

EXAMPLES GROSS AS EARTH

Hamlet's Inaction and the Problem of *Stare Decisis*

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This paper argues that Hamlet's inaction is essentially a problem of *stare decisis*. Despite his prodigious lawyer-like ability to 'quarter' a thought into its most remote elements and to 'scan' a situation in order to reckon with all possible outcomes, Hamlet proves wholly incapable of using his mental/verbal acumen to piece out of the many obvious precedents before him ('examples gross as earth') a general principle of conduct he might in turn reapply to address his own — and his nation's — specific predicament. Moreover, precedent disempowered is linked through Hamlet's putative antinomianism to the law's corporeal demise, ultimately against the metaphorical and metaphysical concept of resurrection.

The greatest progress men have made lies in their learning how to draw correct inferences.¹

The hallmark claim of the Anglo-American system is that law is founded upon precedent — that is, the abiding mandatory rule of history and tradition over and against even the dictates of reasoned logical categories.² Although this method of inductive analogy is hardly unique to common law jurisdictions alone, but is equally characteristic of any legal system — not to mention broader acts of socio-political decision-making as well as the microcosm of individual quotidian interrelations and consciousness³ — it is as philosophically problematic as it is practically essential. In standard

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¹ Nietzsche (1878), p 57.

² See Schauer (1987), pp 575–576 ('I want to view precedent as a rule of precedent, and not as a nonrule-governed choice ... A naked argument from precedent thus urges that a decision-maker give weight to a particular result regardless of whether that decision-maker believes it to be correct and regardless of whether that decision-maker believes it valuable in any way to rely on that previous result.');

Radin (1963), pp 4–5 (The 'rule of precedent is not to be confounded with deference to the authority of the wise and just who have preceded us ... the previous decision must be followed because it is a previous decision and for no other reason.');

see also *New York Trust Co v Eisner* (1921) 256 US 345 at 349: 'a page of history is worth a volume of logic' (Holmes J).

³ Kronman (1990), pp 1031–1032; Schauer (1987), p 572.

Aristotelian terms, precedent is a flawed syllogism, a self-defeating exercise in ratiocination, as it requires an element beyond its premises to establish its conclusions, and scholars have long argued whether the need of the inductive process to posit such an externally controlling 'category of assimilation'⁴ is a fatal flaw rendering precedent a perpetually suspect if not deleteriously irrational methodology.⁵ However, to judges, practitioners, and law-makers (thankfully), those engaged in this debate purposely to debunk reliance on *stare decisis* through competing explanations of its usage seem little better than Buridan's ass; those concerned with law's praxis would defer rather to Hume's observation that induction is 'a species of natural instinct, which no reasoning or process of the thought and understanding is able either to produce or to prevent'⁶ because, whatever the account, precedent is an ineluctable necessity. Nonetheless, although it has been rightly stated that reasoning by example cannot constitute normative legal theory unless such inferences lead to a generally applicable standard,⁷ precedent both as doctrine and practice remains controversial. The source of this contention is thus a central inquiry not so much to resolve the argument decisively as perhaps militate for a truce in this jurisprudential conflict of forensic rhetorical arms.

The essential problem of *stare decisis*, as Llewellyn neatly epitomised it⁸ — albeit not with such intent — is its paradoxical conjugation of two mutually exclusive but simultaneously operative doctrines of interpretation, one that is so 'strict'⁹ as to confine the rule of a prior case only to its facts and so render the precedent non-binding, and another that is so 'loose'¹⁰ as to allow the rule of the *same* prior case to be discerned expansively from the text of the case entire, thus obliterating the distinction between *ratio decidendi* and *obiter dicta* and rendering the precedent binding. The implications of Llewellyn's own summary are more patently disturbing: 'one doctrine [is] for getting rid of precedents deemed troublesome and one doctrine for making use of precedents that seem helpful.'¹¹ Fittingly, if perhaps too casually for his particular objective, Llewellyn labelled this methodology 'Janus-faced',¹² thus characterising the application of precedent as duplicitous and deceitful, perhaps even inordinately truculent.¹³

This description of the perilous nature of *stare decisis*, at least as it is operative in the predominant Western systems of law, has found support in the

⁴ Schauer (1987), pp 582–587.

⁵ See generally, Alexander (1996), pp 503–513; White (1996), pp 583–590.

⁶ Hume (1748), V.i.60.

⁷ Eisenberg (1988), p 86.

⁸ Llewellyn (1960), pp 66–67.

