

All the Law's a Stage!

Shakespearean Insights and their Resonance Today

The Rt Hon Lady Arden

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Shakespeare understood much about the role of law in society, possibly thanks to his direct links with London's Inns of Court. The Inns were primarily places of learning, but between All Saints' Day and February they regularly had revels. The students enjoyed these, and they were probably as thespian as young barristers today. They cut their teeth on the great speeches in drama.

Up to 1587, the plays performed were written by members of the Inns, but after that date professional players were hired and one of the groups engaged was a company of players known first as the Lord Chamberlain's men and then as the King's' Men, for whom Shakespeare wrote plays. *Twelfth Night* was famously first performed in the Middle Temple and *The Comedy of Errors* was probably premiered in Gray's Inn. Some of the lines that Shakespeare wrote might have been intended to provoke reactions from those he knew in his audience. There are famous scenes set in the Inns, such as the Temple Gardens scene in *Henry V*, which set the scene for the commencement of the Wars of the Roses.

Despite his considerable understanding of the law, Shakespeare's knowledge was not perfect. Nor was his knowledge of history. For instance, he wrote a play about King John which does not mention Magna Carta. But Shakespeare was certainly worldly-wise and, however he gained his knowledge, he certainly knew a thing or two about the law.

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We know little about Shakespeare's life in general. He lived from 1564 to 1616, was brought up in Stratford-upon-Avon, and spent much of his working life in London. He never travelled outside

England and yet his works are surprisingly European. Venice had a particular fascination for the English because of its trading reputation and multicultural community, and it is there that Shakespeare develops themes based on religious and racial identity and the status of immigrants and strangers. As we shall see, all these issues have legal overtones.

Shakespeare was a person of genius. He wrote some 37 plays, many of which are regularly read and performed 450 years after the playwright's birth, not just in the land of his birth but in many countries across the globe, in English and in translation.

Shakespeare had experience of the plagues that beset London between 1560 and 1603. *Romeo and Juliet* is one of the plays where he writes about searching for plague victims and in it he introduces into the English language the expression 'a plague on both your houses'.¹ He must have known what a real threat that was, because his landlady in London, Miss Mountjoy, is thought to have died of the plague, and he had to leave quickly if only to avoid the fleas and the quarantine.

The year 2020 was a surreal experience for many of us, and anyone who has missed the theatre during the pandemic might enjoy knowing more about the law during Shakespeare's day, and discovering that his plays raise numerous legal issues that remain relevant today.

What was the legal system like in Shakespeare's day?

By modern standards, the legal system in Shakespeare's day left

¹ See William Shakespeare, *Romeo and Juliet* Act 3, scene 1, line 91.

much to be desired. The concept of justice had become secondary in a system preoccupied by form rather than substance.

Civil wrongs were often denied justice and criminal offenders frequently received punishments wholly out of proportion to the offence committed. Claimants who were unable to fit their complaint within one of the established writs simply went without a remedy. Still others obtained unenforceable judgments because of the jurisdictional disputes between the courts. For example, the Court of the King's Bench originally could only hear cases between the King and his subjects, leaving many without recourse. Sometimes claimants failed to get any remedy because they filed their complaint in the wrong court.

To combat this evil, the Courts of Exchequer and Chancery sought to extend their jurisdiction, but many used the courts as a place to participate in an elaborate intellectual game. Court proceedings were not a means to an end but an end in themselves. Legal procedure was often pedantic and inflexible, and pleadings used an impenetrable mix of Latin, French, and English expressions.

Criminal law was pretty uncompromising too. It was an offence to live with someone as husband and wife without having obtained the sanction of the church. That is a point to remember when we come to *Measure for Measure*. In the case of some serious offences, such as treason and murder, the penalty was always death. London had record numbers of hangings. The Star Chamber used torture to extract confessions.

The Court of Chancery, which was in full swing by Shakespeare's time, was very influential among lawyers. It set the pace in producing documents in a legal form of English, rather than Norman French. In due course, the legal terminology developed by the Court of Chancery became standard.

