebel leader Jack Cade in *Henry VI, Part Two* (2H6, 4.2.71), the viewer might feel perplexed. The play's peasants and workers certainly rail against class privilege (2H6, 4.2.7–20). But why particularly that slur against lawyers? Why not against the monarchy, or the nobility, or a corrupted Church, or the emerging merchant class? Those socio-political actors will certainly face scrutiny elsewhere in Shakespeare.

As it happens, the rebel leader scarcely hates monarchy. Class hostility may motivate some of the Kentish rebels, but Cade tells us in an aside that he has 'invented' (2H6, 4.2.145) his far-fetched lineal claim to the crown (2H6, 4.2.37–46, 126–36). He aims not to abolish, but to seize monarchical power (2H6, 4.2.64–5). His drive to destroy the legal profession, with its penchant for rules, records, and procedures, suggests that this demagogue actually hungers to be a monarch more absolute, less constrained by law (e.g., 2H6, 4.7.13–14, 112–15), than any king England has known before: 'The proudest peer in the realm shall not wear a head on his shoulders, unless he pay me tribute.' (2H6, 4.7.112–13) Cade pledges even to retain the *droit de seigneur* (2H6, 4.7.113–17).

That appetite cannot come as a complete surprise. In Shakespeare's day, British and European monarchies are charging down the absolutist road.⁴ Nor does nobility as such annoy Cade. His first step to the throne takes the form of his own, inadvertently farcical self-knighting⁵ (2H6, 4.2.108–9; cf. 4.7.4). It is not institutionalized power as such, it is not government as such, that most irks the rebels, but rather something specific about the exercise of power through the methods and procedures of law. What they abhor is law's linguistic expression—ostensibly more peaceful, yet also subtler and less overt than the brandished sword of crude, unadorned power politics. Critical Legal Theorists

⁴ See, e.g., Leonard Tennenhouse, *Power on Display: The Politics of Shakespeare's Genres* (New York: Methuen, 1986).

⁵ That charade apes the more calculated strategy of the factious Richard Plantagenet, whose recovery of the Dukedom of York (1H6, 3.1.152–80), lost when his father was hanged for treason against Henry V (1H6, 2.5; 3H6, 1.1; H5, 2.2), ends up merely as his first step towards toppling the House of Lancaster and asserting his own royal claim.

would not be surprised to learn that, for Jack Cade, it is through language that law serves not to overcome brute power struggles, but merely to paint those struggles with the veneer of justice, in the interests of the prevailing order.

Emblematic of the counter-brutality that will arise even from the workers' legitimate gripes is their pseudo-trial of the jurist Lord Saye—drawn from the historical James Fiennes Saye, Lord Chamberlain and Treasurer of England⁶—whose sheer surname (in some editions it appears as 'Say') pre-figures the distinct qualities that the rebels will scorn in law and lawyers. It is because of what this jurist can say, and how he can say it, it is because of the peremptory and elusive power of language in a steadily bureaucratizing world, that Saye will perish. With the pseudo-ceremony of a proceeding that simultaneously enacts and mocks a criminal trial—its own feigned authority raising questions about what, exactly, legitimates 'duly' constituted legal authority—Cade includes among the 'charges' against Saye: '[T]hou hast built a paper-mill. It will be proved to thy face that thou hast men about thee that usually talk of a noun and a verb and such abominable words . . .' (2H6, 4.7.34–8). What is on trial is not merely a government official, not merely an officer of law, but law as such, and its quintessential medium of language. If language is a tool of power, then grammatical, i.e., meta-linguistic talk of 'a noun and a verb' betokens a special, privileged mastery of and access to that tool. Language at least symbolically distinguishes law from other exercises of authority, certainly in the English histories' nominally late medieval world, but also in Shakespeare's early modern England,⁷ where matters of politics and government may still be settled at the point of a sword. It is that distinctly modern exercise of power, whereby words become more potent but also less fathomable than swords, that the Kentish rebels detest.

From Shakespeare's Renaissance-humanist perspective, the power-mongering of the English plays is the hallmark of corrupted politics in the Middle Ages. Yet is not a regime based on reason and accountability, a regime whose emblem is precise and enlightened language, central to justice and to civic freedom? Does not the rationally uttered word always excel the brandished sword? Do not literacy and education count among civilization's greatest goods?⁸ The Renaissance-humanist world of letters may boast Shakespeare as its star creation; however, the poet seems already to anticipate anti-Enlightenment, indeed Foucauldian and Derridian suspicions about language as the pernicious tool of manipulation and subordination, all too handily dressed in the mantle of peace-making neutrality, objectivity, or universality. Language's deceptively benign power becomes all the more lethal when it assumes the guise of cultivated, specialist knowledge and professionalized technique.⁹

Saye has his chance to dodge the rebels, but chooses to confront them (2H6, 4.4.42–7, 56–60), trusting that his enlightened humanism will speak for itself, that his ethos of law for the common good, for the benefit of rich and poor alike, will be manifest. It is in that vein

⁶ See, e.g., OXF4, p. 109; ARD3, p. 148.

⁷ In leading studies on Shakespeare's histories, particularly since the advent of the New Historicist movement, we witness greater attention to Shakespeare's recent Tudor context than to his medieval sources. See, e.g., Tennenhouse (cited in n.4); Graham Holderness, *Shakespeare: The Histories* (New York, NY: St. Martin's Press, 2000); Paola Pugliatti, *Shakespeare The Historian* (New York, NY: Palgrave Macmillan, 1996); Phyllis Rackin, *Stages of History: Shakespeare's English Chronicles* (Ithaca, NY: Cornell University Press, 1990).

⁸ '[T]he main hope of getting a good prince hangs on his proper education': Erasmus, *The Education of a Christian Prince*, Neil M. Cheshire and Michael J. Heath trans., Lisa Jardine, ed. (Cambridge: Cambridge University Press, 1997), p. 5. cf., e.g., Holderness (cited in n.7), pp. 67–73 (discussing humanist ideals in *Hamlet*).

⁹ Foucault famously represents the proliferation of specialized discourses in modernity, under the watch of professionalized elites, as a technique of social control: Michel Foucault, *Histoire de la sexualité*, vol. 1 (Paris: Gallimard, 1994).

of nascent Western liberalism that he defends himself. Saye embraces the ideals of the rule of law and of justice tempered by mercy: 'Justice with favour have I always done,/Prayers and tears have moved me, gifts could never.' (2H6, 4.7.63–4) With those words, Saye aims not just to save his skin. He sincerely views his erudition—which, in the curious Shakespearean lexicon, he will call in the following speech his 'book'¹⁰—as the very embodiment of justice through law, as the safeguard of justice against arbitrariness and brute force. He declares as much in a proto-Enlightenment paean to law and the techniques of knowledge,

Because my book preferred me to the King,
And seeing ignorance is the curse of God,
Knowledge the wing wherewith we fly to heaven,
Unless you be possessed with devilish spirits,
You cannot but forbear to murder me. (2H6, 4.7.68–72)

Yet one feature of oppression in Marxist as well as Foucauldian or Derridian analyses is that the powerful may participate in regimes of arbitrary class difference, whilst sincerely believing in the justice of the system, as they translate their class-based self-interest into universal good.¹¹ Saye invokes the classical humanist imagery of sacrifice of his own welfare or gain, to the point of illness, for the sake of the greater good. The rebels, however, hear only the devious language of class privilege,

SAYE These cheeks are pale for watching for your good—
CADE Give him a box o' the ear and that will make 'em red again.
SAYE Long sitting to determine poor men's causes Hath made me full of sickness
and diseases. [...]
DICK Why dost thou quiver, man?
SAYE The palsy, and not fear, provokes me.
CADE Nay, he nods at us as who should say, 'I'll be even with you'. I'll see if his
head will stand steadier on a pole, or no. Take him away, and behead him.
SAYE Tell me wherein have I offended most?
Have I affected wealth or honour? Speak.
Are my chests filled up with extorted gold?
Is my apparel sumptuous to behold?
Whom have I injured, that ye seek my death?
These hands are free from guiltless bloodshedding,
This breast from harbouring foul deceitful thoughts.
O, let me live! (2H6, 4.7.79–97)

Where Saye says law's tools achieve justice, Cade's men hear cunning eloquence, a strategy of exclusion and privilege,

BUTCHER What say you of Kent?
SAYE Nothing but this: 'tis *bona terra, mala gens*.
CADE Away with him, away with him! He speaks Latin. (2H6, 4.7.52–4; cf. 2H6,
4.2.156)

¹⁰ See OXF4, p. 254.

