


The Law in *Hamlet*:

Death, Property, and the Pursuit of Justice

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 *amlet* is not, on its face, a “legal” play in the way that *Merchant of Venice* and *Measure for Measure* are legal plays. It has no trial scenes, no discourses on the purposes of law and punishment, and no critique, as such, of the legal system. But a closer look at the play shows that legal issues are integrated into the fabric of the drama at key points. The subtlety and accuracy of the law in *Hamlet* suggest that its author had sophisticated legal training of the sort that comes from formal study, not casual conversation. This casts doubt on the traditional theory that the man from Stratford wrote the plays of the Shakespeare canon.

As well as analyzing the law in *Hamlet*, this article will consider how the evidence of legal knowledge in the play impacts the hypothesis, believed by many, that Edward de Vere, the 17th Earl of Oxford, was the real genius behind Shakespeare’s plays.¹ We know that de Vere studied law from an early age with his tutor, Sir Thomas Smith. De Vere also enrolled at the Inns of Court—Gray’s Inn, to be precise—where the common law of England was taught. Of course, evidence of legal knowledge in Shakespeare’s plays does not prove that Oxford wrote the plays. Many noblemen of his day studied at the Inns of Court; and others, such as Francis Bacon, were greater legal minds than Oxford was likely to have been.

But *Hamlet* contains legal issues that parallel watershed events in Oxford’s life, particularly events that concerned homicide and property law. This article briefly explores aspects of law in *Hamlet*: ecclesiastical law, law of homicide, property law, and, more generally, law as an instrument of justice and revenge, and notes some of the parallels to legal issues that directly involved de Vere during his life.

I. Ecclesiastical Law: Ophelia’s “Maimed Rites”

R.S. Guernsey wrote in 1885 that *Hamlet* showed “the most thorough and complete knowledge of the [ecclesiastical] and statute law of England, relating to

the burial of suicides that has ever been written.”² The alert reader may well respond, “What does the law of England, whether ecclesiastical or statutory, have to do with *Hamlet*, which takes place in Denmark?”

The answer for *Hamlet* is the same as for all of Shakespeare’s plays: English law permeates the plays, even those set in foreign countries. The law of the foreign setting may be a factor in some plays, but most of the legal rules and jargon are from English law. This is the law with which Shakespeare’s audience, whether nobility or common folk, would have been most familiar.

A. Law of Suicide

Guernsey argued that *Hamlet* reflected the English law regarding suicides at the time of its writing, rather than the laws in Denmark at the time of the historical Hamlet’s life (about 700 CE, before Christianity was introduced in Denmark). Understanding the law of suicide is crucial to understanding the controversy regarding Ophelia’s burial rites. “Her death was doubtful” (5.1.182),³ as the priest tells Laertes, by which he means it is questionable whether Ophelia’s death was an accident or a suicide. This doubt created some thorny legal issues because of the tension that existed between statutory law and ecclesiastical law regarding suicides, especially when insanity was a factor.

Ophelia’s death was “doubtful” because, once she fell into the brook, she appears to have made no attempt to save herself. Instead, she “chanted snatches of old lauds [hymns], / As one incapable of her own distress” (4.7.182–83). This behavior is consistent with Ophelia’s having gone to the brook intending to kill herself. But given what the audience has already seen of Ophelia’s madness, insanity is the more likely explanation of her inaction.

B. Ecclesiastical Law versus Statutory Law

Under ecclesiastical law, a person who voluntarily caused her own death was not entitled to Christian burial, even if she were insane. The secular law, however, had by Shakespeare’s time developed a more nuanced understanding of voluntariness: an insane person could not, by definition, *voluntarily* kill herself because her mind was too disturbed for her to make any decision for which she could be held responsible. If the coroner, the official of the Crown who presided over the inquest, found that the deceased had been insane at the time of her death, then she could not have killed herself voluntarily and her death was, therefore, not a suicide.

The Church would grudgingly accept the coroner’s verdict and give Christian burial rites to the deceased—but only in the parish churchyard. Even so, the parish priest, who was the legal holder of the church lands, could decide where in the cemetery the deceased would be buried. Suspected suicides were often buried at the fringes of the churchyard.

C. "Make Her Grave Straight"

As Guernsey explains, those who received Christian burial were buried with their bodies lying along a "straight," or east–west axis, the same alignment on which the church itself stood. The head was to the west, the feet to the east. Any other positioning, such as north–south, indicated that the deceased person was not entitled to the full rites of Christian burial.⁴ Such "crooked" burials in unconsecrated ground went to stillborn infants and excommunicated persons, as well as to suicides.

Thus, when one gravedigger tells the other at the beginning of Act 5, "make her grave straight. The crowner hath sat on her, and finds it Christian burial" (5.1.3), he is telling the other to dig the grave east–west.⁵ The thrust of the statement is that the coroner has ruled Ophelia's death involuntary, probably due to insanity, and that she therefore receives basic Christian rites.

If the coroner were to determine, however, that a person was sane at the time of the suicide (a rare finding), the deceased's personal property was forfeit to the Crown, and the coroner, rather than a priest, buried the body, often at a crossroads.

D. "What Ceremony Else?"

When Hamlet first sees a funeral procession in the churchyard, not knowing that it is Ophelia's funeral, he immediately recognizes the "maimed rites" and their significance: "This doth betoken / The corse [corpse] they follow did with desperate hand / For do its own life" (5.1.175–76). After an apparently perfunctory service by the priest, Laertes asks, "What ceremony else?" (5.1.180). The priest's response encapsulates the compromise between secular and holy law:

Her obsequies have been as far enlarged
As we have warranty. Her death was doubtful,
And but that great command o'ersways the order,
She should in ground unsanctified been lodged
Till the last trumpet....

(5.1.181–85).

The "great command" is the statutory law of England, which recognized the monarch as the head of the Church. It also bound the priest to abide by the coroner's verdict that Ophelia be accorded Christian burial. Thus, we know from the text that Ophelia's burial included some of the features of a full Christian burial, namely, an east–west ("straight") grave in consecrated ground.

But Guernsey notes that the funeral left out such optional trappings as torch bearers, cross bearer, sprinkling of holy water, singing of psalms or hymns, blessing, smoking censer, and Eucharist (Holy Communion, or Lord's Supper).⁶ The omission of so many potentially available signs of respect toward the deceased would naturally seem an insult to the mourning Laertes.

The priest goes on to hint that Laertes should be thankful that the “great command” has done as much as it has for Ophelia. Without it, “for charitable prayers, / Shards, flints, and pebbles, should be thrown on her” (5.1.185–86). Guernsey explains that this was a reference to the custom in some parts of England (derived from heathen Teutons’ method of executing criminals) of burying suicides at crossroads, driving a stake through the body, and allowing passersby to throw stones and flints at the stake.

The priest reminds Laertes that the Church has allowed the strewing of flowers for Ophelia and the use of garlands (a token of virginity). The priest has, as Guernsey says, “fulfilled the letter of the law, and rung the bell [a required part of the Christian ceremony, even for doubtful deaths] and . . . given her an honorable place of burial and a straight grave.”⁷

In other words, Ophelia received the bare minimum of Christian burial rites. Shakespeare’s use of a few key phrases—“make her grave straight,” “Christian burial,” “maimed rites,” “What ceremony else?,” “Her death was doubtful,” “great command,” “ground unsanctified”—shows that he perfectly understood the tension between statutory law and ecclesiastical law regarding the burial of suicides.

II. Law of Homicide: “King’s Lawful Subject” versus “Malice Aforethought”

Thomas Glyn Watkin’s 1984 article, “Hamlet and the Law of Homicide,” explores the law governing the many homicides in the play.⁸ Once again, English law rules. Watkin notes that homicide law in Shakespeare’s time had undergone a transformation since medieval times. Stated simply, medieval law focused on the legal status of the victim; the more modern view focused on the state of mind of the accused killer.

A. Law of Homicide: The Old Rule

Watkin explains that, under the medieval system, it was no crime to kill felons who fled or resisted arrest, prisoners who assaulted their jailers, highway robbers, burglars who broke into one’s house at night, or members of an unlawful assembly who resisted a justice of the peace’s order to disperse. The common denominator of all these victims is that none was “the King’s lawful subject.” By their actions they had forfeited the law’s protection; therefore, killing them was not a crime.