Even non-lawyers would have been conscious of the disputes at this time between the Chancery Court and the Courts of the King's Bench. In particular, Lord Ellesmere, the Lord Chancellor, strove to maintain Chancery's ability to override the common law courts. The common law judges took the view that Chancery did not have the power to override their decisions. But litigants continued to flock to the Court of Chancery. Sir Edward Coke, Chief Justice of the King's Bench from 1613 to 1616, tried to stop the Chancery Court from overruling his decisions, but Lord Ellesmere did not agree. In 1614 he heard the case of *Courtney v Glanvil*.² Ellesmere ordered Glanvil to be imprisoned for contempt of court for failing to perform a decree granting relief to Courtney on the ground of Glanvil's deceit. Sir Edward Coke overruled him in the Court of King's Bench by issuing a writ of habeas corpus. Lord Ellesmere tried to intervene again in the *Earl of Oxford's* case two years later, but Sir Edward Coke was able to reverse him once more. Ellesmere then appealed to the King, who upheld him.

Sir Edward Coke was one of the great figures of English legal history. He raised the importance of the common law and held that it controlled the other sources of law, a view that was in due course eclipsed by the doctrine of Parliamentary sovereignty. Coke developed the concept of judicial independence and Professor Maitland³ called him the 'dividing line' between the mediaeval and the modern.⁴

2 [1614] Cro Jac 343.

3 Professor Frederick William Maitland was Downing Professor of the Laws of England from 1888 to 1906, and he is widely regarded as one of the ablest legal historians of modern times.

4 See William Holdsworth, *Some Lessons from Our Legal History* (Macmillan

To get a sense of what Shakespeare was saying from a legal point of view and what resonance it has for today's Britain, it is worth looking at a selection of his great plays, four of which are featured here: *The Merchant of Venice* (1596–98), *Measure for Measure* (1603), *Coriolanus* (1607–08), and *Henry VI Part 2* (1591–92). In these plays, Shakespeare dealt with a range of legal topics, from relatively specific ones such as penalties for the non-payment of debt, to the obligations of those who administer justice, and wider constitutional issues such as the power and responsibility of government to the people.

Recovery of debt: *The Merchant of Venice*

One theme in *The Merchant of Venice* is how contracts should be interpreted, in particular contracts related to lending and debt. This was the subject of much jurisprudential debate in Shakespeare's day, and the contract of a loan in *The Merchant of Venice* is a parody on that debate.

The action takes place in sixteenth-century Venice. A merchant called Bassanio hopes to marry Portia, a rich heiress. But to have a chance at winning her hand in marriage, he needs to have money. Bassanio's rich friend, Antonio, is unable to help. His wealth is tied up in ships, and the ships either have been lost or are far from Venice. So, out of friendship with Bassanio, Antonio makes a deal with a moneylender, Shylock, and it is material to the plot that Shylock was not himself a Venetian and moreover was Jewish, and not a Christian. Antonio will get his money and will not have to pay interest. But if he does not repay the loan on time, he will owe Shylock a pound of his flesh, to be taken near the heart.

Antonio is not able to repay on time, and Shylock sues Antonio to enforce the obligation to allow Shylock a pound of flesh. Bassanio, funded by Portia, offers late payment on Antonio's behalf of an increased sum. Shylock refuses that too.

The human flesh condition surely ought to have meant that the contract was invalid and unenforceable. The reason why Shakespeare thought of a bond of this nature is not known, but it is possible he had in mind an unpopular practice of moneylenders at that time to exact conditional bonds which provided for penalties in the event of late repayment. There was no relief for late payment and, if the borrower failed to repay the loan on time, whether in whole or in part, the common law could not offer relief. There were no regulated banks engaged in the business of lending money, so moneylenders could seek to impose the terms they wished.

The common law courts tended to enforce conditional bonds blindly, but in civil cases a party could petition the King to intervene. By the sixteenth century, this meant that a person could apply to the Court of Chancery presided over by the Lord Chancellor. The Court of Chancery developed rules for intervening in cases where in the judgment of the Lord Chancellor the outcome in the common law courts was unconscionable.

Back in Shakespeare's Venice, however, there was no Court of Chancery, and Shakespeare has to find another means to produce a result whereby this horrendous contract is rendered unenforceable.

