

WHAT SHAKESPEARE TEACHES US ABOUT LAW, POWER, AND PEOPLE*

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Abstract

*This keynote address explores what Shakespeare's plays reveal about the relationship between law, power, and ordinary people. It takes as its starting point the infamous line "the first thing we do, let's kill all the lawyers" from Henry VI, Part 2. The address examines the multiple, often contradictory, interpretations of Dick the Butcher's exhortation, as a critique of lawyers serving the powerful, as an implicit compliment recognising lawyers as guardians against tyranny, and as a broader condemnation of a legal order already perverted by the ruling classes. Drawing on this scene alongside other plays including Henry IV, Henry V, Macbeth, Richard III, and The Merchant of Venice, the address argues that in Shakespeare's world, law and power are inseparably linked in that those who seize power illegitimately must first confront or dismantle the law, and those who disregard it entirely meet inglorious ends. The discussion extends to the judiciary's precarious authority, contrasting Shakespeare's depiction of judicial legitimacy with modern reflections from Lord Atkin's dissent in *Liversidge v Anderson* and Justice Stephen Breyer's writing on judicial power, before turning to contemporary attacks on judicial independence amid rising populism. A closer reading of *The Merchant of Venice* further interrogates the tension between the letter and spirit of the law, particularly through Portia's legalistic triumph over Shylock. The address concludes that Shakespeare's enduring relevance lies not merely in his treatment of law or power, but in his unflinching portrayal of people, and the peril of ignoring what happens when law ceases to serve them.*

Keywords: Relationship between law and power; Shakespeare; Macbeth; The Merchant of Venice; Judicial Legitimacy

I INTRODUCTION

When I was invited to deliver this keynote address in conjunction with the Law and Literature undergraduate course taught at the Universiti Malaya's Faculty of Law, my initial reaction was one of hesitation. Not that I do not enjoy Shakespeare; in fact, I am fascinated by the richness of his work. But to analyse the multi-layered poetic language of early modern English and the complex political and cultural contexts of the Tudor and Stuart eras in which his plays were set, would surely be an intimidating exercise!

However, once I overcame my initial misgivings, I surrendered to Shakespeare's allure and magnificence. Discerning or not, a reasonable reader will ultimately and truly understand what makes Shakespeare so compelling to countless people across the barriers of time and cultures, and even languages. As literary critic and unabashed Shakespeare enthusiast Harold Bloom put it: 'If any author has become a mortal god, it must be Shakespeare'.¹ In foreword to a collection of essays paying tribute to Shakespeare, Bloom explained the Bard's appeal as follows: "Who else has 'perfected expressions of experience and broadened and defined the horizons of human possibility' to influence so many other great writers?"²

To add to Bloom's point, Shakespeare's sway goes beyond literary greats and is arguably universal in his appeal. His many plays and sonnets have become so much a part of our collective consciousness that it is not surprising to hear how he resonates with people from different cultures, and social

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¹ Harold Bloom, *Shakespeare: The Invention of the Human* (Riverhead Books, 1993) 3.

² Harold Bloom, 'Foreword: Who Else is There?' in Susannah Carson (ed), *Living with Shakespeare: Essays by Actors, Writers, and Directors* (Vintage Books, 2013) vii.

classes.³

One would not be far off the mark in saying that Shakespeare has a special appeal with those of us who are in the legal profession. From my time as a student, through my time in the legal and judicial services, and then to the Malaysian bench, Shakespeare has been a constant influence, as some of my judgments may reveal.⁴ I am not alone, of course. References to Shakespeare rank on top of the list of literary allusions “cited” in judgments of the US Supreme Court, for example.⁵

After I got over my initial hesitation, my next reaction was amusement at the title of today’s seminar, ‘The first thing we do, let’s kill all the lawyers’.⁶ It is an altogether familiar line that has been bandied about in lawyer jokes throughout the ages, almost always quoted outside the context of the play from which it is taken.