¹¹ Brecht's quest for constructive estrangement (*Verfremdung*) of the audience from the artwork, assumes, among its audience, not merely the working classes, for whom such alienation merely recapitulates the familiar, but also the more privileged, generally educated classes, who will already believe themselves in possession of a legitimate, coherent, generally applicable moral code, which the artwork ought not to confirm, but to challenge. See Berthold Brecht, *Schriften zum Theater: Über eine nicht-aristotelische Dramatik* (Frankfurt a.M.: Suhrkamp, 1957).

The First Quarto variant, adopted in some current editions, underscores that element of Saye's speech which, confounding the illiterate peasants, mockingly betokens their alienation from the world of literate power,

SAYE ... 'tis bona terra, mala gens.

CADE *Bonum terrum*—zounds, what's that?

BUTCHER He speaks French,

FIRST REBEL No, 'tis Dutch.

SECOND REBEL No, 'tis Out-talian. I know it well enough. (Norton 2, *2H6*, 4.7.47–52)

So distant, even otherworldly, is the jurist's language that it seems demonic, 'Away with him, he has a familiar under his tongue.' (*2H6*, 4.7.101; cf. 4.7.73) Such corporal references to the tongue or the mouth recur, focusing the iconography of power not merely upon language, but literally on the crudeness of the body part that produces it. The reduction, and often debasement, of humanity to body parts is familiar enough in Shakespeare. Law is traced to language, and language traced to the dark pit of the oral cavity, locus of bestial mastication, which indifferently utters words as it chews, bellows, or belches. Merely by opening his mouth, or flexing his tongue, the powerful can dictate fundamental power relations.¹² Henry Bolingbroke observes as much, in *Richard II*, marvelling at the power that issues from 'the breath of kings' (*R2*, 1.3.215; cf. 1.3.152–3; 3.2.56–7). *Measure for Measure*'s corrupted deputy Angelo will boast of being 'the voice of the recorded law' (*MM* 2.4.61), in a passage in which he condemns an innocent to death (*MM* 2.4.33–8; cf. 2.2.34–55) for a trespass trivial in comparison to his own abuses.

Hamlet rebukes Rosenkrantz and Guildenstern for allowing the King and Queen to manipulate *them* into manipulating *him*,

Why, look you now, how unworthy a thing you make of me: you would play upon me! You would seem to know my stops, you would pluck out the heart of my mystery, you would sound me from my lowest note to the top of my compass. And there is much music, excellent voice, in this little organ. Yet cannot you make it speak. 'Sblood! Do you think I am easier to be played on than a pipe?' (*Ham.* 3.2.355–62)

Pipe playing, Hamlet insists, 'is as easy as *lying*. Govern these ventages with your fingers and thumb, give it breath with your mouth, and it will discourse most eloquent music' (*Ham.* 3.2.351–3, emphasis added). Unsurprisingly, Claudius constructs an analogy, whereby 'The head is not more native to the heart,/The hand more instrumental to the mouth,/Than is the throne of Denmark' to the duplicitous Polonius (*Ham.* 1.2.47–9). In contrast to Hamlet, the ambitious Fortinbras handily musters an army and scorns, 'makes mouths at... death and danger' (*Ham.* 4.4.49–51). Finally, in the graveyard scene, the 'politician', 'courtier', or 'lawyer' possess no longer a mouth, but only a skull and jawbone, bereft of speech, therefore of power (*Ham.* 5.1.71–105).

It is Saye's mouth that will be humiliated after he and his son-in-law are executed. When their heads are brought in on poles, Cade commands, 'Let them kiss one another, for they loved well when they were alive' (*2H6*, 4.7.122–3), followed by the Q1 stage direction '*The two heads are made to kiss*' (*2H6*, 4.7.123.1 SD), and by Cade's further insistence, 'at every corner have them kiss' (*2H6*, 4.7.127–8). Cade seeks absolute power for himself, signified through the incarnated authority of the mouth,

BUTCHER I have a suit unto your lordship. [...]

Only that the laws of England may come out of your mouth. [...]

¹² See Charles R. Forker, 'Introduction', in *R2*, ARD3, pp. 1–169, at pp. 65–6.

CADE I have thought upon it, it shall be so. Away, burn all the records of the realm: my mouth shall be the parliament of England. (2H6, 4.7.3–14)

Jane Howell's class-conscious, Brechtian¹³ staging places a ritualistic burning of 'all the records' at the riot's centre. Camera close-ups show the flames devouring legal tomes.¹⁴ Again, it is not power per se, rather it is law per se, manifesting as an intricately linguistic enterprise, that the rebels assail. Saye's linguistic virtuosity in mounting his own defence seals his fate. Cade disposes of Saye, commanding, 'He shall die an it be but for pleading so well for his life.' (2H6, 4.7.100) To the rebels' ears, legal language recites neither clarity nor transparency, but rather, as Marx and then Brecht would have it, obfuscation and *Entfremdung* ('alienation').¹⁵ Saye's pride in the power of law as justice becomes, for the rebels, a sinister, suspicious, ubiquitous force—an exercise of violence not openly, like a 'blow in the field', but covertly, donning the mantle of justice and fairness,

SAYE This tongue hath parleyed unto foreign kings
For your behoof—

CADE Tut, when struck'st thou one blow in the field?

SAYE Great men have reaching hands. Oft have I struck
Those that I never saw, and struck them dead.

BEVIS O monstrous coward! What, to come behind folks? (2H6, 4.7.73–8)

If the workers' revolt will degenerate into mindless rowdiness, it is nevertheless motivated by a justified sense of oppression. Coupled with the 'charge' that Saye talks 'of a noun and a verb' are also some weightier accusations. Literacy betokens not merely benign privilege, but the iniquity whereby criminal punishments inflicted upon the poor and illiterate are harsher than those imposed upon the educated classes,¹⁶

Thou hast appointed justices of peace, to call poor men before them about matters they were not able to answer. Moreover, thou hast put them in prison, and because they could not read, thou hast hanged them, when indeed only for that cause they have been most worthy to live. (2H6, 4.7.38–43)

Throughout Shakespeare's early history plays, powerful nobles flamboyantly place themselves above law¹⁷ (e.g., 1H6, 2.4.7–9). If the fundamental tension is class-based after all, the question remains, why do the rebels not inveigh against the nobles, or indeed against the king, emblem of the legal order, directly? In addition to some reasons already suggested, we must also observe that, far more than any monarch in Shakespeare, Henry VI adheres scrupulously to the rule of law. It is the nobles surrounding him who scorn formal, legal channels of dispute resolution.¹⁸ What emerges from those nobles is as much Shakespeare's early modern world as any medieval one narrated in the chronicles. We witness a Foucauldian world of institutionally disseminated power,

¹³ See, e.g., Graham Holderness, 'Radical Potentiality and Institutional Closure', in *Political Shakespeare: Essays on Cultural Materialism*, Jonathan Dollimore and Alan Sinfield, eds. (Manchester: Manchester University Press, 2nd edn, 1994), pp. 206–25, at pp. 221–3.

¹⁴ *Henry VI, Part Two* (Julia Howell, dir., BBC TV Shakespeare edn (1983)).

¹⁵ See generally Brecht (cited in n.11).

¹⁶ See, e.g., Pugliatti (cited in n.7), ch. 9; Alexander Leggatt, *Shakespeare's Political Drama* (London: Routledge, 1988), pp. 16–22; Ian Ward, *Shakespeare and the Legal Imagination* (London: Butterworths, 1999), pp. 138–40.