1928) 31, citing a letter he had received from Maitland. 'Of Coke perhaps the truest thing ever said was said by Maitland in a letter which he wrote to me: "Coke's books are the great dividing line, and we are hardly out of the Middle Ages till he has dogmatized its results." ... [He] assured the continuity of the development of the common law in this century of change—the century of Renaissance, Reformation, and Reception of Roman Law. He was the founder of the modern common law ...'

The scene shifts to the trial of Shylock's suit, which takes place before the Duke of Venice. Shylock makes his argument that Venice would suffer if contracts were not strictly enforced. He submits to the Duke: 'If you deny me, fie upon your law! / There is no force in the decrees of Venice.'⁵ Strict adherence to the law allowed for the routine consummation of commercial transactions, and Shakespeare highlighted the dilemma Shylock's bond presented to Venetian law. Commercial lawyers down the ages would recognise the force of the argument that commercial law has to be certain and predictable. It must be remembered, however, that the law that Shylock was trying to enforce was deeply objectionable, mirroring the deeply objectionable law which in turn treated Shylock as unequal because he was an alien in Venice.

Bassanio's betrothed, Portia, dressed up as a man, pretends to be a lawyer representing Antonio. She urges Shylock to show mercy:

The quality of mercy is not strained.
It droppeth as the gentle rain from heaven
Upon the place beneath. It is twice blest;
It blesseth him that gives, and him that takes.
'Tis mightiest in the mightiest. It becomes
The thronèd monarch better than his crown ...
It is enthroned in the hearts of kings ...⁶

Shylock, who nurses a long-standing grudge against Antonio, who has made a habit of berating Jews for their usury, declines to be merciful. But Portia then points out that the contract does not provide for him to take any blood, only flesh. Shylock changes his mind and offers to take the amount of his loan, but Portia makes it clear that he can only have what is due to him under the bond. Shylock then decides to withdraw from the courtroom.

Before Shylock can leave, his position is completely upended by Portia, who relies on another Venetian law, one that makes it illegal for a foreigner such as Shylock to attempt to kill a Venetian who follows the Christian religion. One penalty for the offence, if the Duke so orders, is execution of the offender, but the Duke immediately pardons Shylock. The other penalty is confiscation of the offender's goods, with half going to the victim, in this case Antonio, and the other half to the state. Antonio agrees to give up his share of Shylock's goods on two conditions, to which Shylock agrees. On his death, Shylock must give his property to his daughter Jessica, who has eloped with Lorenzo, a friend of Antonio and Bassanio. Shylock must also become a Christian. Shylock feels ill but agrees to sign the necessary deed. Antonio's ships eventually arrive in port laden with precious cargo but there is no suggestion that he is going to repay Shylock what is due to him. The trial ends happily for everyone but Shylock.

There are many great lines in *The Merchant of Venice*. One is especially worth mentioning because it speaks to lawyers: the Prince of Morocco, another suitor for Portia's hand in marriage, says: 'A golden mind stoops not to shows of dross'⁷ (or, great minds are not distracted by things of little worth). This is a phrase which comes to mind when advocates indulge in flowery language to say little of relevance or consequence (dross).

⁵ Act 4, scene 1, lines 105–06.

⁶ Act 4, scene 1, lines 181–86. The quotations and citations in this article are taken from *William Shakespeare, The Complete Works* (Stanley Wells and Gary Taylor eds, Oxford University Press 1986).

⁷ Act 2, scene 7, line 20.

Modern resonance of *The Merchant of Venice*

1. The pound of flesh issue

The debate as to how contracts should be interpreted has flourished until quite recently in the Supreme Court of the United Kingdom. Should they be interpreted liberally so as to produce a just solution? Or should they be interpreted strictly to enable parties to be certain in advance about their rights and obligations, so that people bear responsibility for what they have agreed, whether knowingly or not? This question has always been particularly important in commercial law: *pacta sunt servanda* (agreements must be kept), and views about how to interpret contracts have varied over time.⁸

2. Mitigating the effect of conditional bonds

In *The Merchant of Venice*, Shakespeare exposed shortcomings in the law, particularly with respect to penalties and the lack of protection for the lender, in this case Shylock. In the fullness of time the common law addressed the problems of penalties in its own characteristic way. The courts refused to enforce penalties, and only enforced clauses which provided for an amount that was a genuine pre-estimate of the loss which the lender suffered through late payment. The common law settled on this distinction between penalties and contract terms which the courts were prepared to enforce.