However, the humour has a sting in repeating such a violent line, which is uttered by a fittingly named character Dick the Butcher. This line is interjected in the middle of a comic scene in *Henry VI Part 2* when populist rebel leader Jack Cade lists all his so-called noble qualities in justifying his plans to overthrow the monarchy and install himself as leader. Shakespeare obviously presents Cade as a comical figure – a working-class man with pretensions of nobility. When he is dispatched off later in Act 4, Shakespeare gives him a humiliating death: run through by a sword while starving and hiding out in someone’s garden. The sting though is in what Shakespeare presents in this scene: unlettered citizens from the underclass who need a target to blame for their problems, and they find it among those who can read and write. To them, the law is part of their oppression, as are the educated classes who subject them to this oppressive law.

However, we also know that Shakespeare did not like mobs, famously depicting the capriciousness of the Roman audience at Julius Caesar’s funeral. They were easily swayed by Mark Antony’s rhetorical tricks so that they turned against Brutus and his measured reasoning. As they went on a vengeful rampage, one remembers the scene when they mistook a poet for one of the

³ A recent example is the 2023 film *Sing Sing*, a film based on the experiences of men incarcerated in the maximum security prison Sing Sing, and their participation in the Rehabilitation Through the Arts programme there, heavily influenced by Shakespeare’s plays *A Midsummer Night’s Dream*, *King Lear*, and *Hamlet*.

⁴ For example, even as a Judicial Commissioner, I felt compelled to allude to *Othello* in a divorce petition case, *Leong Sam Moy v Low Chee Thiam* [1997] 2 CLJ Supp 212, 216.

⁵ Scott Dodson and Ami Dodson, ‘Literary Justice’ (2015) 18 *Green Bag* 2d 429, 430.

⁶ William Shakespeare, *2 Henry VI*, 4.2.75, Barbara Mowat, Paul Werstine, Michael Poston, Rebecca Niles, eds (Washington, DC: Folger Shakespeare Library, n.d.), (accessed 7 July 2025) <<https://www.folger.edu/explore/shakespeares-works/henry-vi-part-2/read/4/2/>>.

conspirators. When this poet Cinna pointed out that he was not Cinna the conspirator, the mob responded, ‘Tear him for his bad verses.’ Just as Shakespeare injects comedy into the horror of mob violence here, he does the same in the scene we saw just now, as Jack Cade summarily sentences the clerk of Chatham to death for the crime of being able to read and write.

It is in how Shakespeare depicts this breakdown of the rule of law that we should look for the right context of this infamous quote about killing all the lawyers. Dick the Butcher’s rabble-rousing call has been interpreted in many different ways by many different people, and the multiple interpretations underscore the central point - that the statement’s meaning is inherently open to multiple perspectives.

II LET’S KILL ALL THE LAWYERS (IN CONTEXT)

Any attempt to contextualise Dick the Butcher’s incendiary proposal has to begin with locating it within the play, which – despite the comic elements in this scene – has been described as a dark and angry play, even by Elizabethan standards.⁷ The eponymous Henry VI here is the weak and ineffectual son of Henry V, who was immortalised by Shakespeare as the greatest of England’s warrior kings. The sire’s famous St Crispin Day speech to rally his men before facing the French in the terribly one-sided battle of Agincourt has been quoted through the centuries by other military leaders and even in television and film:⁸

From this day to the ending of the world,
But we in it shall be remember’d;
We few, we happy few, we band of brothers;
For he to-day that sheds his blood with me
Shall be my brother. (4.3.60-64)⁹

For Shakespeare, Henry V’s power and legitimacy came not just from the crown he wore, but from his ability to convince his subjects that he was one of them. He fought and bled together with his outnumbered English army and vanquished the French against the odds. Suffice it to say, Shakespeare does not cover the son Henry VI with much glory or even competence in his handling of feuding nobles and restless citizens. As a weak king, Henry VI allows England

⁷ Chris Fitter, ‘Emergent Shakespeare and the Politics of Protest: ‘2 Henry VI’ in Historical Contexts’ (2005) 72(1) *ELH* 129, 130.

⁸ For example, the critically acclaimed 2001 miniseries *Band of Brothers* that was set in World War II and produced by Steven Spielberg and Tom Hanks.