¹⁷ See Leggatt (cited in n.16), chs 1–2. See also, e.g., Eric Heinze, 'Power Politics and the Rule of Law: Shakespeare's First Historical Tetralogy and Law's "Foundations"', (2009) 29 *Oxford Journal of Legal Studies*, pp. 230–63.

¹⁸ See generally Heinze (cited in n.17).

always everywhere, yet never anywhere in particular, simultaneously perpetuated by, yet altogether consuming even those powerful figures appointed to serve as law's stewards. The nobles' fates arguably end up as bleak as the peasants' in Shakespeare's early English histories. The powerful may sincerely protest the righteousness of the existing order—Saye protests, 'Justice with favour have I always done' (2H6, 4.7.63)—yet they inevitably serve to perpetuate, to 'maintain' that selfsame order. Saye asks, 'When have I aught exacted at your hands,/But to maintain the king, the realm and you?' (2H6, 4.7.65–6), which effectively means: to maintain you within the realm *as constituted*.

The disempowered are no static class in Shakespeare. From the earliest plays, we witness the poor as a class being actively created by powerful and wealthy interests, as the class divide in England accelerates. Crucial to that shift is the emerging crisis of land enclosures, whereby aristocrats increasingly appropriate, and fence off, erstwhile public commons, reducing the quality and quantity of arable land left for the peasants. A landless, increasingly indigent, and sometimes also itinerant segment, so-called 'masterless men', is generated, with a vast increase in crime, and, concomitantly, in the brutality of punishments. Such men are hinted at in *Two Gentlemen of Verona* and *As You Like It*.¹⁹ But the problem is displayed in its origins in *Henry VI, Part Two*, as a labourer vainly attempts a petition '[a]gainst the Duke of Suffolk, for enclosing the commons of Melford.' (2H6, 1.3.22–3)

Law, would-be bastion of justice, far from resisting that socio-economic shift, progressively accommodates it, securing individual, privileged commercial interests above the public good²⁰ (a pervasively commercial role for law that will be pushed to a simultaneously comic and harrowing extreme in a legal order fully abandoned to commercial interests, in *The Merchant of Venice*²¹). Law's complicity in that injustice, and the sense that law camouflages such a role through linguistic force, is nowhere more poignantly suggested than when law is portrayed as a Christ-killing enemy of justice: 'Is not this a lamentable thing, that of the skin of an innocent lamb should be made parchment; that parchment, being scribbled o'er, should undo a man?' (2H6, 4.2.72–5) The theme of alienation resurges in existential terms. Having only once ventured to access the machinery of legal language, 'sealing' to a legal instrument, Cade finds himself only further bound into personal and civic disempowerment: 'Some say the bee stings, but I say, 'tis the bee's wax; for I did but seal once to a thing, and I was never mine own man since.' (2H6, 4.2.75–7)

2. The emerging surveillance state

Among the elements Hamlet recites in his famous soliloquy, law is cast in de-personalized terms, as an abstract force or system. Insidious is not merely the judge's, or lawyer's delay, which would mirror the passage's other personified signifiers of debasement, but rather the workings of a disembodied law, like a machine beyond the human's abilities to control. Reviling '[t]he oppressor's wrong', Hamlet condemns a broader social dynamic steeped in hierarchy. It is as abuse and as disempowerment that '[t]he insolence of office' or 'the spurns/That patient merit of th'unworthy takes' become intolerable. In Shakespeare, even '[t]he pangs of despised love' seethe with political content (*Ham.*

¹⁹ See Richard Wilson, *Will Power: Essays on Shakespearean Authority* (Detroit, Ill.: Wayne State University Press, 1993), pp. 63–82.

²⁰ See, e.g., Ward (cited in n. 16), ch. 5.

²¹ cf. Eric Heinze, *The Concept of Injustice* (London: Routledge, 2013), pp. 114–44.

2.2.138; *2H4*, 2.1.116–19; *TN* 5.1.322–3; *MM* 3.1.210–32, 4.1.13; *AW* 1.1.80–87²²). The ‘proud man’s contumely’ may seem limited in its political content, since a pauper can prate as proudly as a prince.²³ However, haughty underlings in Shakespeare are rarely ‘whips and scorns’. Like Malvolio, indeed like Polonius for Hamlet, they are figures of fun or scorn. It is the arrogance of the elevated and powerful that devalues us—of Coriolanus, of Richard III, of Angelo in *Measure for Measure*, of Leontes in *A Winter’s Tale*, of the Duke of Suffolk in *Henry VI, Part Two*, of Saturninus in *Titus Andronicus*, or of Orlando’s or the ‘good’ Duke’s brothers in *As You Like It*.

For Hamlet, the only response of the aggrieved, who may be a prince as easily as a pauper, is either suffering or suicide. Yet Shakespeare had already staged eight English history plays in which well-born nobles, in response to the ‘contumely’ or ‘insolence’ of an actual or perceived ‘oppressor’, and more like Laertes or Fortinbras, keenly ‘take up arms’, killing all and sundry—anyone but *themselves*.

In the rare case in which one of their rank, like Henry VI (arguably Hamlet’s first precursor in the corpus) finds himself at an existential impasse (e.g., *3H6*, 2.5), he pales as a ridiculed anomaly. Meanwhile, that greatest of all political dramas, *Julius Caesar*, hovers conspicuously in *Hamlet*’s background (*Ham.* 1.1.112–19; 3.2.99–102; 5.1.201) as yet another reminder of a world in which, even if they fail, politically minded men act decisively to affirm themselves by overthrowing the oppressor’s wrong and the proud man’s contumely.

Hamlet’s famous indecision is not a purely psychological impediment within a world in which he would otherwise enjoy freedom to act.²⁴ Rather, unlike in Rome, the faceless operation of law in the early modern surveillance state has disarmed him. If Laertes deploys an autonomy that Hamlet lacks (e.g., *Ham.* 1.2.62–3, 112–17), it is because he, despite being watched by his father, does not immediately present that degree of danger to the state which keeps Hamlet’s every word and deed so tightly monitored (e.g., *Ham.* 4.1.13–19; 4.3.1–2). It is with inadvertent irony that Polonius sees Hamlet’s political rank, in wholly conventional terms, as allowing the prince ‘a larger tether’ (*Ham.* 1.3.124), since Hamlet is the most monitored Dane of all. Only too late can Laertes grasp what Hamlet perceives early on: ‘Denmark’s a prison’²⁵ (*Ham.* 2.2.235.5²⁶). If an unmistakably Foucauldian strand peeks out even from the notionally medieval trappings of Shakespeare’s fifteenth-century histories, it comes to the fore in *Hamlet*’s Denmark, more conspicuously styled in the garb of modernity.

²² Whilst ‘despised’ here means ‘shunned’, several critical editions (ARD2, CAM4, OXF4) prefer the Folio’s ‘disprized’, meaning ‘un- or undervalued’, arguably widening the sentence’s scope, to include such politically weighty examples as *KL* sc.1.77–271; *WT* 2.1.56–199, 3.2.10–241, or, on a feminist reading, *CE* 2.1.30–7, 88–9; *2H4*, 2.1; *Ado* 4.1; *Oth.* 5.2 or *Cym.* 3.4.18–100. Later in the 17th century, disprized love will often have political content, as in, for example, Jean Racine’s *Andromaque* (1667) or *Phèdre* (1677).

²³ Contrary to the Q2 passage appearing in most scholarly editions, the Folio in fact uses ‘poor man’s contumely’. See *Hamlet: The Texts of 1603 and 1623*, ARD3, p. 256.

²⁴ That fierce psychological focus enjoyed a heyday in the mid-20th century. Freudian psychoanalytic theories were reaching popular audiences, as witnessed, for example, in Ernest Jones, *Hamlet and Oedipus* (New York: Doubleday, 1949). That trend was immortalized in Laurence Olivier’s film version, featuring a voiceover to introduce the ‘tragedy of a man who could not make up his mind’: *Hamlet* (dir. Laurence Olivier, 1948). As many directors have done, Olivier eliminates the Fortinbras theme, diminishing the political dimension to emphasize the private and familial. cf. Harold Jenkins, ‘Introduction’, in ARD2, pp. 136–40.