⁹ Llewellyn (1960), pp 66–67.

¹⁰ Llewellyn (1960), pp 66–67.

¹¹ Llewellyn (1960), pp 66–67.

¹² Llewellyn (1960), pp 66–67.

¹³ The gates of the shrine to Janus in Rome, the *Ianus geminus*, were open only during times of war.

work of later scholars, the most recent of note being Richard Weisberg, who argues convincingly from the example of Vichy France that lawyers there, based directly upon their *ordinary training and practice*, read out human rights guarantees embodied in centuries-old Codes and Constitutions and read into the *same* system new anti-Semitic legislation in order to legitimate the expulsion and extermination of Jews.¹⁴ In other words, they got 'rid' of the 'troublesome' language of traditional rights to liberty and life while simultaneously availing themselves of any source of law (irrespective of its pedigree) that seemed 'helpful' to the comprehensive design of genocide. More controversially, Weisberg identifies the source of this deadly dichotomy in a communal consciousness steeped in a Christian hermeneutic that, by way of the New Testament, reads Jewish Law out of Jewish Scripture and consequently reads Jews into certain spiritual damnation, if not in all instances physical demise.¹⁵ While this broader issue cannot be addressed here, it will serve as the distinct background to the following discussion in as much as Shakespeare's *Hamlet* in both its legal and religious imagery is a clear precursor to Weisberg's argument that legal systems in the West have employed a 'paradigm of structured speech as a replacement for legitimate action',¹⁶ which point serves as the apt precursor to my own argument that Hamlet's inaction is not, as some would have it,¹⁷ a product of a humane reluctance to exact a vengeful talion against the ersatz king, but rather of a fundamentally inhuman refusal to infer from specific past and present instances of decisive action a general mode of just behaviour that would save a kingdom — that is, Hamlet's inaction is a problem of *stare decisis*. Despite his prodigious lawyer-like ability to 'quarter'¹⁸ a thought into its most remote elements and to 'scan'¹⁹ a situation in order to reckon with all possible outcomes, Hamlet proves wholly incapable of using his mental/verbal acumen to piece out of the many specific precedents before him a *general* principle of conduct he might in turn reapply to address his own — and his nation's — specific predicament, at least when doing so ill serves the sublimated dictates of his conscience (such as it is). Given the play's understandingly primary place among literary-minded lawyers, this problem of Hamlet's itself deserves indeed to 'be scanned.'²⁰

Something is profoundly 'wrong' with Hamlet. As a supposed prince, he makes a rather pitiful specimen. Physically, he is weak, flaccid, ill-conditioned

¹⁴ See generally Weisberg (1996).

¹⁵ Weisberg (1996), see especially Chapter 10; see also Weisberg (1984); Weisberg (1992).

¹⁶ Weisberg (1984), p xi.

¹⁷ See, for example, Kornstein (1994), pp 90–106.

¹⁸ IV.iv.42–43: 'A thought which, quartered, hath but one part wisdom/And ever three parts coward.'

¹⁹ III.iii.80.

²⁰ III.iii.80.

and generally out of shape.²¹ Spiritually, too, he is equally infirm, beset by a moral malaise, plagued by a suicidal melancholia. A pathetic dolour hangs about him that is, as noted by AC Bradley,²² akin to the unexplained 'sadness' felt by Antonio in *The Merchant of Venice*,²³ a genuine *Weltschmerz* that for Hamlet renders 'weary, stale, flat, and unprofitable ... all the uses of this world'.²⁴ Belying his quick wit and considerable verbal acuity, Hamlet is also ailing intellectually, the 'antic disposition'²⁵ he purports to assume only an ironic reminder of his already afflicted sense.²⁶ His incessant rationalisations often leave him cold, phlegmatic and devoid of passion. Like Brutus in *Julius Caesar*, Hamlet seems 'not gamesome'²⁷ and 'lack[s] some part of that quick spirit'²⁸ so strongly evident in the sybaritic Laertes, the heroic Fortinbras and even in the vile but ambitious Claudius,²⁹ as well as his own Herculean father. There is something in him that is 'the mania of an evil nature, not engendered by vicious training or corrupting books or licentious living, but born with him and innate, in short, a depravity according to nature'.³⁰ Whatever is 'rotten in the state of Denmark'³¹ is nowhere mirrored more completely than in its wretched prince.