⁹ William Shakespeare, *Henry V*, Barbara Mowat, Paul Werstine, Michael Poston, Rebecca Niles, eds (Washington, DC: Folger Shakespeare Library, n.d.), (accessed 7 July 2025) <<https://www.folger.edu/explore/shakespeares-works/henry-v/read/4/3/>>.

to collapse into anarchy and plunge close to civil war – and the short-lived Jack Cade rebellion depicts this effectively on stage. While there really was a Jack Cade in English history, Shakespeare's comic version of the rebel leader is someone who is made use of by the more powerful and opportunistic Richard Plantagenet, Duke of York to undermine Henry VI's rule. For Shakespeare, the ultimate blame is on the aristocrats who are eager to ride on popular unrest for their own ambitions.¹⁰ In the play, the Duke of York acknowledges that he has 'seduced a headstrong Kentishman/ John Cade...To make commotion...' (3.1.355-59).

In his 1994 book ironically titled *Kill All The Lawyers*, American lawyer Daniel Kornstein presents three possible interpretations of Dick the Butcher's infamous exhortation. First, that it is a critique of lawyers as a profession associated with the powerful and wealthy 'who could afford to retain them' rather than with 'the poor and weak'.¹¹ This demonisation of the educated classes – whether lawyers or even the unfortunate clerk of Chatham – is a common enough 'us-against-them' trope that is used by populist politicians even today to get support from the 'poorly educated'.¹²

There is also the general antipathy that laypersons have towards unethical lawyers who use the law to delay or deny justice, especially to vulnerable people. As Kornstein puts it: 'Many upright citizens, wearied by what Hamlet called "the law's delay" or caught in the intricacies of legal red tape, must have bitterly echoed Dick the Butcher's sentiment through clenched teeth at one time or another'.¹³ In any case, from one's personal experience when sitting in the High Court, Court of Appeal and Federal Court, there were moments when particularly irked by counsel, the quote readily came to my mind. But then of course one is trained to manifest exquisite propriety and decorum on the bench.

The second possible inference is that the line is actually complimentary towards lawyers. One has to look at the context of why this line was uttered in the first place. Dick says it immediately in response to John Cade's expressed plans for when he takes over as king. This allows for us to reasonably interpret this to mean that in order to illegally seize power, one must first get rid of lawyers as the gatekeepers of law. In support, Kornstein cites US Supreme

¹⁰ David Bevington, 'Shakespeare on Civil and Dynastic Wars' in David Loewenstein and Paul Stevens (eds), *The Cambridge Companion to Shakespeare and War* (Cambridge University Press, 2021) 39.

¹¹ Daniel J. Kornstein, *Kill All The Lawyers?: Shakespeare's Legal Appeal* (Princeton University Press, 1994) 26.

¹² "I love the poorly educated" was uttered by then US presidential candidate Donald Trump in a February 2016 campaign speech in Nevada. See Melissa Fares and Gina Cherelus, 'Trump loves 'the poorly educated' ... and social media clamors' *Reuters* (online, 25 February 2016) <<https://www.reuters.com/article/world/trump-loves-the-poorly-educated-and-social-media-clamors-idUSKCN0VX2DE/>>.

¹³ Kornstein (n 11) 26.

Court Justice John Paul Stevens' dissent in a 1985 case. In underscoring a point about the absolute constitutional right for a defendant to have independent counsel, Justice Stevens added a lengthy footnote explaining that he interpreted Dick the Butcher's line as spoken by someone unfriendly towards democracy and liberty: 'As a careful reading of that text will reveal, Shakespeare insightfully realised that disposing of lawyers is a step in the direction of a totalitarian form of government.'¹⁴

The third meaning posited by Kornstein is that the quote reflects a criticism of 'perverted law'. Even before Jack Cade comes into the picture, Shakespeare presents an England where the rule of law is already subverted by the ruling classes. Kornstein points out how earlier in the play, the Duke of Gloucester, whom he claims symbolises the rule of law, is killed off after being unjustly accused by Henry VI's jealous advisors.¹⁵ In fact, the 'law' dominates the first half of the play, famously with the exchange between the king and Gloucester in Act 1 Scene 3. Earlier in the same scene, Gloucester is warned that his inflexible commitment to the rule of law would be his undoing.