In due course that rule also proved unsatisfactory, and it has now been seamlessly replaced by proportionality. The present position is that a term of a contract which imposes a detriment on a party if that party breaches a term of the contract, is a penalty if the detriment is out of all proportion to any legitimate interest that the other party might have in that term being performed.⁹ This is a more nuanced test than the distinction that used to be drawn between genuine pre-estimates of damage and penalties. Many more factors are now considered.

Proportionality has been introduced into English law over the last 50 years under the influence of European Union law and human rights, which probably adopted the concept from German law. All the developments in the law of penalties were brought about by the courts. The courts were left to develop the law as they thought appropriate and incorporated it into various aspects of the common law. There was no need for a code or legislation. The adoption of the concept of proportionality in the context of contractual penalties is a good example of how EU law, if applicable, may continue to influence English law even though the UK has left the EU.

⁸ There is a similar debate about whether equitable obligations should be implied into contracts. I referred to this in the context of quasi-partnership companies in *Lau v Chu* [2020] 1 WLR 4656 [4630–31] (PC): '92. In short, in quasi-partnership companies, deadlock often covers some of the same territory as failure to observe the equitable obligations which are not written into the articles but which are owed by one quasi-partner to another. A quasi-partnership is not a commercial transaction in which, to borrow the words of Judge Learned Hand, "it does not in the end promote justice to seek strained interpretations in aid of those who do not protect themselves"' (*James Baird and Co v Gimbel Bros Inc* [1933] 64 F 2d [344] and [346]). The implication of equitable obligations in a quasi-partnership is the way in which the courts secure that justice is done between quasi-partners who have not taken every contractual protection that they might have done to prevent the misuse of corporate powers. The contest between law and equity in this type of situation has been fought over many years and is graphically illustrated by the contest between Shylock and Portia in Shakespeare's *The Merchant of Venice*.

⁹ See *Cavendish Square Holding BV v El Makdessi and ParkingEye Ltd v Beavis* [2016] AC 1162.

3. The Shylock dilemma

By leaving Shylock in the position where he is deprived of his religion and his wealth, Shakespeare exposes a legal void in the then law: first the lack of any judicial protection against the arbitrary actions of the state in relation to an obnoxious banking transaction, and then the lack of any proportionate response to the events in contention. Shakespeare did not portray any solution to this. He simply points out that such voids exist. In a well-organised legal system, such voids should clearly not be present, and there is nothing to suggest Shakespeare approved of these voids. It was simply part of the role of the playwright to point them out.

4. Party-based requests for mercy may be rejected for personal motive

Portia's timeless lines about the quality of mercy are directed not to the Duke (the judge), who plays a nominal role. They are aimed at Shylock, and they fall on stony ground. He wants his revenge on all those people who have belittled him in the Rialto.

The point to note is that when it comes to showing mercy Shakespeare did not invoke the common law. In this play, it was not his expectation of the law that it would show mercy. In the Elizabethan age, the law was seen as having a relatively formal role and rules were inflexible. To save Antonio, Portia relies on statute law, which she pulls out of her papers like a rabbit out of a hat. Despite Portia's great lines, mercy has no impact on the result whatever.

Judicial independence and integrity: *Measure for Measure*

In *Measure for Measure*, the story starts when Duke Vincentio, the Duke of Vienna, decides to take leave of the city for a period of time. For several years, he has neglected to enforce the laws of Vienna. This has led to the city's becoming a lawless place, and he has fallen down on his duty to adjudicate on offences. The Duke makes arrangements for his deputy, Angelo, to enforce the laws in his absence. He confers on Angelo his 'scope ... to enforce or qualify the laws As to your soul seems good'.¹⁰

One of the citizens of Vienna, Claudio, is then found to have committed an offence by making his fiancée, Juliet, pregnant. It is apparently no defence that Juliet is his fiancée and that they will be married as soon as her dowry arrives. The only punishment provided for this offence is execution. Claudio is sentenced to be executed and Angelo refuses to mitigate the penalty. It may be that Shakespeare was here parodying the law I mentioned earlier which made it an offence in Elizabethan England to live with someone as husband and wife without having obtained the sanction of the church.