To discern in Hamlet's malady the noble expression of Aristotle's tragic flaw would, however, be a gross misunderstanding of both Hamlet's pathology and the play's central lesson. Hamlet is *not* a tragic *hero*, albeit his story is a tragedy. Neither is he a romantic figure. As Nietzsche once remarked (and I

²¹ See Gertrude's remark at V.ii.276: 'He's fat and scant of breath.' See also Horatio's pragmatic response to Hamlet's forthcoming mock-duel with Laertes at V.ii.223, 'You will lose this wager, my lord', and his subsequent entreaty that Hamlet reconsider: V.ii.231-232.

²² See Bradley (1965), p 336 at n 2.

²³ See Antonio's opening lines in *The Merchant of Venice* at I.i.1-7:

'In sooth I know not why I am so sad.
It wearies me, you say it wearies you.
But how I caught it, found it, or came by it,
What stuff 'tis made of, whereof it is born,
I am to learn.
And such a want-wit sadness makes of me
That I have much ado to know myself.'

²⁴ I.ii.133-134.

²⁵ I.v.172.

²⁶ See III.ii.308: 'my wit's diseased'.

²⁷ *Julius Caesar*, I.ii.33-34.

²⁸ *Julius Caesar*, I.ii.33-34. See also *Hamlet* III.ii.109-110, wherein Polonius mentions his having acted the part of the similarly ill-fated Caesar.

²⁹ See Nietzsche (1873) VI: 334f: 'What is *strong* wins: that is the universal law. If only it were not so often precisely what is stupid and evil!'

³⁰ See Melville (1891) Ch 11.

³¹ I.iv.100.

paraphrase), great men have great faults.³² Hamlet himself, however, is not great and neither is his failing. Despite the definite psychological similarities evident in the play, he cannot measure up to the tragic archetype, the regal Greek Oedipus who, unlike the Danish prince, used his prodigious dianoetic faculties for the common good by solving the riddle of the Sphinx to save the people of Thebes. Oedipus, in this way, earned a kingdom, whereas the ignoble Hamlet, who employed *his* skills of reason only for the specifically personal design of *avoiding* his one sacred obligation — that is, to revenge his father's murder — was never able to earn and in no way deserved the throne. The fact that, as Fortinbras says,³³ Hamlet possessed the makings of a monarch merely demonstrates all the more pathetically the consequence of his 'failure'.³⁴

Wherein, then, lies Hamlet's 'one defect'³⁵ — the 'vicious mole of nature'³⁶ in him that corrupts all his other virtues? Why is he unable to act beyond the immediate sphere of his own person and use his natural talents for the common good of his beleaguered state by the specific good of exacting revenge on his villainous uncle? Has not Hamlet reason enough to act? A usurper, 'an incestuous and adulterate beast',³⁷ has murdered Denmark's rightful ruler (Hamlet's own father!) and now sits on the throne. How does Hamlet respond? The new monarch's behaviour is in every way decidedly unbecoming a king, making Denmark 'traded and taxed of other nations',³⁸ denigrating the high 'addition',³⁹ and 'achievements',⁴⁰ gained under its former leader. What does the Crown Prince do about it? An enemy from without prepares a massive siege of the kingdom, yet Hamlet deliberately refuses to follow the precedent of his valiant father and, rather than set out to meet in noble combat the hearty Fortinbras, chooses to wallow selfishly in a near-suicidal torpor. Is *this* the man who would be king?⁴¹

Here, then, is Hamlet's fault fully revealed, for in the blatant neglect he exhibits for the prior example of his father's dealing with the old Fortinbras, we see in Hamlet an utter inability to use his inductive faculties to draw out a generally applicable principle of action. Here, then, is the hazard of precedent pointedly demonstrated, for just as 'the greatest progress men have made lies

³² The actual quote is 'the errors of great men are venerable because they are more fruitful than the truths of little men': see Nietzsche (1867), I:393.

³³ V.ii.443-444.

³⁴ If, indeed, there *was* a 'failure.' See discussion below.

³⁵ I.iv.34.

³⁶ I.iv.27.

³⁷ I.v.49.

³⁸ I.iv.20.

³⁹ I.iv.22.

⁴⁰ I.iv.23.

⁴¹ Consider in this regard, then, the irony of Horatio's exclamation 'Why, what a king is this!' at V.ii.63, upon being told by Hamlet that the deaths of Rosencrantz and Guildenstern are wholly inconsequential, if not truly deserved.

in their learning how to draw correct inferences,⁴² surely their greatest failures have arisen from fallacious interpretations, from the perversion of memory, whether personal or historical, written or oral.