III SHAKESPEARE ON POWER, THE LAW AND JUDICIARY

The point one can summarise from these possible interpretations is that in Shakespeare's world, power and the law are inextricably linked for better or for worse. To effectively seize or assert power, no king, executive, rebel or army can ignore the law, even if it is to first recognise its existence before destroying or dismissing it.

For example, in a state of anarchy, the law is one of the first things dismantled, and in this, 'the lawyers' to whom Dick the Butcher referred are the personification of the legal order. In this context, we may also include the judiciary in this legal order that is targeted for dismantling.

If it is a grab for power, whether in a rebellion or military coup or war, then the law is usually the first to be suspended or silenced in the name of some other expedient 'law' of political necessity. We remember Lord Atkin's dissent in *Liversidge v Anderson* in 1941, where he pushed back against the suspension of legally guaranteed rights in times of war. He alluded to Cicero's maxim 'In times of war, law falls silent' (*inter arma enim silent leges*). In this case, it was a matter of detention without trial under wartime emergency powers. His Lordship said:

I view with apprehension the attitude of judges who on a mere question of construction when face to face with claims involving the liberty of the

¹⁴ *Walters v Radiation Survivors*, 473 US 305, 371, n 24 (Stevens J) (1985).

¹⁵ Kornstein (n 11) 32.

subject show themselves more executive minded than the executive... In this country, amid the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace.¹⁶

Today, it is unsurprising that we recall Lord Atkin's dissent as we see the law silenced in so many wars, military coups, and other political crises in the world. History has shown us that often, when power finds it inconvenient to follow the law, then the law gives way to brute force, judicial independence is destroyed, and the courts become accomplices to oppressors. This we see dramatised so well by Shakespeare in many of his plays.

We can glean clues about how Shakespeare saw the role of the judiciary in the rest of Lord Atkin's point that laws 'speak the same language in war as in peace'. This impartial and objective aspect of law, Lord Atkin says, is a pillar of freedom and principle of liberty, and that in upholding this, judges 'stand between the subject and any attempted encroachments on this liberty by the executive, alert to see that any coercive action is justified by law.'¹⁷

In this particular reference to *Henry VI Part 2*, even while he reduces Jack Cade to being a mere tool used by the Duke of York against the king, Shakespeare also makes the same point as Lord Atkin: If the law sides only with the powerful and can no longer deliver justice for the powerless, then a revolution may become inevitable.

Shakespeare wrote in an era when the common law courts openly flexed their power against the discretion and prerogative of the state. We must not forget that Shakespeare began writing during Elizabeth I's reign, which was – as Sir John Baker put it – 'perhaps at the zenith of the Age of Common Law'.¹⁸ During this time, the common law was revered, its principles attributed to timeless reason. In such an age, arguably, the role of lawyers and judges weighed more heavily in determining the legal fates of citizens than legislation, which acted like a 'necessary gloss upon this unwritten common law...sometimes to supplement it, but rarely to replace it'.¹⁹ It is this kind of judicial power that comes under Shakespeare's scrutiny, where in an earlier historical play *Henry IV Part 2*, the Lord Chief Justice's transformation from a people's mediator to the king's justice in a world so consumed by law expresses a jarring dissonance about the scarcity of justice.²⁰

As such, Shakespeare's depiction of what version of law we see in his

¹⁶ *Liversidge v Anderson* [1942] AC 206, 243 (Lord Atkin).

¹⁷ *Ibid* 244.

¹⁸ Sir John Baker, *English Law under the two Elizabeths: The Late Tudor Legal World and the Present* (University of Cambridge Press, 2021) 87.

¹⁹ *Ibid* 87.

²⁰ Penelope Geng, 'On Judges and the Art of Judicature: Shakespeare's *Henry IV*, Part 2' (2017) 114(1) *Studies in Philology* 97, 102.

plays, ultimately depends on the power dynamic between judiciary and the monarch or the executive, and whether or not this power dynamic helps or hinders the legal order in delivering prosperity and justice to the people. After all, it is usually when there is no prosperity that justice becomes an immediate concern for citizens.