Claudio then asks his sister, Isabella, who is about to enter a nunnery, to plead with Angelo on his behalf. She does this but Angelo rejects her plea: 'It is the law, not I, condemn your brother'.¹¹ Angelo explains that the law has not been enforced recently but this was only because it 'hath slept'.¹² Isabella continues to plead for her brother, saying 'O, it is excellent / To have a giant's strength, but it is tyrannous / To use it like a giant'.¹³

¹⁰ Act 1, scene 1, lines 64–65.

¹¹ Act 2, scene 2, line 83.

¹² Act 2, scene 2, line 92.

¹³ Act 2, scene 2, lines 109–11.

Eventually Angelo offers Isabella a bargain. If she agrees to have sex with him in his garden at night, he will release and pardon Claudio. (Angelo clearly did not live in an age of the free press and kiss and tell!) Angelo gives Isabella overnight to make her decision. Isabella is dismayed because that would be contrary to her principles and prevent her from entering the nunnery. (What, one wonders, would she have said to the Mother Superior if she had become pregnant?)

Isabella meets a Friar (the Duke in disguise), who explains that Angelo was himself formerly engaged to be married to a woman called Mariana but that the engagement was broken off when the ship bearing Mariana's dowry was lost. Mariana is assured by the Duke that, while it may be a crime under the laws of Vienna to have sex while unmarried, it is not a sin to do so in the circumstances:

Nor, gentle daughter, fear you not at all,
He is your husband on a pre-contract.
To bring you thus together 'tis no sin ...¹⁴

Mariana agrees to take Isabella's place, with the result that Angelo has sex not with Isabella but with Mariana, although rather surprisingly he does not realise it. But he still refuses to stop the execution of Claudio. Meanwhile, however, the Friar/Duke prevents it from taking place and arranges instead for the similar head of another person in the prison—someone who has died from a fever—to be sent to Angelo. The Duke changes his plans, makes an early return to Vienna, discovers what Angelo has done, and requires him to marry Mariana and then return to his presence. After the marriage, Angelo returns with his new wife, and the Duke then condemns him to death for having ordered the death of Claudio:

The very mercy of the law cries out
Most audible, even from his proper tongue,
'An Angelo for Claudio, death for death'.
Haste still pays haste, and leisure answers leisure;
Like doth quit like, and measure still for measure.
Then, Angelo, thy fault's thus manifested,
Which, though thou wouldst deny, denies thee vantage.¹⁵

In these famous lines, the Duke as judge says that Angelo must be treated like anyone else—a person in authority is not above the law. Quite so. That is a very important aspect of the Rule of Law, and Shakespeare here reflected its importance. Angelo acted with haste, and without deliberation. And 'Like doth quit like', so there must be the like penalty for the like actions. In the phrase 'measure still for measure', the word 'measure' is being used in its sense of treatment meted out to someone. So, Angelo should receive the same punishment as he imposed on Claudio. The law, as the Duke sees it at this point and perhaps as many contemporaries of Shakespeare saw it, is about retaliation.

The newly wed Mariana is horrified at this turn of events and is not consoled by the fact that she will as Angelo's widow inherit his assets. She and Isabella seek mercy for Angelo.

But then the keeper of the jail where Claudio was held reveals that Claudio was not executed after all. He is alive and is brought before the Duke with Juliet. So, at the end of the play Angelo is not executed but is disgraced. The Duke offers to marry Isabella.

The story can be summed up in this way. The play starts with the

¹⁴ Act 4, scene 1, lines 69–71.

¹⁵ Act 5, scene 4, lines 404–09.

problems caused by the Duke who had neglected to enforce the laws so that people broke them. But Angelo enforces them without exercising judgment and does so corruptly. He must be punished, but when it turns out that Claudio was not executed, the Duke exercises his judgment. It is no longer a case, as in the old code of Hammurabi of Babylon, of an eye for an eye, or a tooth for a tooth, or measure still for measure.