The medieval system meant that an accidental killing, however, usually *was* a crime. If one were chopping down a tree and an innocent victim happened to walk nearby and be killed by the falling tree, the woodcutter would be prosecuted. The dead person had done nothing to take himself outside the law’s protection, so he was still the king’s lawful subject and killing him was a crime.

Even more perplexing to the modern mind is that, under the old system, killing in self-defense during a sudden brawl was not protected under the law—even if one refrained from killing until his back was to the wall and he had no choice. Why, one might reasonably ask, would it be lawful for a citizen to kill the burglar who breaks

into his home, but not the public brawler who means to kill the citizen?

The answer is that the brawler has not yet committed a crime. Because he has not forfeited the law's protection, he is still the king's lawful subject. Additionally, the law assumed that when a quarrel arose, both parties must be at fault to some degree. A person found to have killed in self-defense, however, could seek, and would usually obtain, a pardon from the king, as provided by the Statute of Gloucester of 1278;⁹ but he had to forfeit his goods to the Crown for depriving the king of one of his lawful subjects.

A burglar, on the other hand, has already committed a crime by breaking into one's home and has thereby lost the law's protection. Killing the burglar was a lawful act even if he had not yet injured anyone or stolen any goods.

B. Law of Homicide: The New Rule

By Shakespeare's time, homicide law had gone through a series of gradual changes so that the legal analysis focused on the killer's state of mind, or *mens rea*, rather than the victim's legal status. In the 17th century, legal scholars, such as Sir Edward Coke (pronounced "Cook"), began to articulate the new state of the common law as it had evolved.

The new definition of murder was best expressed by Coke in his Third Institute, published in 1641: "Murder is when a man . . . unlawfully killeth . . . with malice fore-thought, either expressed by the party, or implied by law . . ." ¹⁰ Coke's definition brilliantly captured the change in the law: the focus was no longer on the victim, but on the defendant; not merely on physical acts, but on the intentions behind them. Indeed, one of the great advances of modern law over medieval law has been modern law's consideration of a defendant's intentions as well as his actions.

When Coke said in his definition that "malice fore-thought" (or "malice aforethought," as it is more commonly termed) could be expressed by the party or implied by law, he meant that the killer could state his intentions or the law could infer intent based on his actions. For example, malice aforethought was assumed in willful poisoning cases¹¹ and incidents of stabbing a victim who had no weapon drawn or had not struck first.¹²

Watkin argues that Shakespeare, who wove the theme of the deceptiveness of appearances into *Hamlet* ("That one may smile, and smile, and be a villain" [1.5.108]), found such legal shortcuts too superficial. As the play demonstrates, a smooth assassin like Claudius or a creative actor like Hamlet could get away with murder, at least for a while, by disguising his intentions.

The new understanding of murder meant that killings in self-defense or by accident were no longer crimes because the killer had no malicious intent. By the time of Coke's writing in the 1600s, juries who found that the defendant had killed in self-defense could simply acquit, and pardon from the king was no longer necessary. Insanity became a complete defense to murder because, as discussed earlier in regard to suicide, an insane person was incapable of forming an intent for which he could be

held responsible.

One might say that murder and manslaughter were distinguished by their hotness or coldness. Murder involved “cold” blood, the murderer having had time to reflect on his action; the punishment was death. Manslaughter was a sudden killing driven by “the heat of the blood kindled by ire,” as Coke said.¹³ Manslaughter was punished by imprisonment for up to a year and branding of the thumb.

Watkin’s article goes on to examine each of the killings in *Hamlet* in light of the changes in the law, demonstrating that Shakespeare had a keen appreciation of the subtleties of the law of homicide as it had developed in his time. This article summarizes several of Watkin’s analyses.

C. Hamlet’s Feigned Madness

Let us look at Hamlet’s “antic disposition” (1.5.172), his feigning madness. Why would he pretend to be insane? In Saxo Grammaticus’s *Amleth*, one of Shakespeare’s sources for the *Hamlet* plot, the young protagonist pretends to be a simpleton in order to appear harmless while he plots his revenge against his uncle.¹⁴ This may be a part of the strategy of Shakespeare’s Hamlet, but Hamlet also reaps legal benefits from his charade—benefits that accrue because of the new state of the law. After all, insanity was a complete defense to murder. By feigning madness, Hamlet would escape all punishment, even forfeiture of goods, for the planned murder of his uncle.

Although Hamlet’s pretended madness never becomes an issue in regard to Claudius’ death, it comes in quite handy when he mistakenly kills Polonius. “What I have done,” Hamlet later says of the killing, “I here proclaim was madness” (5.2.201–03). Gertrude backs up Hamlet’s pretense of madness by telling Claudius that Hamlet, when killing Polonius, was “Mad as the sea and wind when both contend / Which is the mightier” (4.1.7–8). Claudius accepts the fiction and passes it on when he tells Rosencrantz and Guildenstern that “Hamlet in madness hath Polonius slain” (4.1.34). The courtiers would need no further explanation as to why Hamlet is not criminally prosecuted for Polonius’ death.

D. The Rat Behind the Arras

Even if the madness defense hadn’t worked in the killing of Polonius, Hamlet had a backup argument: he stabbed at the arras thinking a rat was behind it. While we know from the text that Hamlet hoped and believed Claudius was behind the arras, he cleverly shouted out, “How now? A rat? / Dead for a ducat, dead!” (3.4.27) as he stabbed, giving himself an excuse for the killing. Because the intent to kill a person is necessary for murder, a man who intends to kill a rat but accidentally kills a person instead is not guilty of murder.¹⁵

The rat-behind-the-arras excuse is a new twist that Shakespeare added to the plot. In the Belleforest version of the Hamlet story in *Histoires Tragiques*,¹⁶ the counselor who eavesdrops on Hamlet’s interview with his mother hides under a quilt; Shakespeare has Polonius, on the other hand, hide behind an arras.¹⁷ One can see that

this makes a difference from a legal standpoint because of the new state of the law. Under the medieval rule, Hamlet's guilt in killing Polonius would have depended on whether Polonius was the "King's lawful subject" at the time of the killing. Clearly, Polonius would qualify as a lawful subject no matter where he hid, and Hamlet would be culpable for the death.

But under the modern rule, Hamlet's guilt depends on his intent. If he attacked a person who was hiding under a quilt, as in the Belleforest version, it would have been difficult to deny that he knew it was a person, not a rat, underneath. When Shakespeare places Polonius behind the arras, however, the rat excuse becomes plausible. One might see the rustling of an arras and assume that a rat, climbing the arras, caused the disturbance. Then one might stab at the arras, only to find that a person, not a rat, was behind it. This would not be murder because there was no evil intent. Thus, Hamlet was fortified with two legal defenses for killing Polonius: insanity and accident. Neither defense would have saved him under the medieval rules.

Could Hamlet have argued his innocence by saying that his killing of Polonius was accidental because he had actually meant to kill Claudius? This would not have worked because of the doctrine of "transferred intent." If one intended to kill a human being but, in the course of attempting the killing, accidentally killed another human, one was still guilty of murder. The unlawful intent transferred to the unintended victim.

Nor could Hamlet have based a plausible defense on a pretense that he thought Polonius was a robber. For that defense to work, he would have to ascertain before the killing that his victim actually *was* a robber. A quick peek behind the arras would have immediately cured him of that notion.

E. Rosencrantz and Guildenstern

One of Claudius' schemes to do away with Hamlet is to send him to England, accompanied by Rosencrantz and Guildenstern, with a written commission authorizing the English authorities to execute Hamlet. The scheme shows Claudius' typical craftiness: by arranging for the killing to occur in another jurisdiction, Claudius ensures that he cannot be tried for it in Denmark.

As we know, Hamlet turned the tables by substituting the order for his death with an order for the deaths of Rosencrantz and Guildenstern. For this act, Hamlet could have used a similar jurisdictional argument to Claudius': as Hamlet wrote the order while at sea, he was outside the jurisdiction of Denmark.