²⁵ The inevitable reference is, of course, Michel Foucault, *Surveiller et punir: Naissance de la prison* (Paris: Gallimard, 1975).

²⁶ A ‘Folio-Only’ passage, ARD3, p. 466, generally included in the leading critical (‘conflated’) editions.

Crucial to Tudor rule is the consolidation of power in the monarchy,²⁷ at the expense of the Roman Church, but also at the expense of a nobility progressively transforming from the recalcitrant, quasi-autonomous *noblesse d'épée* to the co-opted (if they are to avoid being altogether sidelined) *noblesse de robe*. Centralized power will increasingly bureaucratize, with an emerging class of professional administrators, drawn from the aristocracy where possible—where loyalty and obedience to the Crown seem secure—or from the bourgeoisie where convenient.²⁸ If the deceased King Hamlet is depicted as the old-style, medieval warrior king, his brother's political acts consist of nothing but 'writing' (*Ham.* 1.2.27–8) and plotting (*Ham.* 4.3.56–63; 4.7.59–66; 5.2.18–26), always sanitarily sequestered within the palace walls. It is not merely a king, but an entire socio-political order that Claudius replaces; even his name recalls the post-heroic, bureaucratically imperial Rome, in contrast to the tribally Nordic King 'Hamlet'.

In our own day, we tend to think of democracy and monarchy as opposites, the former having overthrown the latter. In Graeco-Roman thought, however, as revived in the Renaissance, and commonplace in Shakespeare's day, the relationship is more complex. Masses can raise up or pull down rulers, as displayed in *Julius Caesar* or *Coriolanus*.²⁹ Denmark's strongly centralized, yet nevertheless elective monarchy³⁰ draws it close to the modern state. Controlling opinion and information become decisive political skills, through astute permutations of surveillance and propaganda.³¹ Crucial to the synthesis of conformity through language is sheer habituation—the acceptance of a belief not because of, but regardless of, its truth: 'that monster Custom' (*Ham.* 3.4.159) as witnessed, for example, in Gertrude's 'common' philosophy of death (*Ham.* 1.2.70–3), which conveniently recapitulates the king's (*Ham.* 1.2.87–106). 'Custom hath made it . . . a property of easiness' (*Ham.* 5.1.53–4).

That element of the emerging surveillance state provides a crucial background, now to be more closely examined, before I return, in section 3, to the role of legal language. Only through that broader insight into the machinery of state can we appreciate how law and language pervade seemingly unpolitical elements of the drama. Knowledge, modernity's technique of power through expertise, supersedes the more openly coercive relations of brute force associated with the Middle Ages; *nota bene*: not more coercive, just more manifestly so, more ostentatiously so. In early modernity, the word does not so much eliminate as disassemble the sword. Coercive enforcement remains, yet less visibly, overtly retreating to the fringes. Everyday legal life is about power exercised through registration and regulation. The more efficiently it works, the less one perceives it as an exercise of power. Unsurprisingly, *Hamlet* is as political as any drama in Shakespeare, yet does not always seem so—and, traditionally, has never led the pack as the English or Roman histories have done³²—precisely because its machinery is so efficiently designed, to deflect attention away from the techniques of power, to give the impression, so dominant among the old-style humanist critics, that the drama 'just happens' within 'life'. It gives the famous impression of a 'universal', 'human' predicament, not specifically generated by its politics. The technique clearly works: generations of skilled readers have spilled ink about *Hamlet*, collapsing it into a purely personal—and only in that apolitical

²⁷ See generally Tennenhouse (cited in n.4).

²⁸ See, e.g., Holderness (cited in n.7), ch. 1.

²⁹ That complex relationship between popular will and monarchical rule will remain central to early modern thought, as witnessed in Pierre Corneille's *Cinna* (1641), or Jean Racine's *Bérénice* (1670).

³⁰ Referred to in n.3.

³¹ See, e.g., Holderness (cited in n.7), chs 1–2.

³² Leggatt, for example, does not include it. See Leggatt (cited in n.16).

sense, ‘universal’—tragedy, often scarcely noticing its pervasively political structure.³³ Political and legal power work most effectively, they most disempower us, precisely when they have us viewing their pernicious effects fatalistically, as ‘just the way things are’ and ‘just the way life is’, indeed ‘universally’.

Polonius passes effortlessly from father monitoring his children to government official monitoring Hamlet, using the selfsame ways and means. Ophelia does not merely submit to that network of control, but loves its agent, her father. Having been raised in her role as obedient daughter (*Ham* 2.2.106), that function, too, ends up being natural to her, as she scarcely sees herself as an object of calculated, state control. When Polonius uses the machine of surveillance to trap her, all the audience can see, within the terms of conventionally classical literary humanism, is her ‘personal’ dilemma, oblivious to the fact that the technique determines not merely a family dynamic, but a total political world—which has so utterly pervaded the private sphere as to seem purely private, with no real political content.

In Kenneth Branagh’s 1996 film version, Polonius and Claudius spy on the Prince and Ophelia not merely behind an arras, but through the updated technology of a one-way mirrored hall. In Michael Grandage’s 2009 stage production, Ron Cook departs from the tradition of playing Polonius as the dotty, blundering *senex*, underscoring instead the character’s bureaucratic managerialism, in which nothing and no one escape his KGB-esque oversight. Jude Law’s Hamlet echoes him in that performance, avoiding excessive displays of the Prince’s episodic madness. After all, we expect a madman to be easily tripped up. By instead emphasizing Hamlet’s lucidity and intelligence, Law portrays a modern figure whom no amount of purely personal insight or integrity can save from the machinery of state—a Winston Smith, whom Orwellian state technologies of power can always defeat, a mouse who can always be trapped (*Ham.* 3.2.231) within a political machine that ‘runs by itself’.³⁴

Gregory Doran’s 2009 RSC performance, starring David Tennant, draws these elements to their logical, or at least post-industrial, conclusion, showing the entire action captured on a network of security cameras.³⁵ Like Soviet psychiatry, Big Brother prevails not merely by subduing Smith, but by converting any resistance he may manifest into a purely personal problem—‘I have found/The very cause of Hamlet’s lunacy’ (*Ham.* 2.2.48–9)—to be overcome through coercion as therapy. *Hamlet* unsurprisingly transforms any of Hamlet’s or Ophelia’s leanings towards political resistance into either the personal reality, or the strategic appearance, of mental illness: Hamlet resists the political-legal machine’s ‘valves’ and ‘stops’ (*Ham.* 3.2.355–63) by affecting his ‘antic disposition’ (*Ham.* 1.5.170), but overcomes it only in death.

Knowledge through surveillance will become the instrument of a new kind of power that is simultaneously consolidated and, as the very technique of its consolidation, diffused. Decisive for the trial of Mary, Queen of Scots had been the elaborate network of covert intelligence, notably the interception of private communications.³⁶ In several plays, authority figures demand that their subordinates—indeed their own children,

³³ As discussed in n.24.

³⁴ See Roger Cotterrell, *The Politics of Jurisprudence* (London: Butterworths, 2nd edn, 2003), p. 107 (citing Carl Schmitt).

³⁵ I am grateful to István Zöld for pointing out that the technique obliterates the traditional illusion of utterances made in confidence, either between characters, or as asides to the audience. Even Hamlet’s seemingly private soliloquies are shown to be picked up on a security camera—precisely as, in the original, Hamlet’s ‘To be or not to be’ can be spied by Claudius and Polonius behind an arras.

³⁶ See, e.g., Holderness, (cited in n.7), pp. 31–2.

albeit in politically sensitive contexts—disclose secret writings to them (*R2*, 5.2.56–72; *KL* sc.2.25–44; cf. *TGV* 1.3.51–55), not unlike Polonius hectoring Ophelia, as to Hamlet, 'What is between you? Give me up the truth' (*Ham.* 1.3.97).