Modern resonance of *Measure for Measure*

1. The power to grant mercy is not party-based but an aspect of the judicial function

We saw that, in *The Merchant of Venice*, Portia's plea of mercy was directed to Shylock and it was he who rejected it. Shakespeare gave him the right to refuse to give mercy. The judge stood on the side-lines.

In *Measure for Measure*, we see Shakespeare returning to this issue and picking up where he left off in his earlier play. How does he resolve the issue? He gives the power to grant mercy not to any party but to the judge, the Duke, and he gives him discretion as to how to administer the law. The Duke is able to grant mercy on the particular facts of the case because Claudio comes to no harm.

It follows that there are dangers when judges do not respect the obligations of their office, for example because they are corrupt or act for personal motive. Judges must not act in this way. The obligations of judges performing a judicial role constitute their responsibility when they are asked to adjudicate on disputes. They must enforce the law appropriately and disinterestedly and not allow society to become lawless. They are the servants of the law. In that capacity, their function includes dispensing mercy in appropriate cases. Shakespeare rightly showed that the role of judges was important in all these respects.

There are lessons here for every modern judge. The message is about what has become known as judicial independence. Judges must be completely independent and objective. This doctrine was starting to emerge in the writings and judgments of Coke when Shakespeare was writing his plays.

So we find that the resolution in *Measure for Measure* comes in the final scene, when the Duke uses his judicial discretion to produce a solution. It is by no means a perfect solution. I for one have some sympathy with Isabella, faced with the proposal of marriage which she would not have sought. But the resolution of the play is probably as good as the Elizabethan age could hope to produce. It is the judge who pronounces the sanctions and he does so on his own authority and good judgment, not the supernatural power of Prospero in *The Tempest* or the powers of darkness in *Macbeth*.

The idea that the legal system should produce solutions that were moderated to the individuals involved was relatively revolutionary for Elizabethan times. Shakespeare's thinking had evolved from mercy to statute law and then to judges and the law they create in individual cases. The end objective for Shakespeare was thus that the law should produce a just solution.

2. The problem of the dysfunctional legal system

The play starts with the problems caused by the Duke, who has neglected to enforce the laws. No wonder the citizens of Vienna were caught out when Angelo started enforcing them to the letter.

He stands at the opposite extreme to the Duke. He enforces the laws without exercising judgment and does so corruptly.

Shakespeare compares unenforced law with headstrong horses who had shaken off their bridles, and overgrown lions in caves. Such law is unruly, arbitrary, and unpredictable. The problem is resolved by restoring a properly working legal system, in which judges perform the essential and independent role of dispensing mercy.

3. The role of lawyers in a properly functioning legal system

You cannot have a system of justice that functions well unless you have lawyers who are well trained and mindful of their obligations and judges who have independent judgement and the freedom to produce just solutions. The late Justice Ruth Bader Ginsburg of the United States Supreme Court beautifully described the vocation of lawyers in a passage that I recently cited in a tribute in memory of her:

To me the highest obligation of someone in the legal profession is to recognise that you have training and talent ... that equips you to make things a little better in your local community, your nation and your world, that is, to devote your talent not just to being the counterpart of an artisan or bricklayer who does a day's work for a day's pay but with someone who sees himself or herself as a true citizen of the community.

Angelo was not such a lawyer, but we saw in *The Merchant of Venice* the role that Portia played in bringing the Venetian law that saved Antonio's life to the judge's attention.

Sovereign power: *Coriolanus*

Here we find that an idea that animated Shakespeare was how the ordinary people curbed sovereign power. *Coriolanus* is one of the plays which Shakespeare wrote about classical times.¹⁶ The plot revolves around a Roman general called Caius Martius, who has defeated a Latin tribe called the Volsces at Corioli and earned the new name Coriolanus.

The question arises of how the state is going to reward him. The usual method was for the general to be taken back in honour to Rome and then to be placed in front of the people, to explain how he had won the battle and how he would look after them. The people of Rome would then elect him a consul. The whole process was started by the patricians—that is, the existing senators.

In the play, the patricians initiate the process on Coriolanus' behalf, but he is reluctant to waste any time on talking to the people. He is after all a great doer of battles. In the play, he speaks to the citizens in scornful terms and threatens to sell or to kill them. Not surprisingly, the people then turn against Coriolanus, deciding they do not want him as a consul after all. The situation is unprecedented. But Coriolanus is proud, and he simply cannot see the problem.