Hamlet could conceivably argue in the alternative that he killed in self-defense, but this is a weaker argument because self-defense usually requires an immediate threat to one's life. Watkin argues that Hamlet's situation subtly highlights the inadequacy of the law of homicide to "accommodate a killing done during the course of a protracted threat to the killer's own life."¹⁸

F. The Duel with Laertes

Claudius conspires with Laertes to kill Hamlet in a fencing match. Claudius suggests that Laertes use an unblunted sword. Laertes goes him one better and offers to put poison on the sword tip. Clearly, this will be a premeditated murder planned in cold blood with malice aforethought. Claudius assures Laertes that it will look like an accident.

But the always-clever Claudius, like Hamlet, has a backup legal justification: killing another as part of a *royally ordained* joust or tournament was not a felony. Since the duel will take place under the auspices of the King, Laertes (and Claudius, his co-conspirator) will have legal cover for their actions.

G. Poison, Poison, Poison

And in case the poisoned sword doesn't do the trick, Claudius has a backup for that as well: serve Hamlet some poisoned wine. Watkin points out that the play employs three of the four types of poisoning that Coke lists in his *Third Institute: gustu*, by taste, as with the poisoned wine; *contactu*, by touching, as with the poisoned sword used on Hamlet, Laertes, and Claudius; and *suppostu*, as with a suppository or the like, in this case, the poison that Claudius pours in his brother's ear before the action of the play begins.¹⁹ Coke declared poisoning to be the most detestable kind of murder.

As for the poisoned wine, it is Gertrude, not Hamlet, who eventually drinks it. Here the principle of transferred intent comes into play. Since Claudius intended a person's death when he poisoned the wine, his malicious intent transfers to unintended victims and he is accountable for any human death that results from the device.

H. Hamlet Kills Claudius

Hamlet kills Claudius after watching his mother die of poisoning and hearing Laertes reveal that Claudius is responsible for Gertrude's death and for the poisonous plot that has fatally wounded both Laertes and Hamlet. By this time, the audience, which also knows about Claudius' killing of his own brother and has been waiting for hours for Hamlet to wreak his vengeance, is likely to consider Hamlet's killing of his uncle long overdue. Watkin argues, however, that the law would not see it that way.

Although Hamlet kills Claudius in what most observers would agree was the "heat of the moment," one must recall that the law necessarily inferred malice aforethought in at least two situations: (1) stabbing a person who has no weapon drawn and (2) willful poisoning. Hamlet kills Claudius by first, stabbing him, although there is no indication that Claudius has drawn a weapon, and second, forcing him to drink poison. Under the law, the only possible verdict is cold-blooded murder,²⁰ although the audience can plainly see that the killing of Claudius was nothing of the kind.

Watkin concludes that "Shakespeare can well be taken to have constructed this outcome as a direct comment on the law's overemphasis on appearances . . ." ²¹

Considering how deftly Shakespeare combined a moment of overwhelming passion with two actions that the law deemed to be cold and calculating, we may agree with Watkin that Shakespeare's irony is deliberate.

I. Oxford and the Law of Homicide

Edward de Vere, the Earl of Oxford, not only studied the law from an early age, he had a personal brush with homicide law at the age of 17. In 1567, he was practicing his fencing moves with Edward Baynam, a tailor, when a third person, Thomas Brincknell, a cook, joined them. We do not know exactly what happened, except that de Vere's sword somehow pierced the cook's femoral artery, killing him within minutes. If de Vere had not already studied the law of homicide, he had reason to do so now.

It seems unlikely that de Vere would have killed the cook with malice aforethought. Possibly, he and the cook quarreled and de Vere struck him in anger, which would have been manslaughter. Perhaps de Vere killed him accidentally in fencing practice, but this seems improbable, given the severity of the wound, which was four inches deep and an inch wide.

Or perhaps the cook attacked de Vere, who killed in self-defense. It is not clear whether the cook was armed. Although the Stabbing Statute was not enacted until 1603–04, it is unlikely that a jury of peers, even in 1567, would have accepted a self-defense argument for the armed killing of an unarmed man.

But whether de Vere's act was premeditated, provoked, accidental, or done in self-defense, he faced a penalty ranging from death (if it were murder) to imprisonment for up to a year (if it were manslaughter) to loss of personal property (if it were accident or self-defense). De Vere escaped all of these through a kind of legal hairsplitting that lawyer and Shakespeare commentator Daniel Kornstein has called "a metaphysical delight."²²

The coroner's inquest found that the cook, who was drunk, "not having God before his eyes, but moved and deceived by diabolic instigation . . . ran and fell upon the point of [the Earl of Oxford's] foil . . . [and] gave himself . . . one fatal stroke . . ."²³ This implausible conclusion made the death entirely the fault of the godless cook and absolved de Vere of any wrongdoing. Surely, it helped that de Vere was an earl and that his guardian, Sir William Cecil (later Lord Burghley), was an extremely powerful man.

De Vere, if he was Shakespeare, may have been satirizing the legal fictions that saved his own neck when he had the gravediggers in Hamlet discuss the rules of self-defense:

Second Clown [Gravedigger]. . . . The crowner hath sat on her, and finds it Christian burial.

First Clown. How can that be, unless she drowned herself in her own defense?

Second Clown. Why, 'tis found so.

First Clown. It must be *se offendendo*, it cannot be else.

The first gravedigger means “*se defendendo*,” or self-defense, not “*se offendendo*,” but here the lower class characters misstate the law, as they usually do in Shakespeare’s plays.²⁴ The idea that one could drown oneself “in self-defense” (presumably to prevent oneself from killing oneself) is as zany a piece of illogic as to think that a man would commit suicide by running into another man’s sword.²⁵ It is also a parody on legal treatises of the time that analyzed suicide by the same formulae as homicide while completely ignoring that in suicide the “murderer” and “victim” were the same person.²⁶

De Vere may also have identified with both Claudius and Hamlet, who use their privileged positions, as well as some clever playacting, to get away with murder. Mark Anderson, a de Vere biographer who posits that de Vere was the man behind the Shakespeare plays, writes: “As with nearly all his crimes and misdemeanors, de Vere’s acknowledgment of his rash and destructive behavior came later in life—in the form of words that are performed today on stages around the world.”²⁷

Watkin notes that some incidents in *Hamlet* “seem to be based on examples contained in discussions of homicide in legal works—for example, Shakespeare’s introduction of the rat-killing pretext for the slaying of Polonius, not to mention the anticipation of Coke’s language and analysis with regard to poisoning . . .” Watkin says that Coke’s analysis “may have been based on contemporary Inns of Court readings and discussions on which Coke later drew.”²⁸

When one considers that Coke’s *Third Institute* was not completed until 1628 nor published until 1641, it is remarkable that the author of *Hamlet* (published in 1603–04) was so well-versed in Coke’s legal analysis of homicide. The playwright must have kept up with the law of homicide as it evolved through the enactment of statutes and the publication of court opinions. Or perhaps he heard readings on the subject at the Inns of Court.

The detailed understanding of law evident in *Hamlet* suggests an author with formal legal training, who understood the nuances of the law and could arrange fact patterns in the play so as to align with the law as it existed in his time. This profile fits what we know of de Vere more closely than it fits what we know of the man from Stratford.

III. Property Law: Hamlet’s Lost Inheritance

Property rights are a subtly recurring theme in *Hamlet*, as J. Anthony Burton demonstrated in an article published in the 2000–2001 *Shakespeare Newsletter*.²⁹ An understanding of English property law during Shakespeare’s time increases our understanding of many of the main characters’ actions and motivations.

A. King Fortinbras’ Lands

As Burton notes, property references run throughout the play, beginning in the first scene when Horatio explains the military threat to Denmark from Norway.

Part of the background of the potential hostilities is that many years before, Hamlet's father, King Hamlet, had agreed to a wager based on a challenge by King Fortinbras of Norway (father of the young Prince Fortinbras who appears in the play). The terms were man-to-man combat to the death, the winner to take all the lands owned by the loser. King Hamlet slew King Fortinbras and assumed ownership of his lands.