Under Foucault's influence, that element of diffused power has become central to readings of Shakespeare. For example, *Measure for Measure* will present a duke very different from his peripheral, ineffectual counterparts in *The Merchant of Venice* or *Romeo and Juliet*. Vincentio ostensibly suspends his power, whilst in fact expanding it by diffusing it everywhere, turning himself into a living and breathing security camera, always safely concealed beneath a cloak of piety.³⁷ The England of *Henry VI, Part II* is not yet a surveillance state in that sense. Lord Saye's pseudo-trial still only hints at the new face of power as bureaucracy. It is power more clearly exercised by one class upon another. A revolt of the poor against the rich comes as no surprise. The rebels in particular attack that exponent of power which signally symbolizes their alienation. By contrast, in *Hamlet*, looking towards the modern state, it is no longer a distinctly disempowered class, so much as an entire realm that falls within the state's grip, which even the one 'most immediate to [the] throne' and 'chiefest courtier' (*Ham.* 1.2.109, 117) cannot escape. Hamlet will be played 'like a pipe', not by the state's highest officers, but by his sometime friends. Rosencrantz and Guildenstern remain far inferior to Hamlet in socio-legal rank, yet become instruments of a state power that even their prince can decry, but can never shake off, except through their deaths (*Ham.* 4.2.13–19, 5.2.355).

3. Language, performance, existence

Legal transactions in the conventional sense of contracts, lawsuits, or trials play little role in Shakespearean tragedy. Full-blown trial scenes instead occur in the comedies (*CE* 1.1., *MV* 4.1, *Ado* 4.2, *MM* 5.1, *WT* 3.2); an exception proving the rule would be the bleakly comic fool's court in *KL* sc.13. Trials occur also in the English histories (*1H6*, 5.5; *2H6*, 2.3, cf. 4.7; *R2*, 1.1, 1.3, 4.1; *H5*, 2.2.76–7). Law in the tragedies, by contrast, although closer to the histories, tends to highlight cardinal matters of state, such as treason, political murder, or war. In *Hamlet*, the suspicion of a fratricidal and regicidal murder appears early on, but conspicuously lacking any conventional legal elements. The discourse hearkens back to the feudal-heroic vocabulary of honour and revenge, not to any juridical lexicon of *actus reus* or *mens rea*. Similarly, armed conflict with Norway, more of a sub-plot (although rightly elevated in Branagh's version), is discussed solely in political terms, with nothing like the famous exposition (or rather, invention) of a *causa belli* that inaugurates *Henry V*. It is all the more remarkable when, in one of *Hamlet's* dramatic high points, that eerie amalgam of comedy and introspection in the graveyard, Hamlet speculates that one of the skulls might be that of a lawyer (*Ham.* 5.1.93–4). That thought arises, it would seem, out of the blue; it seems true only in the trivial sense that it could be *anyone's* skull, and might therefore be a lawyer's.

In a drama otherwise so different from *Henry VI, Part Two*, lawyers are again singled out in a sarcastic, arguably unexpected way. When the gravedigger throws up the second skull (*Ham.* 5.1.92.1 SD), it is, once again, the linguistic element, more intricate than

³⁷ See, e.g., Wilson (cited in n.19), pp. 126–31; Jonathan Dollimore, 'Transgression and Surveillance in *Measure for Measure*' in *Political Shakespeare: Essays on Cultural Materialism*, Jonathan Dollimore and Alan Sinfield, eds (Manchester: Manchester University Press, 2nd edn, 1994), ch. 4; cf. Paul Raffield, *Shakespeare's Imaginary Constitution: Late Elizabethan Politics and the Theatre of Law* (Oxford: Hart Publishing, 2010), pp. 191–204 (discussing parallel themes in *Measure for Measure*).

the politician's plots or the courtier's niceties, which becomes law's paramount feature, not, this time, in the eyes of peasants, who have stood powerless before mighty judges, but in the eyes of one near to the throne, yet no more able to control the machinations of power, 'Where be his quiddities now, his quillets, his cases, his tenures, and his tricks?' (*Ham.* 5.1.94–5 [OXF4]).

That passage's verbal torrent, its Sayesque echoes of English mixed with Latin, parodies lawyerly loquacity, overpowering not with depth, but with sheer, patter-song speed. Archetypal of Shakespeare's depictions of legal language, the passage employs a layering of rhetorical devices, notably *erotema*, *congeries*, *bathos*, and *irony*. Why would that compression of so many rhetorical strategies emerge here? It is the equivocating, dissimulating character of legal discourse that Hamlet mimetically mocks. Taking the form of a rhetorical question (*erotema*), the obvious reply would be 'They're nowhere. I'm dead, and, moreover, I can't even hear your question.' Accordingly, as with any *erotema*, the question is, what other point, aside from that obvious one, does that rhetorical strategy aim to convey?

The *erotema*, in turn, employs *congeries*, a clustering of terms for cumulative effect,³⁸ and further marries that technique to *bathos* (a calculated anti-climax, in contrast to the anticipated climax of the more typical *auxesis* or *gradatio*³⁹), whereby the lawyer's seeming high-blown skills collapse into mere 'tricks'. That synthesis of *congeries* with *bathos* further yields the rhetorical device of irony. Were the sequence not to anti-climax with 'tricks', the passage would retain a more contemplative, less sarcastic tone. It would be musing about the death of a lawyer whose various attributes are named, though not necessarily with disdain. Even 'quilletts', meaning mere quibbles,⁴⁰ can sound, on first hearing, like more of a lawyerly quirk—a playful, but not necessarily derisive description of lawyerly precision—than anything so manifestly pernicious as a 'trick'. It is only that final word 'trick' which retrolectically casts its four predecessors as patently sinister. 'Quiddities', referring to a thing's 'essential nature' in scholastic philosophy,⁴¹ becomes grimly elided with the rest of these underhanded 'tricks', mirroring the play's simultaneously poignant and sardonic treatment of ontology and existence. Hamlet utters the statement as if cross-examining the imaginary lawyer, using legal ploys against law's agent. The graveyard scene is altogether remarkable in its re-enactments of the things that are being parodied. Precisely at that point in which law, as a tool of oppressive power, is at issue, Horatio, departing from the ease with which he generally addresses his social superior, suddenly performs the role of obsequious subject (cf., e.g., *Ham.* 2.1.66–70), mechanically agreeing with each of Hamlet's whimsies: 'It might, my lord' (*Ham.* 5.1.76), 'Ay, my lord' (*Ham.* 5.1.82), 'Not a jot more, my lord' (*Ham.* 5.1.106) (cf. *Ham.* 3.2.367–73).

As with Lord Saye, what may appear, from the perspective of the powerful jurist, to be the very soul of legitimacy, law's articulated rationality, appears, from the perspective of the disempowered, who can even be a prince, to be a tool of deception. The point is made through parody, as the gravedigger's 'equivocation' mocks lawyerly hairsplitting,⁴²

HAMLET Whose grave's this, sirrah?

GRAVEDIGGER Mine, sir. [...]

HAMLET I think it be thine, indeed; for thou liest in't.

GRAVEDIGGER You lie out on't, sir, and therefore it is not yours. For my part, I do not lie in't, and yet it is mine.

³⁸ cf., e.g., 'thou Dromio, thou snail, thou slug, thou sot!' (*CE* 2.2.197).

³⁹ e.g., Julius Caesar's progressively climactic 'Veni, vidi, vici' ('I came, I saw, I conquered').

⁴⁰ OXF4, p. 325.

⁴¹ See OXF4, p. 325.

⁴² See ARD3, p. 419.

HAMLET Thou dost lie in't, to be in't and say it is thine. 'Tis for the dead, not for the quick. Therefore thou liest.

GRAVEDIGGER 'Tis a quick lie, sir, 'twill away gain, from me to you.

HAMLET What man dost thou dig it for?