Where he tackles corrupt, cruel or weak kings, Shakespeare sets up dramatic challenges to the rule of law in his plots. In these challenges, it is not as if these ambitious characters are unaware of the illegal acts they have to commit in order to seize power. Their hubris ultimately gives way to this awareness in their unsuccessful struggles to hold on to that ill-gotten power. We see this in *Richard III*, and also in *Macbeth*. In the latter play, for instance, we recall Macbeth's worried thoughts before his planned treasonous act of killing King Duncan:

But in these cases,
We still have judgment here; that we but teach
Bloody instructions, which being taught return
To plague the inventor: this even-handed justice
Commends the ingredients of our poison'd chalice
To our own lips. (1.7.7-12)²¹

He who seizes power by illegal force will be given the same rough justice – the “poison'd chalice”. After all, both Macbeth and Richard III are killed on the battlefield as usurpers.

For Shakespeare, getting rid of a king is not really the issue; the point is that overthrowing your king has to be done according to the law. In the case of England, it should be done with respect to its ancient and unwritten constitution. In Shakespeare's plays, those who try to seize power by completely disregarding the law have pretty bad ends, such as death without glory or honour.

IV THE SEPARATION OF POWER

Even with a popular and celebrated English king like Henry V, Shakespeare made sure that the newly crowned king gave due deference to the law, symbolised by the Chief Justice at the end of the play *Henry IV Part 2*. This is the same Chief Justice whom the young Prince Hal had disrespected when he was the Prince of Wales, and who had arrested the prince for his disreputable and criminal acts alongside troublemakers like Falstaff. When Prince Hal

²¹ William Shakespeare, *Macbeth*, Barbara Mowat, Paul Werstine, Michael Poston, Rebecca Niles, eds (Washington, DC: Folger Shakespeare Library, n.d.), (accessed 7 July 2025) <<https://www.folger.edu/explore/shakespeares-works/macbeth/read/1/7/>>.

becomes Henry V, the new king surprises the worried judge by commending him for his past strictness and courage in standing up against bad behaviour, even when such behaviour was committed by the future king himself before ascension to the throne. The Chief Justice has been noted as a ‘paternal model’ or ‘symbolic father of the law’ to the king in upholding the ancient constitution.²²

What the interaction between Henry V and the Chief Justice actually says is that in political terms, in Shakespeare’s England, the judiciary did not enjoy real independence in the modern sense of the separation of power doctrine. His approach to judicial power was more realpolitik than ideological, even as he acknowledged that ideally, the judiciary should be able to exercise its power without fear or favour. And yet, Shakespeare’s judges ultimately drew their real power from the legitimacy conferred upon them by the common law and England’s ancient constitution. In this respect, not unlike that in the Shakespearean world, the doctrines of the separation of powers and the rule of law are very much alive today.

In his 2021 book *The Authority of the Court and the Peril of Politics*, recently retired US Supreme Court justice Stephen Breyer said that while we accept that it is the Constitution that ‘provides the Court with legal power’, it is not so clear whether the judicial branch has tangible power to actually compel other branches to comply with its interpretation of this same Constitution.²³ Breyer notes the point made by Alexander Hamilton that since the judiciary has no influence over either the sword or the purse, it ‘may truly be said to have neither force nor will, but mere judgment’.²⁴ This is why Hamilton considered that since the judiciary was the least dangerous branch of government, its independence had to be solidified by the constitution’s separation of power doctrine.

Breyer notes that ultimately, in the matter of enforcing court judgments, the judiciary cannot force a recalcitrant executive to comply. He cites Andrew Jackson’s refusal to respect the Supreme Court’s decision in *Worcester v Georgia* in 1832, which resulted in the removal of Cherokees from their land, forcing them on the infamous Trail of Tears that killed 4,000 persons. We see this even today in Malaysia, where state governments try to circumvent court pronouncements in many landmark decisions - particularly those that affirm

²² Paul Raffield, ‘The Ancient Constitution, Common Law and the Idyll of Albion: Law and Lawyers in Henry IV, Parts 1 and 2’ (2010) 22(1) *Law and Literature* 18, 40.