Young Fortinbras, whose spirit is now "with divine ambition puff'd" (4.4.49), seeks to exact vengeance for his father's loss of land by attacking Denmark. When Fortinbras' uncle quashes that scheme, the young prince apparently settles on some worthless land in Poland as a substitute target. Having secured the services of some "landless resolute"³⁰ (1.1.103)—possibly some impoverished younger sons who wish to make their fortunes in Fortinbras' army—he gains permission to march through Denmark. Perhaps in recognition of Fortinbras' claims on Denmark, Hamlet gives Fortinbras his "dying voice" (5.2.344) at the end of the play, as events come full circle and Norway reclaims its lost property, and more.

But immediately after Claudius murders King Hamlet, what happens to the lands that King Hamlet won in combat from King Fortinbras, as well as any other lands King Hamlet may have personally owned? Presumably, they would descend by inheritance to his eldest son, Hamlet. Hamlet would not have automatically inherited the crown because, in Denmark, the kingship was an elected position. (This is one of the few points of Danish law, rather than English, that figures into the plot.) Claudius managed, probably through superior political skills and his being at Elsinore when his brother died, to win the election over Hamlet.

The election would not, however, change Hamlet's inheritance rights to lands that his father had owned—lands that belonged to his family and did not go along with the crown. Hamlet should be living comfortably on the income from those lands, but the play suggests that he is living in genteel poverty. "Beggard that I am," he tells Rosencrantz and Guildenstern, "I am even poor in thanks" (2.2.250). When Claudius asks him how he fares, he replies, "Excellent, i' faith, of the chameleon's dish. I eat the air, promise-crammed" (3.2.82–83). This is a reference to the ancient belief that chameleons could live by eating air. Hamlet, a prince, cannot even afford good servants, for he tells Rosencrantz and Guildenstern that he is "most dreadfully attended" (2.2.247).

Hamlet may not be enjoying the income from his father's lands because of certain quirks in property law that could delay an inheritance. Burton argues that Claudius has skillfully manipulated the law so that Claudius, not Hamlet, is benefiting from Hamlet's inheritance and that Claudius' machinations threaten to delay Hamlet's inheritance indefinitely.

B. Gertrude's Dower

Under the Magna Carta, a widow had "dower" rights, which meant that when her husband died she was entitled to a life estate in one-third of the lands that he had owned during his lifetime. A "life estate" meant that the widow would possess the lands during her lifetime but she could not sell them or give them away during her life

or bequeath them to a person of her choice on her death. The widow's third would go to the heir, most often the eldest son, when she died.

After the husband's death, the widow was allowed to remain in her husband's house for 40 days (a period called the "quarantine," after the Italian word for "forty"), during which time her dower, i.e., her life estate in one-third of her husband's lands, would be assigned to her. The heir would take outright possession of the other two-thirds.

But something happened before the 40-day quarantine period was over: Gertrude married Claudius. As Hamlet laments:

Within a month,
Ere yet the salt of most unrighteous tears
Had left the flushing in her galléd eyes,
She married. O, most wicked speed.
(1.2.155–58)

In addition to the disrespect the "o'er hasty marriage" (2.2.57) shows for the memory of Hamlet's father,³¹ it also leaves Hamlet with a legal difficulty. The marriage would give Claudius an arguable claim over Gertrude's lands—not of outright ownership, but of legal control—because, under the law, man and wife were one. Hamlet makes a bitter joke out of this legal principle in this repartee with Claudius:

Hamlet [to Claudius]. Farewell, dear mother.
Claudius. Thy loving father, Hamlet.
Hamlet. My mother. Father and mother is man and wife, man and wife is one flesh—so, my mother.
(4.3.50–51)

In theory, the remarriage should not have been a problem for Hamlet. His father's lands should have vested in him on his father's death, and Hamlet would have had the duty of assigning a third of the lands to Gertrude as her dower.³² But in Shakespeare's time, successful legal actions over property usually involved interference with *possession*, based on the legal maxim, "Possession is nine-tenths of the law."³³ Since Hamlet was in Wittenberg when his father died, he was not in a position to take possession of his lands right away.

Elsinore was at least a 200-mile trip from Wittenberg, some of it over water. When King Hamlet died, it would have taken some time for a messenger to get the news to Hamlet; then Hamlet would have had to make the trek to Elsinore. In the meantime, Gertrude, as the widow, would have had a stronger claim to the late king's property than anyone but Hamlet. As her dower lands had not yet been carved out of the estate, she had a *potential* possessory right to any part of those lands.

Before Hamlet arrived at Elsinore, the crafty Claudius probably wasted no time in sewing up the kingship and cajoling Gertrude into agreeing to marry him. Perhaps he even sent a few of his hired Switzer guards to "safeguard" Hamlet's lands and collect

the feudal rents, on behalf of his queen-to-be and her son, of course. Thus, Claudius might be in *de facto* possession, though not *de jure*,³⁴ of Hamlet's inheritance long before Hamlet arrives at Elsinore to assert possession. This would leave Hamlet, legally, in a weak position: he could not claim that Claudius interfered with his possession because Hamlet never had possession.³⁵

Furthermore, as Burton hypothesizes, Claudius may have made a premarital property settlement with Gertrude giving her a "jointure," a life estate in a predetermined portion of land that she would possess immediately upon Claudius' death. In exchange for the jointure, Gertrude would have waived her dower rights to one-third of Claudius' estate, if he should die before her.³⁶ The existence of a jointure agreement would explain Claudius' reference to Gertrude as a "jointress" (1.2.9), a term that scholars have perhaps been too quick to pass off as merely referring to Gertrude as a joint ruler or joint owner.³⁷ Literally, the word means a "woman who has a jointure."³⁸

Shakespeare's audience would have accepted the idea that Gertrude would trade dower for jointure because widows often had to fight for their dower rights in court, whereas jointure agreements were readily honored.³⁹ But the jointure was usually much less valuable than the dower would have been.⁴⁰ Furthermore, the jointure arrangement would be a signal to Hamlet of legal trickery afoot because Gertrude's waiver of dower in exchange for the jointure would make it easier for Claudius to sell off any lands he might later acquire.⁴¹

Claudius' claim to control, though not ownership, of King Hamlet's still-undivided lands, would have arisen when he married Gertrude. But wouldn't Hamlet's claim, which arose when his father died, precede Claudius'? Not necessarily, as we learn from a 1562 case called *Hales versus Pettit*.

C. *Hales v. Pettit*

The case revolved around the suicide of Sir James Hales, a judge who had drowned himself in 1554. The coroner returned a verdict of *felo de se* (suicide: literally, "felon of himself"). At the time of his death, Hales and his wife Margaret jointly possessed a lease for a term of years to an estate in Kent.

The suicide verdict meant that the lease was forfeit to the monarch, Queen Mary,⁴² and the Queen gave the lease to Cyriac Pettit, who took possession of the land.⁴³ Dame Margaret sued Pettit to recover the lands, claiming Pettit had trespassed. Her attorneys argued, ingeniously, that Sir James could not have killed himself in his lifetime:

the death precedes the forfeiture, for until the death is fully consummate he is not a *felo de se*, for if he had killed another, he should not have been a felon until the other had been dead. And for the same reason he cannot be a *felo de se* until the death of himself be fully had and consummate. For the death precedes the felony both in the one case and in the other, and the death precedes the forfeiture.⁴⁴

In other words, his act of jumping in the river was not suicide at the time the act occurred because no one had died from it at that moment; it did not become suicide, a felony, until he died. But at the exact moment of his death, the estate vested in his wife by right of survivorship. His attainder (the extinguishing of his rights for his committing a felony) did not occur until the coroner declared his death a suicide.

Cyriac Pettit's counsel countered that an act has three parts: the imagination, the resolution, and the perfection, or execution, and that the "doing of the act is the greatest in the judgment of our law, and it is in effect the whole."⁴⁵ The first gravedigger's pronouncement in *Hamlet* that "an act hath three branches—it is to act, to do, to perform" (5.1.8–9) is thus his garbled misstatement of the defense counsel's argument. Sir John Hawkins, Samuel Johnson's lawyer, appears to have been the first, around 1773, to notice that the gravediggers' discussion was a parody of *Hales v. Pettit*.⁴⁶

The court found for Pettit, holding that the forfeiture had "relation" to Sir James' act. In other words, his jumping into the river and the ensuing death and forfeiture were all part of one continuous act:

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 life-time. So that Sir James Hales being alive caused Sir James Hales to die; and the act of the living man was the death of the dead man. And then for this offence it is reasonable to punish the living man who committed the offence, and not the dead man. But how can he be said to be punished alive when the punishment comes after his death? Sir, this can be done no other way but by [divesting] out of him, from the time of the act done in his life which was the cause of his death, the title and property of those things which he had in his life-time.⁴⁷

Because the death by suicide included the illicit act of jumping in the river, any property right that the widow acquired at the moment of Hales' death arose at the same moment as the forfeiture to the Crown as a result of Hales' suicide.