GRAVEDIGGER For no man, sir.

HAMLET What woman, then?

GRAVEDIGGER For none, neither.

HAMLET Who is to be buried in't?

GRAVEDIGGER One that was a woman, sir, but, rest her soul she's dead.

HAMLET [*to Horatio*] How absolute the knave is! We must speak by the card or equivocation will undo us. (*Ham.* 5.1.110–30)

That parody on law's dialectics recalls a conspicuous counterpart in the corpus, the other royal sounding-out of commoner subjects incognito in *Henry V*. If Henry, supreme Shakespearean architect of the surveillance state, uses the technique to further consolidate power,⁴³ the disempowered Hamlet is in precisely the opposite position. A lowly gravedigger can trip Hamlet up by invoking that language of disembodied law which can trip up *anyone* who falls within its grip, great or small. A moment later, Hamlet will curse the language of law whilst contemplating the supposed lawyer's skull.

Equivocation is not the gravedigger's alone. Throughout the play, it is Hamlet's salient style. It is typical of Hamlet to condemn those things which most characterize him; he can never—one can never—step out of the system, but can only revile those very elements of it which he himself constantly recapitulates: its faceless inhumanity, its covert aggression, its machineries of surveillance and duplicity. The linguistic manipulation of law, coupled with the technique of power deployed through the surveillance state, embodies Shakespeare's depiction of law in *Hamlet*, and the culmination of his vision of law progressively developed in the corpus. As in *Henry VI, Part Two*, law's literacy is again evoked through the image of innocent beings sacrificed to make parchment ('sheep and calves' being glossed as 'simpletons'⁴⁴),

HAMLET Is not parchment made of sheepskins?

HORATIO Ay, my lord, and of calves' skins too.

HAMLET They are sheep and calves which seek out assurance in that.⁴⁵ (*Ham.* 5.1.107–10)

If we return once again to the early English history plays, we find elsewhere another of the canon's more remarkable explorations of law, in the Temple Garden scene of *Henry VI, Part One*. A group of aristocrats and lawyers have had to leave the Temple hall, at the Inns of Court, because their debate was turning to aggression, becoming 'too loud' (*IH6*, 2.4.3). Although the substance of their dispute is not yet clear,⁴⁶ what is striking is how the nobles, whom we would expect to be vigilant guardians of law, bask in their contempt for it, scarcely discouraged by the lawyers. The Duke of Suffolk, joining privilege to machismo, boasts of his breaches of law,

⁴³ See, e.g., Pugliatti (cited in n.7), ch. 8; Stephen Greenblatt, 'Invisible Bullets: Renaissance Authority and Its Subversion, *Henry IV* and *Henry V*' in Dollimore and Sinfield (cited in n.13), ch. 2.

⁴⁴ See OXF4, p. 326; PEN2, p. 296.

⁴⁵ Glossed as 'people who trust such documents are fools', ARD3, p. 418.

⁴⁶ It presumably concerns Richard's claim to the Dukedom of York, referred to in n.5.

Faith, I have been a truant in the law,
And never yet could frame my will to it,
And therefore frame the law unto my will. (*IH6*, 2.4.7–9)

The Earl of Warwick, having boasted of his prowess in sport, arms, and sex (*IH6*, 2.4.11–15), and whose house will nevertheless prove adept at law when it serves their cause (*2H6*, 3.2.153–94; *3H6*, 1.1.132–45), not merely dismisses, but proudly and boastfully derides ‘these nice sharp quilllets of the law’ (*IH6*, 2.4.17).

Warwick’s contrast of law with such masculine affairs as armed, athletic, or sexual conquest casts law as that which uses language not as a superior alternative to violence, but merely as the wily, manipulative, ‘women’s’ weapon of words (e.g., *TS* 2.1.137). And nothing plagues Hamlet more than either impotence (his immobility being perhaps the play’s most famous theme⁴⁷ (e.g., *Ham.* 3.4.106–7; 4.4.38–45)) or femininity (his misogyny is notorious⁴⁸ (e.g., *Ham.* 1.2.146; 3.1.142–4)). ‘Masculine’, armed conflict may be brutal, but is at least overt; law purporting to overcome sheer powermongering, but merely adorning it in the ‘feminine’ guise of peaceful and humanist discourse, rendering it, like a torrent of legal argument, both overwhelming and opaque, turns the abuse of power into something beyond one’s ability to oppose or to subvert. The simultaneously covert and loquacious quality of the surveillance state takes the form of a feminization of the outward display of power, as Hamlet’s impotence within the power structure witnesses his emerging misogyny. If Hamlet is paralysed, it is because killing Claudius, far from achieving some idealized notion of justice in the manner of the old-style revenge tragedy,⁴⁹ is, in a brave new modern world, futile and beside the point. Claudius sits atop the machine that runs by itself, and which is not destroyed simply by toppling its public face. The problem is not so much that Hamlet ‘cannot’ kill Claudius, but that, unlike the conspirators against Caesar, the ineffable power dynamics of the Foucauldian state no longer offer any alternative, nor, then, any obvious grounds for doing so. The plausible Let-Caesar-die-so-Rome-may-live has turned implausible in early modernity. Freud broached the age-old problem of Hamlet’s delay⁵⁰ by depicting a Hamlet immobilized because his nemesis had in fact expressed the prince’s own Oedipal wish.⁵¹ A Foucauldian construction, by contrast, can view Hamlet as immobilized because the omnipresent political-legal machine eviscerates the sheer possibility of meaningful political action.

Another of the plays most amenable to Foucauldian theories of power is *Henry V*. Where Henry was once taken at face value as Shakespeare’s vision of the model monarch, more recent scholars, taking their cues from the propagandizing function of official iconography in the Tudor period, have emphasized the ways in which Henry masters the techniques of power deployment in the modern state, through means of surveillance—e.g., in the entrapment of the conspirators plotting to kill him (*H5*, 2.2.76–7) or the covert sounding-out of foot soldiers (*H5*, 4.1–)—but more importantly in emerging as a charismatic figure in the Weberian sense,⁵² mastering popular psychology through recourse to language.⁵³

⁴⁷ See Jenkins (cited in n.24), pp. 136–40.

⁴⁸ See, e.g., Jacqueline Rose, ‘Sexuality in the Reading of Shakespeare’ in *Alternative Shakespeares*, 2nd edn, John Drakakis, ed. (London: Routledge, 2002), ch. 5.

⁴⁹ See Jenkins (cited in n.24), pp. 82–103.

⁵⁰ cf., e.g., Jenkins (cited in n.24), pp. 136–40.

⁵¹ See Sigmund Freud, *Die Traumdeutung* (Leipzig und Wien: Franz Deuticke, 1900); cf. Jones (cited in n.24).

⁵² Max Weber, *Wirtschaft und Gesellschaft* II.ix.5 (Tübingen: Mohr, 1976), pp. 654–87.

⁵³ See, e.g., Pugliatti (cited in n.7), ch. 8; Greenblatt (cited in n.43); Stephen Greenblatt, *Shakespearean Negotiations* (Oxford: Oxford University Press), pp. 56–65.

In *Hamlet*, Claudius lends himself to a similar analysis. As late as the 1980s, before Foucauldian analysis had become widespread, scholars sometimes praised Claudius as a competent ruler—despite the glaring fact, for which one hardly needs Foucault, that Claudius fatuously allows the enemy (*Ham.* 1.2.17–25) Fortinbras passage of his legions through the realm (*Ham.* 2.2.72–82), supposedly to invade a ‘little patch of ground’ in Poland (*Ham.* 4.4.17), yet conspicuously clearing the path to power in Denmark (*Ham.* 5.2.334–40, 373–4). A question arises about how viewers might find overall competence in a king, like Claudius, who delivers Denmark to an invader, even believing he has done the opposite, and spends much of the rest of his time either ‘wassailing’ (*Ham.* 1.4.9), or plotting against his nephew (*Ham.* 4.3.56–63; 4.7.59–66; 5.2.18–26), and otherwise manipulating law (*Ham.* 3.3.36–64; 5.1.217). In the same vein, we can ask why so many audiences have seen, and continue to see Henry V as Shakespeare’s ideal monarch, despite his manipulation of both positive and divine law to justify an imperial invasion of France (*H5*, 1.2), and the summary trials and executions of the conspirators with little due process (*H5*, 2.2).