Hamlet has before him several prior examples — ‘examples gross as earth’⁴³ — of the ‘right’ way to exact revenge for a father’s murder, all of which he acknowledges shamefully, but none of which spurs him on to act. He admires the ‘bravery’⁴⁴ of Laertes’ grief over the slain Polonius, hoping that it might rouse his own faint ire into a ‘tow’ring passion.’⁴⁵ And yet, although Hamlet recognises the poignant factual similarities between his and Laertes’ situation (‘For by the image of my cause I see/The portraiture of his’),⁴⁶ he is not able to draw out from that correlation a mode of conduct for himself. Similarly, when Hamlet witnesses the grand procession of Fortinbras’ army on its way to war in Poland, he is once more overcome by a sense of self-incrimination which he expresses in a paroxysm of verbosity.⁴⁷ Yet again, although Hamlet realises that the valour of Fortinbras’ men in the face of daunting odds should bolster his own resolve, he remains unable to fully relate this example to his own circumstance in the most fundamental respect — namely, Hamlet is unable to see *himself* as Fortinbras.

Although, as a rival prince in a neighbouring country, Hamlet must surely be cognisant of Fortinbras’ prowess, he never once associates himself comparatively with the stalwart son of his father’s enemy. The character of Fortinbras, however, is the most important living example of ‘the man of action’⁴⁸ that Hamlet could consider; therefore, why Hamlet fails — or, better, refuses — to make this comparison is a critical issue. Like the noble Horatio, the gallant but impetuous Norwegian prince is the quintessential classic hero, less Hamlet’s contemporary than ‘an antique Roman’.⁴⁹ Even Fortinbras’ name, derived from the Latin for ‘strong-armed’, suggests as much. More than this, however, Fortinbras is also the embodiment of the most important fictional example of ‘the man of action’ presented to Hamlet — namely, the classic Greek figure of Pyrrhus. Here, Shakespeare’s genius in constructing literary/historical allusions is most evident, for the Pyrrhus referred to in the play is *both* the mythical Achaean knight in the *Iliad* of Homer and the historical King of Epirus who ruled a generation after Alexander the Great.

Ironically, the character of the first Pyrrhus, the hero of the Trojan War, was brought forth initially by Hamlet himself.⁵⁰ Like both Hamlet and

⁴² See Nietzsche (1878), p 271.

⁴³ IV.iv.49.

⁴⁴ V.ii.89.

⁴⁵ V.ii.90.

⁴⁶ V.ii.87–88.

⁴⁷ IV.iv.34–69.

⁴⁸ Fortinbras is a Man of Action in the Nietzschean sense and not a Dostoevskian ‘sword rattler’.

⁴⁹ V.ii.374.

⁵⁰ II.ii.458.

Fortinbras, this Pyrrhus was a young warrior⁵¹ and the son of a famous heroic father (in Pyrrhus' case none other than Achilles) who met an untimely death in combat. Again, as with Hamlet and Fortinbras, Pyrrhus sought revenge from his father's murderer,⁵² although here a pivotal difference between the Greek and Norwegian princes and Hamlet emerges: whereas both Pyrrhus and Fortinbras found the will wholly in themselves to pursue a just end, Hamlet needed to be compelled by something as dramatic as a spirit from beyond the grave — and even *then* his will was flagging.

Nevertheless, despite — or rather because of — Hamlet's hesitation, the story of Pyrrhus as told in the Player's recital should have readily emboldened him since Pyrrhus also hesitated before delivering the killing blow.⁵³ However, that Hamlet himself requested a recitation by the First Player of this particular poetic reconstruction of the last days of Troy reveals much of his (mis)use of precedent, for the retelling that Hamlet thus deliberately cites could hardly portray Pyrrhus, his putative spur to action, more barbarically in his vengeful bloodlust. The 'hellish',⁵⁴ Pyrrhus:

he whose sable arms,
 Black as his purpose, did the night resemble
 When he lay couchèd in th'ominous horse,
 Hath now this dread and black complexion smeared
 With heraldry more dismal. Head to foot,
 Now is he total gules, horridly tricked
 With blood of fathers, mothers, daughters, sons,
 Baked and impasted with the parching streets,
 That lent a tyrannous and a damned light
 To their lord's murder. Roasted in wrath and fire,
 And thus o'ersizèd with coagulate gore,
 With eyes like carbuncles, ...⁵⁵

Pyrrhus seeks out Priam, whom the poem affectionately calls 'Old grandsire',⁵⁶ honours as 'reverend',⁵⁷ and whose slaughter is unsuitably likened to 'treason'.⁵⁸ Although 'Unequal matched',⁵⁹ Pyrrhus bloodily dispatches the defenceless old man without a hint of remorse, valour or gallantry in the text of the poem, which conversely depicts with noble pathos the tragic bravery of this

⁵¹ The literal Greek translation of his birth name, Neoptolemos.