The court held that when claims by the monarch and a subject arise simultaneously, the monarch wins: "in things of an instant the King shall be preferred."⁴⁸ But what does this have to do with *Hamlet v. Claudius*? Doesn't Hamlet's claim, which arose when his father died, precede Claudius' claim, which arose later, when he married Gertrude? Not necessarily.

The *Hales* case is significant not only for the holding about simultaneous claims; it is also important as an example of the doctrine of "relation back," which is still alive and well in modern law.⁴⁹ "Relation back" is a legal fiction that treats an act done at a later time as if it had been done at an earlier time. Thus, retrospectively, Sir James Hales forfeited his lease the moment he threw himself in the water, even

though he hadn't yet died of it and the coroner had not yet pronounced him a suicide.

Could Claudius use this legal fiction to argue that his claim to King Hamlet's lands arose simultaneously with young Hamlet's? Yes, because Claudius' claim ultimately relies on Gertrude's claim. The moment King Hamlet died, Gertrude had a claim to his still-undivided estate through dower, just as Hamlet had a claim through inheritance. When Claudius married Gertrude, he gained the right to make the claim on Gertrude's behalf. Claudius could then "relate back" his claim to the time of King Hamlet's death. Gertrude's claim becomes, retrospectively, the new King's claim from the moment of inception. And, as *Hales* tells us, a king's claim trumps a simultaneous claim by a subject.⁵⁰

D. The Closet Scene: Gertrude's Child and the "Law's Delay"

Claudius' legal tricks do not deny Hamlet's inheritance for all time; they merely delay it. Gertrude's death would effectively end Claudius' claims, and Hamlet would inherit. But, as Burton explains, Claudius could play still another legal trump card: "tenancy by the curtesy." This provision in the law allowed that if Gertrude were to bear a child by Claudius, Claudius would then be entitled to a life estate in Gertrude's lands. In other words, Hamlet's taking of his inheritance could be further postponed even if his mother died. These circumstances give added meaning to Hamlet's fulminations about "the law's delay" (3.1.72) in the "To be, or not to be" soliloquy (3.1.56ff.).

But even more worrisome is the fact that Gertrude, after bearing Claudius a child, would be expendable. Claudius would no longer need her as the basis of his claim to Hamlet's inheritance. Perhaps this explains some of the significance in the mad Ophelia's saying, as she hands out herbs to members of the court, "There's rue for you, and here's some for me" (4.5.178–79). Arden editor Harold Jenkins has suggested that Ophelia speaks this line to Claudius because rue was a symbol of repentance.

Jenkins' reading is plausible, but might Ophelia be giving rue to Gertrude because common rue was thought to induce abortion? A little rue might save Gertrude's life and preserve Hamlet's inheritance at the same time. And perhaps Ophelia keeps some rue because she herself is pregnant, a possibility hinted at in her song about the "maid at your window . . . that out a maid / Never departed more" (4.5.54–55).⁵¹

At any rate, Gertrude's improvidence in marrying Claudius and thereby inadvertently delaying Hamlet's inheritance, is a subtext of the closet scene between Hamlet and Gertrude after the Mousetrap performance. When Hamlet tells her that Claudius killed her husband, she probably sees that Claudius has used her and that her life is in danger. When Hamlet tells her, "go not to my uncle's bed" (3.4.172), she understands that this is to ensure her own safety as well as to honor her late husband's memory.

E. Skull of a Lawyer

John Campbell, Lord Chief Justice of England, said in 1859 that the gravediggers' scene produces "the richest legal ore" in *Hamlet*.⁵² This should be no

surprise to the reader by now, as this legal analysis of *Hamlet* has referred repeatedly to the graveyard scene. It now returns to that locale, where the two overarching themes of death and property reach their symbolic climaxes.

A graveyard is the perfect setting for talk of death, with old skulls being cast about and bodies being buried in the dirt, where they may return to dust. It is coincidentally a perfect setting for talk of property. For what is ownership of land but ownership of the dirt to which we all return? With reminders of death so near at hand, squabbles over property rights seem meaningless. One will soon enough have all the real estate one will ever need.

Death and property are the simultaneous subjects of Hamlet's speech on the "skull of a lawyer." Many theatergoers may be unfamiliar with this speech, or at least less familiar than with the "Alas, poor Yorick!" speech (5.1.148ff.), which follows it by about 60 lines. This speech is often omitted from performances because its many legal terms make it unintelligible to most audiences. But because it is perhaps the most densely legal passage in all of Shakespeare, it is worth understanding. As Hamlet and Horatio stand by the open grave in which the gravedigger is working and singing, the gravedigger tosses out a skull. Hamlet muses upon it:

Why may not that be the skull of a lawyer? Where be his quiddities [subtleties] now, his quillets [evasions], his *cases*, his *tenures*, and his *tricks*? . . . 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 scarcely lie in this box, and must the inheritor himself have no more, ha?

(5.1.78–89, emphasis added)

For years, critics dismissed the "skull of a lawyer" speech as merely a mishmash of random legal terms. J. Anthony Burton, however, shines a spotlight on this previously underappreciated passage and explains how the speech ties in with the theme of lost inheritance that Shakespeare has woven into the plot since the first scene:

The legal terms in this passage . . . all describe elements of collusive lawsuits and procedures commonly used to defeat the rights of heirs in order to facilitate sales of real property by the present owners. In the vocabulary of these actions, a *fine* ("final concord") ended a lawsuit in which the defendant defaulted by prearrangement; it was "final" because it concluded the rights of all interested persons, and not just the parties to the action. The legal record of the *fine* was an *indenture*. The *recovery* (or common recovery, because its most frequent use was in collusive actions) was more expensive and more secure: it required a law suit to proceed through all its stages (with substantial

court fees for each party), upon pleadings which made ownership turn on the existence of a supposed warranty of title by a judgment-proof third party (usually the court bailiff) who was brought in as a witness by a *voucher*, but always failed to appear and testify. When there were multiple entails, fictitious witnesses were vouched in for each one; a *double voucher* added a second layer of protection to the rights acquired by the buyer, and so forth. A *recognizance* was a judicial acknowledgement of debt; and although not a lawsuit, it also lent itself to collusive misuse by placing a priority lien on the lands of the person giving it without requiring any proof that the obligation existed. A *statute* was similar, except that the acknowledgement of debt was not made in a court but before a mayor or chief magistrate. Hamlet's reference to *cases* and *tricks* embraces the entire arsenal of devices for leaving the inheritor with nothing at all.⁵³

As Hamlet says, "and must the inheritor himself have no more, ha?" Claudius' legal shenanigans could mean that Hamlet's grave will be the only land Hamlet ever possesses. One might think that a court would see through Claudius' schemes and award Hamlet's inheritance to him. But this would overestimate the logic and predictability of the legal system: seemingly clear rules were often sidestepped through legal fictions. For example, the Statute *De Donis*⁵⁴ of 1285 expressly required "entailed" estates to remain within the family line. The inheritor could not sell or give away his estate; on his death it had to go to his lineal descendants. But the "fine and recovery" that Hamlet decries in the "skull of a lawyer" speech became a standard legal ruse for getting around the Statute *De Donis* and depriving heirs of their inheritance.