In both plays, the traps Shakespeare had set centuries ago seem still to work into our own day. Like the Tudors, who disseminated iconographic images of monarchical power,⁵⁴ these new-style monarchs orchestrate power through the manipulation of language and symbols—through the verbal dissemination of the iconography of power. Arguably, ‘model’ monarch would be a better phrase than ‘ideal’ monarch for describing such figures, in the sense that Shakespeare is not, in fact, endorsing them as exemplars of justice, so much as simply using them to explore the degree to which Machiavellianism can be honed to a high art form. Whilst the dead King Hamlet, *noblesse d’épee*, never praised for making speeches, had taken up arms to defeat Norway on the battlefield, his successor, *noblesse de robe*, need merely write letters, but then announce it with pomp and fanfare (*Ham.* 1.2.27–8). Hamlet flounders between those two models. If Claudius, in those same triumphant tones, feigns liberality by allowing Laertes to leave Denmark (*Ham.* 1.2.44–6, 62–3), that display serves only to mask the tighter grip to be placed on the more important person of Hamlet (*Ham.* 1.2.112–17). Claudius ‘may smile, and smile, and be a villain’ (*Ham.* 1.5.108).

In the play’s broader context, there is nothing surprising about Claudius’s recourse to verbal performance as a technique of power. *Hamlet*’s entire world is structured as a series of performances orchestrated for the deployment of power. Polonius, ‘accounted a good actor’ (*Ham.* 3.2.96–7), coaches Reynaldo to perform deceitful and potentially damaging tricks on Laertes for the purpose of gathering information, ‘by indirections’ to ‘find directions out’ (*Ham.* 2.1.63). Claudius marshals Rosencrantz and Guildenstern to stage similar performances, to ‘draw’ Hamlet ‘on to pleasures’ (*Ham.* 2.2.15), for similar purposes of spying Hamlet’s reactions. Polonius and Claudius collaborate to have Ophelia perform the reading of a religious text, again to monitor secretly Hamlet’s behaviour (*Ham.* 3.1.29–45). Hamlet, immersed in this culture of deceptive words and practices, first turns himself into a performer, planning to deploy his ‘antic disposition’ in order to test others’ reactions; then to stage the play’s most famous performance, the play-within-the-play, whereby Hamlet and Horatio monitor the king to establish Claudius’s criminal guilt (*Ham.* 2.2.523–40; 3.2.71–85).

That play-within-the-play is called *The Murder of Gonzago* (*Ham.* 2.2.474). When Claudius asks Hamlet the title, however, Hamlet calls it *The Mousetrap* (*Ham.* 3.2.231), symbol of the device constructed to ensnare base, unwitting vermin. The play, like much of Shakespeare, is obsessed with the differences between man and beast (e.g., *Ham.* 1.2.150–1; 4.4.32–4). Its political world of traps and tricks defeats Saye’s classical humanist ideal of a noble, dignified human existence depending merely upon one’s will

⁵⁴ See generally Tennenhouse (cited in n.4).

to achieve it, when one exists within a political-legal machine that systematically disarms, deflates, and disempowers the human (cf. *Ham.* 2.2.262–75). The play-within-the-play becomes not an exotic episode, but a model for all human relations in *Hamlet*. Words having been emptied of reliable meaning, they instead serve only for any one set of characters to contrive situations within which human behaviours—personalities—are actively generated for purposes of being recorded.

That engineering function of language pervades the play, yet always traces back to law as the paradigm human institution of manipulated language deployed with the effects of mechanical control and the resulting individual alienation. Legal language becomes the premier tool for re-manufacturing humans as mice. Amidst the perpetual doubt about when Hamlet is mad, when he is only affecting that ‘antic disposition’, and when he is perhaps a mix of both—a question highly dependent upon the actor and performance—the prince’s compulsive prolixity (e.g., *Ham.* 2.2.190–201) intentionally or inadvertently parodies language as the outstandingly malleable and manipulated medium of political power and human existence—all to be more bleakly parodied in the garbled tongue of Ophelia’s madness (*Ham.* 4.5.160–92).

Immediately before Hamlet’s encounter with the skulls, a more improvised play-within-the-play is staged by the gravediggers, or ‘clowns’, long a source of wonderment in view of the bleak events so late in the play. The only thing resembling a full-blown, conventional legal argument in *Hamlet* is, as we have seen, the parody of one with the gravedigger. If Hamlet’s dilemma concerned subjective deliberation as between existence and non-existence, the one surrounding Ophelia concerns an equally unstable, objective determination of that question,

GRAVEDIGGER Is she to be buried in Christian burial, when she wilfully seeks her own salvation?

2 MAN I tell thee she is. Therefore make her grave straight. The crowner [coroner—EH] hath sat on her and finds it Christian burial.

GRAVEDIGGER How can that be unless she drowned herself in her own defence?

Law operates not according to any discernable reason, but merely by *fiat*,

2 MAN Why, ’tis found so. (*Ham.* 5.1.1–8)

The familiar Shakespearean mangling of arcane legal language, in the mouths of lowly illiterates, alienated from power within a regime which keeps them disempowered⁵⁵ (cf. *Ado* 3.3, 4.2; *MM* 2.1; cf. also *2H6*(Fol.) 1.3.33.0–2), and precisely on the ethical and ontological status of the dead Ophelia, again manifests in malapropisms of the erudite Latin *se defendendo*⁵⁶ (*se offendendo*) or *ergo*⁵⁷ (*argal*), followed by a spoof of casuistic distinctions drawn between active and passive, reminiscent of medieval-scholastic disputes on metaphysical questions, whereby Ophelia’s bleak end dissolves into pseudo-legal sophisms,⁵⁸

GRAVEDIGGER 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, to perform. Argal, she drowned herself wittingly. (*Ham.* 5.1.9–13)

⁵⁵ cf. generally Eric Heinze, “‘Were it not against our laws’: Oppression and Resistance in Shakespeare’s *Comedy of Errors*”, (2009) 29 *Legal Studies* pp. 230–63.

⁵⁶ See OXF4 321; cf. ARD3, p. 410.

⁵⁷ See OXF4 321; cf. ARD3, p. 410.

⁵⁸ See Raffield (cited in n.37), p. 93 (linking the legal questions surrounding Ophelia’s suicide to the 1562 case of *Hales v Petit*).

Immediately following that spoof on the abstractions of legal logic, comes a spoof of forensic argument, again eliciting (not least through the water imagery) the arbitrariness and concomitant instability of ethical problems beholden to legal language,

2 MAN Nay, but hear you, goodman delver.

GRAVEDIGGER 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, willy-nilly, 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 MAN But is this law?

GRAVEDIGGER Ay, marry, is't. Crowner's 'quest law. (*Ham.* 5.1.14–22)

The sequence of skulls from politician/courtier, then to lawyer, next progresses to the supposed skull of the court jester Yorick (*Ham.* 5.1.174–84), to whom Hamlet puts a question parallel to that for the lawyer, yet with none of the biting acrimony. Again through the rhetorical technique of congeries, Hamlet now asks if that clown—court jesters, as in *Lear*, being well known for speaking inconvenient truths—had been the worthier figure: 'Where be your gibes now—your gambols, your songs, your flashes of merriment, that were wont to set the table on a roar?' (*Ham.* 5.1.179–82). In one of the play's rare uses of the word 'truth',⁵⁹ the gravedigger returns to the theme of law being used to benefit powerful interests, reminiscent of the deeper examinations of class difference in *Henry VI, Part Two* and other English or Roman political dramas,

2 MAN Will you ha' the truth on't? If this had not been a gentlewoman, she should have been buried out o'Christian burial.