²³ Stephen Breyer, *The Authority of the Court and the Perils of Politics* (Harvard University Press, 2021) 8.

²⁴ Alexander Hamilton, ‘The Federalist No. 78’, *Founders Online, National Archives* (Web Page, 28 May, 1788) <<https://founders.archives.gov/documents/Hamilton/01-04-02-0241>>.

that indigenous customary land rights are constitutionally guaranteed.²⁵ We see this in a powerful Inspector General of Police ignoring a warrant and recovery order from our court to find a child to be reunited with her mother.²⁶

Breyer's point is that the judiciary's power must ultimately come from its legitimacy with the public, given that judges are unelected. Ironically, according to him, this legitimacy must come from a belief that judges 'decide cases on legal grounds, and not on the basis of what is popular',²⁷ even if it goes against the most strident of public opinions. This is perhaps the most difficult needle for judges to thread.

V JUDGES, PUBLIC OPINION AND POPULISM

Breyer's point about legitimacy is especially crucial today, with the rise of populism and would-be or real authoritarian leaders who take advantage of the clash of values and interests in our plural societies. As it is in Shakespeare's *Henry VI*, there are many Jack Cades and Dick the Butchers instigating for an outright rejection of certain legal structures standing in their way. As it is in the play, usually behind these modern-day Dick the Butchers are the not-so-hidden influences of even more powerful forces with their own agendas.

In this kind of atmosphere, political attacks on the judiciary have become commonplace around the world, thanks to political leaders who present the rule of law as oppressive to the will of the people, and judges as the alleged tools of that oppression.

We saw this in the Brexit debacle in the United Kingdom with the *Miller I* case.²⁸ On 4th November 2016, *The Daily Mail* featured photos of three High Court judges on their front cover under the provocative headline "Enemies of the People". This came in the wake of the High Court ruling that the Prime Minister was not entitled to use the prerogative power of the Crown to give notice under Article 50 for the United Kingdom to cease to be a member of the European Union. She had to seek parliamentary approval. Ironically, the High Court reinforced the quintessentially British doctrine of parliamentary sovereignty, a principle that was lost on many Brexiteers.

We see the same crisis of judicial legitimacy and credibility in post-Trump America in Netanyahu's encroachment on judicial power in Israel, and even in the jurisdictional tensions in Malaysia. Unlike politicians, when judges are attacked, they are bound by professional norms to not respond. It is important

²⁵ *Director of Forest, Sarawak & Anor v TR Sandah Tabau and Ors and Other Appeals* [2017] 4 MLJ 42.

²⁶ *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors* [2018] 1 MLJ 545.

²⁷ Breyer (n 23) 59.

²⁸ *R (Miller) v Secretary of State for Exiting the European* [2017] UKSC 5.

that law students understand this – it falls upon lawyers to stand up and defend judges against these increasingly vicious attacks. There is a difference between fair criticism and the intimidation of judges, and the latter is where judicial independence and the rule of law are at stake. This is where the battle lines are drawn between those who submit to the legal order and those who think that they are above it.

VI CONTEXTUALISING SHAKESPEARE: THE MERCHANT OF VENICE

In tackling this topic about power and the law, it would be worthwhile to consider the way Shakespeare resonates differently with all of us, especially from the context of the era in which we live. After all, ‘presentism’ is quite in vogue today, not just in academic circles but also among the younger generation. Presentism is an approach in interpreting classic texts within the prism of being ‘woke’ and not from the text’s original historical context. Presentism has been described as ‘a strategy of interpreting texts in relation to current affairs which challenges the dominant fashion of reading Shakespeare historically’.²⁹

This approach does not endorse any type of cancelling or bowdlerising elements in Shakespeare that may seem racist or sexist by today’s standards. That would be just anti-intellectual and skate dangerously too close to censorship. However, just as the law can be challenged and changed to be more in tune with the times, so can Shakespeare stand up to an updated scrutiny. In doing so, we must be mindful that this exercise should be undertaken in a scholarly way and not reduced to social media trends or fleeting hashtags. The late American Supreme Court Justice Ruth Bader Ginsberg was fond of quoting Harvard professor Paul Freund that the courts ‘should never be influenced by the weather of the day but inevitably they will be influenced by the climate of the era’.³⁰

For this analysis, I will look at one of Shakespeare’s most popular plays which may not completely stand up to scrutiny in the ‘climate’ of our current age.