Still, one might ask: how did the litigants who used "fine and recovery" to defeat the rights of inheritors manage to fool the judges? The answer is that they didn't fool them. The judges knew exactly what was going on and were complicit in the deception.⁵⁵ Likewise, Claudius could, through a combination of questionable legal claims, brute force in the form of his guards, the intimidating power of the divinity that "doth hedge a king" (4.5.121), and the blessing of *Hales v. Pettit*, keep any claim by Hamlet tied up in court for years.⁵⁶

F. Shakespeare's Legal Knowledge

As with the law of homicide, the author of *Hamlet* shows a detailed knowledge of the law of property and an ability to weave it subtly into the text of the play. Again, this is evidence of formal legal training. Additionally, the author's knowledge of *Hales v. Pettit* suggests that he was familiar with Law French, the corrupted form of Norman French that was the primary language of the English legal system.⁵⁷

In Shakespeare's day, only two summaries of the *Hales* case included the court's holding regarding simultaneous claims: (1) the handwritten notebooks of the chief judge, Sir James Dyer,⁵⁸ and (2) Edmund Plowden's reports.⁵⁹ Both were written in Law French, a language not known to have been taught in the Stratford grammar

school. Dyer's reports were copied by hand and passed around in legal circles, but it is difficult to imagine how they might have come into the hands of a sometime actor from Stratford. They were finally translated into English and published in the 20th century.

Plowden's Reports were in published form in Shakespeare's time, but still not likely to be read outside of legal circles. Plowden's report on *Hales* is much longer and more legally dense than Dyer's (some sentences in the Plowden report are almost a page long), making it a difficult read for a mind lacking legal training, not to mention knowledge of Law French. Edward de Vere studied law at Gray's Inn, where Sir James Hales had been a member. It is possible that the lawyers there often discussed the *Hales* case, not only for its legal significance, but also for its connection to one of their own. De Vere would have thus been in a better position than the Stratford man to know about the case.

G. Oxford's Lost Inheritance

We have seen evidence in the plays of Shakespeare's legal training.⁶⁰ In addition, Shakespeare's works contain many correlations to Edward de Vere's life.⁶¹ Both add to the considerable body of circumstantial evidence suggesting that de Vere was the real Shakespeare. De Vere has been caricatured as a profligate who misspent his family fortune in a life of luxury, but recent research by Nina Green reveals another side of the story and an additional connection between de Vere's life and *Hamlet*. Much of de Vere's family fortune was siphoned off into the purses of people who were ostensibly protecting him or his family.⁶²

As Green explains, the trouble began in 1548, two years before de Vere was born. The Duke of Somerset, then Protector of the Realm during Edward VI's minority, abused his powerful position to extort most of the family lands from de Vere's father, the 16th Earl of Oxford, under the pretext of a marriage contract for the Earl's daughter.

Since the Oxford estate was entailed, and therefore by law required to remain within the Oxford bloodline,⁶³ Somerset had to resort to some fancy legal footwork to undo the entailment. He forced the 16th Earl to enter into an *indenture* and a *recognizance* binding the Earl to marry his daughter to one of Somerset's sons and to transfer the lands of the Oxford earldom to Somerset by means of a *fine*, i.e., a "final concord" of the kind that concluded collusive lawsuits depriving heirs of their inheritance. Thus, Somerset's actions exemplify the very type of behavior, and employ many of the same legal devices and terminology, that Hamlet rails against in his "skull of a lawyer" speech.

The damage to the Oxford estate was only partially undone by two private Acts of Parliament in 1552, after Somerset fell from power and was beheaded. For reasons that are not entirely clear today, the lands emerged from the legal maneuverings as no longer entailed, but as held by the 16th Earl of Oxford in trust.

Ten years later, in 1562, the 16th Earl died unexpectedly, shortly after having contracted a future marriage for his then twelve-year-old son, Edward de Vere. Because the intended bride was to be one of the Hastings sisters of Sir Robert Dudley's wife's

family, the 16th Earl appointed Dudley (later Earl of Leicester, and Queen Elizabeth's longtime favorite and reputed lover) as one of three trustees who would hold the lands of the Oxford estate in trust. The 16th Earl also named Dudley as a "supervisor" of his estate under a will that he wrote only five days before his death.

Dudley's appointments as trustee and supervisor left him with enormous power over the estate of Edward de Vere, who was now the 17th Earl of Oxford, but a ward of the Queen until age 21. Dudley was not rich at the time, but the 16th Earl's death and Dudley's positions as trustee and supervisor gave Queen Elizabeth an excuse to grant Dudley the Oxford lands during de Vere's wardship.

Green details how Elizabeth gave the predatory Dudley more power over the Oxford estate than the law allowed. Dudley quickly rose in prominence, becoming the Earl of Leicester in 1564. De Vere's lands appear to have been mismanaged under Leicester's stewardship, and the Queen repeatedly favored Leicester's financial interests over de Vere's.

An anonymous book, later known as *Leicester's Commonwealth*, was published in 1584, accusing Leicester of being an expert poisoner with designs on the crown. Might Leicester thus be a partial model for King Claudius, who poisons his brother to gain the crown? Is it possible that Leicester poisoned the 16th Earl of Oxford for his lands? "A poisons him i' th' garden for his estate" (3.3.248), as Hamlet says during the Mousetrap performance. Note that Hamlet says, "estate," not "crown" or "queen." We will probably never know the truth about the 16th Earl's death; but, as Green notes, if de Vere even suspected Leicester of having a hand in his father's death, casting Leicester as the rapacious, poisoning villain in the greatest play of all time would be a suitable revenge. What is certain is that Leicester spoiled de Vere's inheritance, just as Claudius usurped Hamlet's.

And if there is something of Leicester in Claudius, there may be something of Queen Elizabeth in Gertrude.⁶⁴ When the twelve-year-old Edward de Vere became the Queen's ward in 1562, her legal position towards him was analogous to that of a mother to a son. A mother would be expected to do all she could to preserve her son's inheritance, but the doting Queen was so eager to advance Leicester that she was blind to de Vere's well-being.

Similarly, Gertrude rushed into a marriage with the smooth-talking Claudius, almost oblivious to the fact that her hasty marriage seriously jeopardized Hamlet's hopes of inheritance. Perhaps the closet scene, in which Hamlet turns Gertrude's eyes into her "very soul" (3.4.95), is de Vere's fictionalization of the frank talk he always wanted to have with Queen Elizabeth ("Mother, you have my father much offended" [3.4.10]), but never could because his advancement depended so much on her good favor.

IV. Hamlet's Imperfect Justice

Legal scholars have studied *Hamlet* not only for its understanding of substantive law; they have also considered its implications regarding the broader issues of law and justice. Daniel Kornstein and Richard Posner, for example, have analyzed *Hamlet* as

an instance of revenge literature. Kornstein notes that the law may benefit society as a way of channeling the passion of revenge, which might otherwise go unchecked. He cites Francis Bacon, who said, "Revenge is a kind of wild justice, which the more man's nature runs to, the more ought law to weed it out."⁶⁵

Kornstein is one of the few commentators to suggest that Hamlet's delay in avenging his father's death is not a sign of cowardice or indecisiveness, but rather a noble sign of resistance to the primitive urge for revenge. Hamlet should elicit our respect because he does not sweep to his revenge in the unquestioning way that Laertes and Fortinbras pursue theirs. "The outcome of Hamlet's war with the primitive moral code is less important than the war itself," writes Kornstein. "The crucial point is that Hamlet was won to the side of violence only after a long inner struggle."⁶⁶

Richard Posner, a judge of the U.S. Court of Appeals and a leading light of the "law and economics" discipline, notes that private revenge is not a cost-effective system. The net benefits of exacting revenge seldom outweigh the costs of time and effort spent on it, not to mention the increased chance that the friends and family of the object of one's revenge will retaliate against the revenger.

Posner notes that there can be no better illustration of the costliness of revenge than the unnecessary deaths of so many more-or-less good people in *Hamlet*. Although Claudius says, "Revenge should have no bounds" (4.7.133), the play demonstrates that it should. Posner argues that *Hamlet* represents Elizabethans' ambivalence toward revenge, based on the New Testament's rejection of it. "But if so sympathetic, so ultimately admirable a character as I think we are intended to find Hamlet . . . cannot negotiate the shoals of a revenge culture, it tells us a lot about such a culture."⁶⁷

Both Kornstein and Posner find a lawyer-like quality in Hamlet's reflectiveness, his ability to see both sides of an issue, a trait found in outstanding legal minds. Posner sees the "To be, or not to be" soliloquy as epitomizing "the mind in equipoise."⁶⁸ Like a good lawyer, Hamlet does not merely accept the Ghost's word that Claudius killed his father: he seeks additional evidence.