GRAVEDIGGER Why, there thou sayst, and the more pity that great folk should have countenance in this world to drown or hang themselves more than their even-Christen [fellow Christians—EH]. (*Ham.* 5.1.23–9)

The legal manipulation is easily overlooked, since we may grieve for Ophelia and wish her a dignified burial. The question of her death remains unresolved, and, even if she did kill herself, we, like Laertes (5.1.227–31), might find any lesser rites to reek of hypocrisy. But manipulation it is, to save the face of power: 'great command o'ersways the order' (*Ham.* 5.1.217). Law leaves us, then, with a tasteless dilemma. We cannot side with the church pronouncement, which, as Laertes shows, is cynically sanctimonious, albeit wrapped in the language of divinely ordained law. Nor can we side with the trumping of it through state decree, through the king's secular prerogative, which merely piles the hypocrisy of class privilege, and some politically opportunist face-saving (the king needs Ophelia dispatched with as little trouble as possible from Laertes, who has already challenged the throne (*Ham.* 4.5.88–134)), atop the church's sinister law. The gravediggers have spoofed the procedure, and the presumption, whereby state law, incorporating canon law, would pass final ethical judgment on Ophelia's life and its end: 'Her death was doubtful; [...] She should in ground unsanctified have lodged/Till the last trumpeter' (*Ham.* 5.1.216–19). Divine law is invoked not to challenge, but to maintain, and to lend authority to, the machinations

⁵⁹ The others are revealing. Polonius uses it in the context of gathering information about his children (*Ham.* 1.3.97). Hamlet uses it in a love poem, to drop a hint about much of the play: 'Doubt truth to be a liar' (*Ham.* 2.2.116).

of Denmark's law. In a cosy circle, each legal regime draws legitimacy by justifying the other.

The role of legal language to mask deployments of power becomes an exemplar of the schism between appearance and reality that dominates *Hamlet* and much of the corpus (e.g., *Ham.* 1.2.76–86). From the outset, language is used by the head of state to conceal breaches not only of the law against murder, but of the law against treason, as Claudius describes the death of King Hamlet as nothing more than nature's 'common theme' (*Ham.* 1.2.103; cf. 1.2.74), which, for the prince to challenge through 'obstinate condolment' (*Ham.* 1.2.93) would make not Claudius, but Hamlet himself the criminal, perpetrator of 'a fault to heaven,/A fault against the dead, a fault to nature' (*Ham.* 1.2.101–2). Ophelia is pressed into that same state-managed mendacity (already deployed by Polonius to have Reynaldo spy on Laertes (*Ham.* 2.1.1–71)), as she is duped into lying to Hamlet about vows that had passed between them,

My lord, I have remembrances of yours
That I have longèd long to redeliver.
I pray you now receive them. (*Ham.* 3.1.92–4)

Curiously, Hamlet does not merely refuse to take them back. Rather, he denies having given them in the first place (*Ham.* 3.1.95)—very possibly his first outright lie in the play, precisely as it is becoming clearer to him that truth and lie are scarcely to be distinguished (*Ham.* 2.2.175–6, 232–4). That moment raises a problem for modern audiences, for whom oaths have acquired a more marginal, pro forma status in law. If Hamlet and Ophelia had earlier exchanged vows, kept secret in view of their differing stations⁶⁰ (*Ham.* 2.2.138), then Ophelia's renunciation of them, Hamlet not knowing that she is coerced to do so, becomes the breach of a sacred bond, for which the 'remembrances' serve as formal consideration (comparable to the more usual rings for betrothals, which, worn for public view, involve no such problems of social rank, as witnessed in the ring exchange themes of *Two Gentlemen of Verona* or *The Merchant of Venice*). By denying having given such tokens in consideration, countering a lie with a lie, Hamlet revives a status quo ante, in which Ophelia is precluded by fiat from committing any such breach, because a new past has been created in which no vows had in fact been exchanged. Hamlet from that point forward mirrors his world, using the deceptions of language to fabricate realities which Denmark's political and legal world have been engineered to conceal. Hamlet thenceforth distrusts all appearances, not only the appearances of words.

Thinking Ophelia's disavowal sincere, he launches into misogyny, a tirade against all women, inveighing against deceptive appearances: 'God has given you one face, and you make yourselves another: you jig, you amble, and you lisp' (*Ham.* 3.1.142–4). Included in that rant is the charge that women 'nickname God's creatures', i.e., give them fond or frivolous names, strikingly recalling the problem of language's disaggregation from realities, paradigmatic in law, yet now suffered or sensed by Hamlet everywhere. Even

⁶⁰ Shakespeare leaves teasingly obscure the question as to whether Ophelia had reciprocated Hamlet's vows. Such a supposition, however, is hardly far-fetched. Assuming that she is not quite as 'green' (*Ham.* 1.3.100) as Polonius and Laertes believe—she certainly grasps sexual double standards (*Ham.* 1.3.45–49)—she will have known perfectly well that Hamlet, in terms of conventional socio-political rank, 'with a larger tether may... walk' (*Ham.* 1.3.124), and that she must therefore keep her actions and intentions discreet; and Hamlet would have grasped that need for caution. In subsequently denying his vows, he by fiat annuls any that she might have made in reciprocation, so that they, by definition, cannot be broken, and her honesty is maintained.

discovering lies lends Hamlet no way out of the manipulations of the broader power structure. He knows perfectly well that Rosencrantz and Guildenstern are in the King's service, merely performing the words of friendship in order to monitor Hamlet (*Ham.* 2.2.235–57), but that insight scarcely advances him.

4. Conclusion

Hamlet's emerging modernist world of arcane machinations, intertwining and blurring word and deed, seems far removed from the world of power imposed, clearly, directly, unabashedly by the sword. In one sense, those techniques of power also seem far removed from the more conventional legal and linguistic world of statutes, writs, and trials for which Saye was attacked. What unites them are the ways in which linguistic manipulation within more conventional legal settings emerges as a model for the dissemination and manipulation of power generally. Words become tools of oppression precisely as manipulation of them empties them of any reliable meanings. Words simultaneously become trivial and impenetrable. It is their Orwellian proliferation and dissemination which work as a simultaneously overwhelming and inscrutable torrent of 'Words, words, words' (*Ham.* 2.2.189).

That radical disaggregation of words from meanings has a twofold significance. First, it brings us nearer to a sense of how law is being portrayed. Law exists by no means distinct from other loci of power. Rather, law, through its characteristic uses of language, becomes archetypical for the specific modes of power and control in modernity. Secondly, that disjunction between signifier and signified leads to the heart of existential turmoil in *Hamlet*. Some traditional readings might be content to see in Polonius little more than an overprotective father, and in Claudius little more than a flawed king. Yet their recourse to lies, whilst insisting that others tell truth, their perpetration of appearances calculated to conceal realities, are never secondary or episodic. Those techniques become the pervasive mode of existence in the Danish court. Linguistic dysfunction becomes a hallmark of discourse throughout the play, yet not in a sense which would render its status, as component of existential anxiety, somehow distinctly personal, divorced from politics. On the contrary, the extermination of meaning for the characters, the play's creeping nihilism—not so much distinct to Hamlet, as distinctly perceived by him yet common to all—follows as a direct result from a world in which quilllets and quiddities, earmarks of legal discourse, come to denote the absence of any reliable meanings in the sphere of politics, ethics, justice, or human relations.

In the final scene, Fortinbras assumes control. Horatio certainly promises truth telling, but scarcely promises to wield more influence than he had done before. Rather, that truth will emerge within the framework of the same kind of tightly orchestrated power structure that has preceded. Fortinbras's final commandment revives appearance and decorum as the watchword: 'Take up the bodies. Such a sight as this/Becomes the field, but here shows much amiss' (*Ham.* 5.2.385–6). The signifiers of mayhem strut political glory in battle, but reek of excess in the palace, in which signifiers of order, precisely as Claudius had so well contrived, must dominate. Decisive is not the truth that Horatio has to tell, but the managerial state within which that truth will be harnessed, directed, and controlled.