The Tribune says, 'What is the city but the people?',¹⁷ and the citizens shout, 'True, / The people are the city.'¹⁸ Coriolanus' mother, the

¹⁶ Others included *Titus Andronicus*, *Pericles*, and *Timon of Athens*.

Shakespeare's classical knowledge was limited. Nonetheless there is plenty of detail in *Coriolanus*.

¹⁷ Act 3, scene 1, line 197.

¹⁸ Act 3, scene 1, line 199.

strong-minded Volumnia, tries to persuade him to apologise to the people and to seek their forgiveness, but he absolutely refuses. He is angry at the charges the people have made against him and he declines to apologise. In the end, the people change their mind about his being a consul and banish him from Rome. He is banished as 'enemy to the people'.¹⁹ Coriolanus calls back: 'You common cry of curs'²⁰ and goes into exile.

The tale then takes a remarkable twist. Coriolanus goes to find his old enemy, Aufidius. Together they start on a succession of acts hostile to Rome and they end up besieging the city. The inhabitants try to get Coriolanus to change his mind about this, but even Coriolanus' father cannot persuade him otherwise. In the end it is his wife, mother, and young son who come to visit him in the camp and win him over. They persuade him to go to Rome to negotiate a peaceful conclusion to the war.

There is then yet another twist in the story. Aufidius does not accept this chain of events and he arranges for Coriolanus to be lynched and killed. Thus ends the story of someone who tried to ignore and reject the peoples' wishes.

Modern resonance of *Coriolanus*

1. The rights of the people against sovereign power

Shakespeare had far-sighted views about the rights of the people. In the sixteenth century, absolutism was the general theory. Sir John Fortescue, one of the early legal writers, wrote that whatever the Prince wished was *lex*, or law. In England, this theory changed shortly after Shakespeare's time. The seventeenth century saw a rapid growth of parliamentary powers, and the Glorious Revolution of 1688, when King James II, having suspended Parliament, was forced to flee from the country, and his protestant daughter Mary and her husband William of Orange became the King and Queen of England.

2. The role of the ordinary citizen

Coriolanus is particularly revealing on the role of the ordinary citizen in the governance of society. Considering that the British constitution had not yet really developed, Shakespeare was before his time in his attitudes. He felt that power should be responsive to people and not that the Prince's word was law. Shakespeare had a touching faith in the people.

In all his plays, Shakespeare wrote about common people who enter on to the scene and provide enormous enlightenment against all the odds. Thus, in *A Midsummer Night's Dream*, King Theseus is to be married to Queen Hippolyta and local people decide to put on a play for them as part of the celebrations. The Queen considers that as the play has been arranged by working men from Athens it will probably not be much good.²¹ But when the play starts it becomes clear that the actors are literate. They have learnt their lines and they know about classical mythology (the play tells a love story from Ovid's *Metamorphoses*). They also know how a theatre should operate. Here, as with the gravediggers in *Hamlet*, Shakespeare was holding up the wisdom of the common person.

¹⁹ Act 3, scene 3, lines 121–22.

²⁰ Act 3, scene 3, line 124.

²¹ William Shakespeare, *A Midsummer Night's Dream* Act 5, scene 1, lines 85–88.

Autocracy: *Henry VI Part 2*

Henry VI Part 2 is another example of Shakespeare working out the theme of the relationship between the ordinary person and the sovereign in the state. In the play, there are rival claims to the throne. The Earl of Suffolk organises a rebellion in England against the King. The leader of the rebellion is a man called Jack Cade. Shakespeare portrays Cade, when he gets power, as an absolute and arbitrary ruler. As soon as he becomes the leader, he sees to it that he is appointed as a Lord. This is a somewhat strange thing for someone who is an ordinary citizen to demand. Besides, the real grievance motivating the common citizens to get together is that they distrust the ruling class.

Jack Cade is full of his own importance. He states: 'My mouth shall be the Parliament of England.'²² He fully expects his rebellion to be successful and, when it is, to be anointed King. And he intends to be an autocratic king.