Kenji Yoshino, a professor at New York University Law School, sees Hamlet's attempt to corroborate the Ghost's story as part of Hamlet's intellectual commitment to "perfect justice."⁶⁹ Yoshino makes Hamlet's delay in exacting revenge intelligible by pointing out that there are really two delays, both attributable to Hamlet's quest for perfect justice.

First comes the guilt phase, in which Hamlet must convince himself of the Ghost's truthfulness. Elizabethan audiences would have been instinctively skeptical of any ghost, knowing it might be a manifestation of the devil. Hamlet finds Claudius guilty by the evidence of his reaction to the Mousetrap performance. So far, so good. Hamlet knows he will not be taking revenge on an innocent man.

Next comes the punishment phase. But here again, Hamlet wants it to be perfect: the punishment must exactly match the crime. Hamlet forgoes the chance of killing Claudius at his prayers because Claudius, who had sent Hamlet's father to purgatory, would then be sent to heaven. As Yoshino says, "Perfect justice requires not just a life for a life, but a soul for a soul."⁷⁰

Hamlet's perfect justice comes at the end, as Gertrude dies and Laertes reveals

Claudius' treachery. Knowing his own death is near, Hamlet must act immediately. By stabbing Claudius and then making him drink poison, Hamlet achieves poetic justice in having Claudius die by the same means as himself (poisoned sword) and Gertrude (poisoned wine), while ensuring that Claudius will not be saying any prayers that might get him into heaven. Because the poisoned sword and wine were Claudius' own traps for Hamlet, the poetic justice is all the more complete, as Claudius is "Hoist with his own petar[d]" (3.4.222).

But Hamlet's "perfect" justice comes at great cost: the many deaths, including Hamlet's, that would not have occurred if he had acted more swiftly. Yoshino criticizes Hamlet for adhering so stubbornly to his intellectual vision that he loses sight of the consequences to others. Hamlet's wild justice is a warning to all that revenge is never so sweet in the tasting as in the anticipation.

Conclusion

Laurence Olivier said of *Hamlet*, "You can play it and play it as many times as the opportunity occurs and still not get to the bottom of its box of wonders."⁷¹ This analysis has attempted to show that, by exploring the rich legal ore in *Hamlet*, we may better understand the great debt that this wonder of a play owes to the subject of law. But if *Hamlet* can inspire legal scholars such as those cited here to consider the deeper meanings of law and justice, then it is a debt that *Hamlet* continues to repay.

Endnotes

- ¹ See, e.g., Ramon Jiménez, “The Case for Oxford Revisited,” *The Oxfordian*, 11 (2009): 45–64, <http://shakespeareoxfordsociety.wordpress.com/2011/03/08from-the-oxfordian-excellent-article-summarizing-the-case-for-oxford-as-shakespeare-now-available-online/>; Mark Anderson, *“Shakespeare” by Another Name: The Life of Edward de Vere, Earl of Oxford, the Man Who Was Shakespeare* (New York: Gotham Books, 2005); Joseph Sobran, *Alias Shakespeare: Solving the Greatest Literary Mystery of All Time* (New York: Free Press, 1997); Richard F. Whalen, *Shakespeare—Who Was He? The Oxford Challenge to the Bard of Avon* (Westport, CT: Praeger, 1994); Charlton Ogburn, *The Mysterious William Shakespeare: the Myth and the Reality* (New York: Dodd, Mead & Co., 1984); J. Thomas Looney, *“Shakespeare” Identified in Edward de Vere, the Seventeenth Earl of Oxford* (New York: Frederick A. Stokes Co., 1920).
- ² R.S. Guernsey, *Ecclesiastical Law in Hamlet: The Burial of Ophelia* (New York: Brentano Bros., 1885), 5.
- ³ Quotations from *Hamlet* are from the soon-to-be-published Oxfordian Shakespeare Series edition, Jack Shuttleworth, editor (Truro, MA: Horatio Editions, 2012). A condensed version of this article appears in the Oxfordian edition.
- ⁴ The English antiquarian, Thomas Hearne (1678–1735), left orders that his grave be made “straight” east and west, by a compass. T.F. Thiselton Dyer, *Folk-lore of Shakespeare* (London: Griffith & Farran, 1883), 359.
- ⁵ Samuel Johnson interpreted “straight” as east–west in his 1765 edition of *Hamlet*. Many modern editions define “straight” merely as “straightaway,” “immediately,” or the like.
- ⁶ Guernsey, 43–44.
- ⁷ Guernsey, 45.
- ⁸ Thomas Glyn Watkin, “*Hamlet* and the Law of Homicide,” *Law Quarterly Review*, 100 (1984), 282–310.
- ⁹ 6 Edw. I, c. 9 (1278).
- ¹⁰ Edward Coke, *Third Institute* (London, 1641), 47.
- ¹¹ 1 Edw. VI, c. 12 (1547) (“[A]ll willful killing by poisoning of any person or persons . . . shall be adjudged, taken, and deemed willful murder of malice prepensed

[aforethought].”) (spelling modernized).

- ¹² 1 Jac. I, c. 8 (1603–04) (“[E]very person . . . which . . . shall stab or thrust any person or persons that hath not then any weapon drawn, or that hath not then first stricken the party which shall so stab or thrust, so as the person or persons so stabbed or thrust shall thereof die . . . although it cannot be proved that the same was done of malice forethought, yet the party so offending, and being thereof convicted . . . shall . . . suffer Death as in case of Willful Murder.”) (spelling modernized).
- ¹³ Coke, 55.
- ¹⁴ Saxo (Grammaticus), “Amleth, Prince of Denmark,” in *The Danish History of Saxo Grammaticus* (c. 1185), trans. Oliver Elton (London: David Nutt, 1894).
- ¹⁵ As legal commentator William Lambard wrote, “And if a man lay poison for rats, and another taketh it unawares, and die thereof, this is not any ways to be laid to the other’s charge.” *Eirenarcha* (London, 1581), 218, quoted in Watkin, 300 (spelling modernized).
- ¹⁶ François Belleforest, “The Hystorie of Hamblet” in *Histoires Tragiques* (1570), trans. anon (London, 1608).
- ¹⁷ In Belleforest’s French version (1570), the counselor hid under a quilt; in Saxo’s Danish version (c. 1185), he hid in some straw. The anonymous English translator of Belleforest, in 1608, modified the story to follow Shakespeare’s version (1603–04) by placing the counselor behind an arras and having Hamlet cry, “A rat! a rat!” Thus, the placing of Polonius behind an arras appears to be Shakespeare’s original device. Israel Gollancz, *The Sources of Hamlet* (London: Oxford University Press, 1926), 319–20.
- ¹⁸ Watkin, 309.
- ¹⁹ Coke’s fourth type of poisoning was “*anhelitu*, by taking in of breath, as by a poisonous perfume” (Coke, 52).
- ²⁰ Members of the court cry out that Hamlet is guilty of treason for killing the King, but they are unaware that Claudius himself was a traitor for killing his brother, the previous king. Hamlet could have argued that killing a traitor is not treason.
- ²¹ Watkin, 307.
- ²² Daniel J. Kornstein, *Kill All the Lawyers? Shakespeare’s Legal Appeal* (Princeton: Princeton Univ. Press, 1994), 104.
- ²³ The National Archives KB 9/619, Part 1, Item 13 (trans. Nina Green).
- ²⁴ In a sense, the gravedigger backs into the truth of the matter because suicide is in fact self-offense.
- ²⁵ In Shakespeare’s *Julius Caesar* (5.5), Brutus commits suicide by running on his own sword—held, at Brutus’s request, by Strato. But Brutus, in defeat, was acting on his Roman sense of honor. We have no reason to believe that Brincknell was acting on such motives.
- ²⁶ Watkin, 291.

²⁷ Anderson, 37.

²⁸ Watkin, 310.

²⁹ J. Anthony Burton, "An Unrecognized Theme in *Hamlet*: Lost Inheritance and Claudius' Marriage to Gertrude," *The Shakespeare Newsletter*, 50 (2000–2001): 71–106.