If a lawyer is asked to quickly name one Shakespearean play on top of their list of familiar works, there is a high chance that it would be *The Merchant of Venice*. While the basic facts of the case of Shylock v Antonio may be quite well-known to us, the possible interpretations are numerous, on

²⁹ Ewan Fernie, ‘Shakespeare and the Prospect of Presentism’ in Peter Holland (ed), *Shakespeare Survey* (Cambridge University Press, 2005) 169, 169.

³⁰ Marcia Coyle, ‘The Supreme Court and the Climate of the Era’, *National Constitution Center* (online, June 29, 2020) <<https://constitutioncenter.org/blog/the-supreme-court-and-the-climate-of-the-era>>.

many levels and layers. Constitutional law professor and law and literature scholar Richard Weisberg captures this complexity in his description of the play as ‘clearly one of Shakespeare’s most complex and ironic plays’, noting that ‘the text affords in rich abundance: passages of legalistic complexity that – once engaged – reverse traditional patterns of understanding.’³¹

It is this legalistic complexity which I find problematic. It is especially in how Portia exploits the law to corner Shylock, a manoeuvre applauded as a masterful use of literalism in construing terms while preserving the sanctity of contract. One also cannot forget the backdrop of this trial, in which an outsider non-citizen Jew makes a claim against a citizen merchant from the Christian establishment in Venice. While we admit with discomfort that Shakespeare’s depiction of Shylock does feature anti-Semitic stereotypes in line with the historical context of Elizabethan England, we also acknowledge that Shylock’s humanity is lyrically presented in his anguished and angered speech, ‘Hath not a Jew not eyes?’ (Act 3, Scene 1) spoken after he is asked by Antonio’s Christian merchant friends to not enforce the pound of flesh bond. However, despite the surface tension afforded by the freedom of contract façade of two equals bargaining at arm’s length in mercantile Venice, Shakespeare does clearly set the stage for a one-sided power play in which Shylock does not have a chance. As Kornstein puts it: ‘Shylock’s legal stance is far from the harsh caricature often portrayed. Shylock is an outsider in Venice, an unpopular minority member who is discriminated against, a hated alien who lacks the same rights as his adversaries.’³²

Within this context, one may reasonably claim that the role Portia plays in bringing about Shylock’s ruin does not always come across as particularly heroic. It is a conflict that many in the legal profession have to wrestle with because Portia is so compelling as a Shakespearean heroine on the one hand, and on the other, a ruthlessly efficient enforcer for the Christian hegemonic order in the play. While she is not technically an insider in the legal system (she is forced to disguise herself as a male jurist), the rich, privileged Portia is there for one reason only: to save the life of one of her own privileged class. For modern audiences, the court in which she operates ‘represents...a system of justice rigged on racial grounds, revealing the true limits of Venetian tolerance.’³³

However, as noted earlier, there is no single way to read Shakespeare. I too am ambivalent about Portia, especially about her ‘Quality of Mercy’ speech

³¹ Richard H Weisberg, ‘Antonio’s Legalistic Cruelty: Interdisciplinarity and The Merchant of Venice’ (1998) 25(1) *College Literature* 12, 12.

³² Daniel J. Kornstein, ‘Fie Upon Your Law!’ (1998) 5(1) *Cardozo Studies in Law and Literature* 35, 43.

³³ Emma Smith, *This is Shakespeare* (Pelican Books, 2019) 111.

to Shylock. It is difficult to see how anyone could *not* be moved by these powerful lines:

But mercy is above this sceptered sway.
It is enthronèd in the hearts of kings;
It is an attribute to God Himself;
And earthly power doth then show likest God's
When mercy seasons justice. (4.1.199-203) ³⁴

These stirring lines have in many ways moved me to decide the way I have in some of the judgments I have written.