Cade has to set out the list of things that will change when he gets to power. One of his supporters, Dick the Butcher, says: 'The first thing we do, let's kill all the lawyers.'²³ This is a well-known passage that always causes a wry smile when it is quoted to lawyers, but its meaning is far from clear. No doubt lawyers were linked with the nobility and caught up with grievances against the nobility. It is also possible that all Shakespeare was trying to do was to get some reaction from his audience. As mentioned, his plays were performed in the Inns of Court, of which the members were barristers, and where legal education was provided.

Not surprisingly, Jack Cade does not come to a happy end. He is ultimately deprived of all his supporters when one of the members of the nobility urges the people to support the King.

Several references are made to Parliament. The Earl of Warwick states that: 'The commons, like an angry hive of bees that want their leader, scatter up and down and care not who they sting in his revenge.'²⁴ Anyone who has seen or heard UK Parliamentary debates may think that this was particularly insightful of Shakespeare.

Jack Cade was a historical figure. His rebellion in 1450 against Henry VI did not last long, and England returned to a feudal society in which the power was vested in the nobles and the poor had to obey. In Shakespeare's eyes, that was the natural order of things. The poor accepted that the nobility should rule. What they expected, however, as appears in *Coriolanus*, was that the rulers would respond to their requests and seek to uphold their wishes.

Modern resonance of *Coriolanus* and *Henry VI Part 2*

Shakespeare examined sovereign power in both these plays. He lived under an absolute monarch and foresaw that this had to change, and in these plays he suggested the direction in which it had to evolve.

Coriolanus seeks to become a consul of Rome, and the people turn him down because he refuses to acknowledge that he has to look after them and attend to their needs. In *Henry VI Part 2*, the rebel Jack Cade seeks to challenge the nobility on the grounds that they have done nothing for the common man. But his plans for taking power include

²² Act 4, scene 7, lines 13–14.

²³ Act 4, scene 2, line 78.

²⁴ Act 3, scene 2, lines 125–27.

making himself a Lord and making arbitrary decisions about executing people and so on. Both Coriolanus and Jack Cade come to grief.

Shakespeare lived in a time of absolute monarchs, but his insight was to recognise that there was a bargain made between the citizens and the sovereign as to how the sovereign's power should be used. It is this bargain that drives the evolution of the constitution from absolute monarchy to the present-day Parliamentary democracy.

Shakespeare saw the corrupting effect of power politics—what happens when those in power seek to serve themselves rather than the community from which they are appointed. The citizenry loses out and the legal system is endangered. When Dick the Butcher says that the first thing to do is to kill all the lawyers, Shakespeare is underlining the point that, for an autocrat to have control of the state, the rule of law must be set aside, and that this places judicial independence and the role of judges and lawyers in jeopardy. The words of Dick the Butcher are not said just for theatrical effect.

Shakespeare knew that society needs a properly working system of justice, with judges and lawyers performing their special roles. Those who exercise power have to accept that the law is above them, and that sometimes the decision will go against them. They then have the power to alter the law if it is right to do so.

Conclusion: A legal system that evolves

The matters of law addressed in the four plays discussed here all remain worthy of consideration today—repayment of debt, the obligations of those who administer justice, and the wider constitutional issue of the power and responsibility of the government to the people.

What shines out most from the legal issues that intrigued Shakespeare in his plays is the ability of our system to continue evolving. By relying on precedent, the courts can modify the law gradually in a way that avoids abrupt or ideological change. The common law is not like a civil code imposed on the people. We all own it and it belongs to us all.

Similarly, with our constitution, its unwritten nature means that it has the capacity to continue and yet change in the light of experience. Since Shakespeare's day, the country has evolved organically from absolute monarchy to constitutional monarchy with Parliamentary sovereignty. It has also been able to embrace international law and (during membership) the laws of the EU, and to draw on the European Convention on Human Rights. It has progressed from the legalistic system that Shakespeare knew to one that is more focussed on justice.

It was part of Shakespeare's genius that through the dramatic medium he could capture the depth and diversity of humankind. But his genius was far greater than that. As I have sought to show in this article, he could also provide thoughtful insights into the evolution of the law of England and its constitution.