³⁰ In keeping with an awareness of the ubiquity of property themes in the play, the Oxfordian edition follows Burton and others in preferring the First Folio's "landless" to the Second Quarto's "lawless."

³¹ Audiences in Shakespeare's day would have found Gertrude's behavior shocking: widows were expected to mourn their husbands for at least a year. Carla Spivack, "The Woman Will Be Out: A New Look at the Law In *Hamlet*," *Yale Journal of Law and the Humanities*, 20 (2008), 45.

³² C.C. Langdell, "Classification of Rights and Wrongs," *Harvard Law Review*, 13 (1900): 544 ("Another ancient instance is the duty imposed by the common law upon the heir of a deceased person to assign dower to the widow of the latter. Here, again, the enforcement of this duty was the widow's only resource, as the title to all the land of which her husband died seized vested in the heir, both at law and in equity.").

³³ Burton, "An Unrecognized Theme in *Hamlet*," 82, note 17.

³⁴ "*De facto*" means, "Actual; existing in fact; having effect though not formally or legally recognized;" "*de jure*" means, "Existing by right or according to law." *Black's Law Dictionary*, 9th ed. (St. Paul: West Publ., 2009), 479, 490.

³⁵ Possession is one of the most important, but also one of the most ambiguous concepts in law. "In common speech a man is said to possess . . . anything of which he has the apparent control, or from the use of which he has the apparent power of excluding others." Possession does not necessarily coincide with legal title or ownership. Frederick Pollock and Robert Samuel Wright, *An Essay on Possession in the Common Law* (Oxford: Clarendon Press, 1888), 1–2.

³⁶ The Statute of Uses, 27 Hen. VIII, c. 10 (1535), required waiver of dower in exchange for a jointure.

³⁷ Burton, "An Unrecognized Theme in *Hamlet*," 104, notes 7, 8.

³⁸ *Black's Law Dictionary*, 915.

³⁹ Sue Sheridan Walker, "Litigation as Personal Quest: Suing for Dower in the Royal Courts, circa 1272–1350," in *Wife and Widow in Medieval England*, ed. Sue Sheridan Walker (Ann Arbor: Univ. of Mich. Press, 1993), 81–108; Eileen Spring, *Law, Land, & Family: Aristocratic Inheritance in England, 1300 to 1800* (Chapel Hill: Univ. of N.C. Press, 1993), 49.

⁴⁰ After the Statute of Uses (1535), the jointure was usually calculated so as to be worth 10% to 20% of the value of the marriage portion, i.e., the wealth that the woman brought to the marriage from her own family. The value of the husband's lands, which could be great, dropped out of the equation. Spring, 49–58. A woman who accepted a jointure would know at the time of marriage

exactly which lands would comprise her jointure. If she took dower instead, she couldn't be sure which lands she would get until after her husband's death. Even then, she might have to go to court to get her dower. Consequently, a woman was often willing to trade the potentially valuable, but uncertain, dower for the less valuable, but known, jointure.

- ⁴¹ A widow's dower rights were interpreted to include a claim to one-third of the lands her husband owned during his life, *even lands he had sold*. Janet Senderowitz Loengard, "Rationabilis Dos: Magna Carta and the Widow's 'Fair Share' in the Earlier Thirteenth Century," in *Wife and Widow in Medieval England*, ed. Walker, 62–68. Buyers were therefore hesitant to buy lands that might later be subject to a widow's dower claim. But if the wife had already waived her dower rights, buyers could purchase with greater peace of mind. Spring, 48–49.
- ⁴² Note that the penalty for suicide was forfeiture of chattels, i.e., goods, not land. But Hales did not own the land in *fee simple* (i.e., outright ownership), but rather leased it. A lease was considered a *chattel real*, which was inferior to a real property interest. Thus, it was subject to forfeiture along with other "chattels."
- ⁴³ Spivack argues that Ophelia's burial represents an inversion of the *Hales* case: whereas in *Hales*, a male's suicide leads to his forfeiture of land to a female monarch, Ophelia's suicide and burial "allow Hamlet to reclaim his kingdom and identity through a symbolic forfeit of land by the female Ophelia." Spivack, 35, 58–60.
- ⁴⁴ *Hales v. Petit*, 1 Plowden 253, 258, 75 Eng. Rep. 387, 395 (C.B. 1562).
- ⁴⁵ *Hales v. Petit*, 1 Plowden 253, 259, 75 Eng. Rep. 387, 397 (C.B. 1562).
- ⁴⁶ Burton, "An Unrecognized Theme in *Hamlet*," 71. Shakespeare satirizes the lawyers' arguments and the court's reasoning in the first gravedigger's further explanation: "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 [ergo], he that is not guilty of his own death shortens not his own life." (5.1.12–15).
- ⁴⁷ *Hales v. Petit*, 1 Plowden 253, 262, 75 Eng. Rep. 387, 401 (C.B. 1562).
- ⁴⁸ *Hales v. Petit*, 1 Plowden 253, 264, 75 Eng. Rep. 387, 404 (C.B. 1562).
- ⁴⁹ For example, Federal Rule of Civil Procedure 15(c), allows that an amended pleading may be treated as if filed at the same time as the original pleading, even if the amended pleading is filed after the statute of limitations has passed.
- ⁵⁰ My analysis diverges here from my earlier interpretation in "Could Shakespeare Think Like a Lawyer? How Inheritance Law Issues in *Hamlet* May Shed Light on the Authorship Question," *University of Miami Law Review*, 57 (2003): 377–428, and from Burton's interpretation, both of which posit that Claudius' and Hamlet's claims arise when Gertrude marries Claudius. I believe my current interpretation is more in line with English custom and law. See Langdell, *supra*, note 32.
- ⁵¹ Spivack, 52–53.

- ⁵² John Lord Campbell, *Shakespeare's Legal Acquirements Considered* (New York: D. Appleton and Co., 1859), 104.
- ⁵³ Burton, "An Unrecognized Theme in *Hamlet*," 104 (emphasis added).
- ⁵⁴ 13 Edw. I, c. 1 (1285).
- ⁵⁵ Thomas F. Bergin and Paul G. Haskell, *Preface to Estates in Land and Future Interests*, 2nd ed. (Brooklyn: Foundation Press, 1984), 31–32.
- ⁵⁶ In a separate article, Burton discusses Laertes' concerns that Claudius may be attempting to usurp Laertes' inheritance as well as Hamlet's. J. Anthony Burton, "Laertes's Rebellion as a Defense of His Inheritance: Further Aspects of Inheritance Law in *Hamlet*," *Shakespeare Newsletter*, 52 (2002): 60.
- ⁵⁷ *Black's Law Dictionary*, 964.
- ⁵⁸ *Hales v. Petyt* (1562), *I Reports from the Lost Notebooks of Sir James Dyer* 72, ed. J.H. Baker (London: Selden Society, 1994).
- ⁵⁹ *Hales v. Petit*, 1 Plowden 253, 75 Eng. Rep. 387 (C.B. 1562).
- ⁶⁰ Regnier, "Could Shakespeare Think Like a Lawyer?" 405–28.
- ⁶¹ See generally, Anderson; see also Sobran, 181–204; Whalen, 85–94, 103–12.
- ⁶² Nina Green, "The Fall of the House of Oxford," *Brief Chronicles I* (2009), 41–95.
- ⁶³ Specifically, by the aforementioned Statute *De Donis*, 13 Edw. I, c. 1 (1285).
- ⁶⁴ See Spivack, 37–40, 44–52, for extensive parallels between Gertrude and Queen Elizabeth.
- ⁶⁵ Kornstein, 94, quoting Bacon, "Of Revenge," in *Essays*, 18.
- ⁶⁶ Kornstein, 95.
- ⁶⁷ Richard A. Posner, *Law and Literature* (Cambridge: Harvard Univ. Press, rev. 1998), 84.
- ⁶⁸ Posner, 83.
- ⁶⁹ Kenji Yoshino, *A Thousand Times More Fair: What Shakespeare's Plays Teach Us About Justice* (New York: HarperCollins, 2011), 185–86.
- ⁷⁰ Yoshino, 201.
- ⁷¹ Laurence Olivier, *On Acting* (New York: Simon & Schuster, 1986), 76–77.