How we evaluate the two different views of Portia is also relevant in evaluating how we perceive our own conflicted roles in using the law to achieve certain outcomes: 'what we fear about her is what we fear about the profession.'³⁵ What we may take away from the conflict we face is that the legal intricacies in Shakespeare's plays are placed there deliberately to cause unease and even draw blood. As Kornstein unflinchingly observes:

And woven all through, like barbed wire sewn into a tapestry, are deftly cutting observations about law and lawyers, each glinting shard designed to draw just a little blood from the legal profession.³⁶

In short, the law is essential to understanding Shakespeare's universal themes of justice and power like a critical mirror we put up to see our own flawed reflections.

VII THE LAW IS NOT BLACK AND WHITE

In considering these flawed reflections, perhaps the most important lesson we can learn from Shakespeare is that the law is not black and white. Judges and lawyers are forced to consider complex legal and constitutional issues that cannot be reduced to simple political slogans favoured by populists. There are also real people who are directly and indirectly impacted by the decisions made in courts today.

Shakespeare addressed these tensions by distinguishing between the letter and the spirit of the law. While the rule of law depends on adherence to legal

³⁴ William Shakespeare, *The Merchant of Venice*, Barbara Mowat, Paul Werstine, Michael Poston, Rebecca Niles, eds (Washington, DC: Folger Shakespeare Library, n.d.), (accessed 7 July 2025) <<https://www.folger.edu/explore/shakespeares-works/the-merchant-of-venice/read/4/1/>>.

³⁵ Kenji Yoshino, 'The Lawyer of Belmont' (1997) 9(1) *Yale Journal of Law & the Humanities* 183, 185.

³⁶ Kornstein (n 11) xii.

consistency and certainty in precedents, Shakespeare's plays reveal his disapproval of a strict, rule-bound interpretation of the law that gives rise to injustice and a lack of moral rationality. He also disapproved of those in the legal profession who, in their immersion in the legal procedure and bureaucracy, lose sight of who they should be advocating for - ordinary people who depend on their services.

Shakespeare was especially critical of the tendency for legalism to subvert the cause of substantive justice and to be used as a tool of oppression and injustice. We can see this in Portia being forced to resort to legal sophistry in *The Merchant of Venice*, in the rule-bound but corrupt judge Angelo in *Measure for Measure*, and even in the way legal language is presented as essentially duplicitous in *Hamlet*. In that famous graveyard scene in *Hamlet*, the hero speculates on the supposed skull of a lawyer:

Why may not that be the skull of a lawyer? Where be his quiddities now, his quillets, his cases, his tenures, and his tricks? (5.1.100-103) ³⁷

It is not a coincidence that Shakespeare, as a writer, perceived the law's oppressive and duplicitous character emerging from its linguistic qualities. In this, he also held some in the legal profession as complicit. Thus, for Shakespeare, substantive justice is found beyond the 'graveyard' of 'quiddities' (subtleties) and 'quillets' (evasions) of legal sophistry and tricks. It is what judges struggle with even today - to find justice beyond the smoke-and-mirror tricks of skillful lawyers in our adversarial system.

VIII CONCLUSION

Through his characters, Shakespeare invites us to reflect on and recognise our own thoughts within the context of his plays. Moreover, these narratives allow us to immerse ourselves in their worlds to address our own inadequacies or conflicts. Ultimately, the timeless appeal of what Shakespeare teaches us about law, power and people lies not in 'law' or 'power' but in the 'people' he creates for us on stage. Shakespeare's portrayal of ordinary people is not romanticised or idealised but instead, it is raw, unruly, and sometimes even violent. However, although he was unkind to Jack Cade in *Henry VI Part 2*, the lesson we take away today is that when the law does not work for the people, but instead for the powerful and educated classes, it fuels resentment that will usually boil over into rebellion, anarchy, and mob justice. In today's world, this lesson is ignored at the peril of all in the legal fraternity.

³⁷ William Shakespeare, *Hamlet*, Barbara Mowat, Paul Werstine, Michael Poston, Rebecca Niles, eds (Washington, DC: Folger Shakespeare Library, n.d.), (accessed 7 July 2025) <<https://www.folger.edu/explore/shakespeares-works/hamlet/read/5/1/>>.