⁵² Although it was actually Priam's son, Paris, who killed Achilles, this is but a minor 'fact'; for Pyrrhus, revenge is no mere vendetta but a point of honour — and Priam was, after all — as the king of Troy — the Greeks' chief enemy.

⁵³ II.ii.505–507: 'So as a painted tyrant Pyrrhus stood,/And like a neutral to his will and matter/Did nothing.'

⁵⁴ II.ii.488.

⁵⁵ II.ii.477–488.

⁵⁶ II.ii.489.

⁵⁷ II.ii.504.

⁵⁸ II.ii.536.

⁵⁹ II.ii.496.

frail monarch of a fallen realm fighting hopelessly but heroically to the very end of his undoubtedly lost cause.⁶⁰ No wonder that Hamlet all but ignored the example of Pyrrhus in the recitation; he knew the poem perhaps better than anyone and still, thoroughly mindful of his heavenly obligation to seek revenge, intentionally cited as precedent a characterisation of vengeance bespeaking only of inhuman savagery and not a whit of filial or communal duty. The Pyrrhus of the poem Hamlet chose to hear could hardly serve as a fit spur to action, as he well knew; thus Hamlet lets the fierce description of Pyrrhus speak for itself and impatiently hurries the Player to continue on to the bathetic account of Hecuba, Priam's queen.⁶¹

Here we patently see Hamlet's Oedipal⁶² fixation upon his mother symbolised by his obsessive concern with the tale of Hecuba's woe, for the example that now sets him off on yet another long-winded harangue against his lack of will is not Pyrrhus, as it should have been, but Hecuba. 'For Hecuba!' Hamlet exclaims incredulously after the Player's lachrymose recitation, 'What's Hecuba to him, or he to Hecuba,/That he should weep for her?'⁶³ Clearly, Hamlet has missed the relevance of the Homeric tale completely, for the truly pivotal (precedential) question is not 'what is Hecuba to the Player?', but 'what is Pyrrhus to Hamlet?'

Once again, as with Fortinbras, Hamlet has failed to extract the 'correct' inference from the example of Pyrrhus. In other words, like a lawyer who is unable to accurately discern the holding of a case, Hamlet has confused the *obiter dicta* of Hecuba's sorrow with the *ratio decidendi* of Pyrrhus' actions in the case of *Pyrrhus v Priam*. Thus, because of his flawed method of inductive reasoning, from the specific example of Pyrrhus Hamlet gleans the wrong paradigm, for the character of Hecuba not only leads him astray from his sacred oath⁶⁴ of revenge, but also directs him to contravene the Ghost's only proscription: that Hamlet should not 'let [his] soul contrive'⁶⁵ against his mother, but that he should 'leave her to heaven'.⁶⁶ Nevertheless, Hamlet takes the inference of Hecuba to heart immediately — so much so, in fact, that he forgoes a choice opportunity to kill Claudius 'pat, now he is a-praying'⁶⁷ with an actual blade in order to 'speak daggers'⁶⁸ metaphorically to his mother.

Hamlet's misunderstanding of the process and the substantive value of *stare decisis* is thus ingloriously manifest in the example of Pyrrhus the Achaean — and this failing is further demonstrated later in the play when Shakespeare subtly resurrects another Pyrrhus in the form of young Fortinbras.

⁶⁰ II.ii.493–522.

⁶¹ II.ii.525–526: 'Prithee say on ... Say on; come to Hecuba.'

⁶² In the psychoanalytical, not the Greek, sense.

⁶³ II.ii.585–588.

⁶⁴ I.v.119.

⁶⁵ I.v.92.

⁶⁶ I.v.93.

⁶⁷ III.iii.77.

⁶⁸ III.ii.429.

This second Pyrrhus was, half a century into the post-Alexandrian Era, the monarch of Epirus, a kingdom said to have been established by the first Pyrrhus a millennium before.⁶⁹ This later king is the proverbially famed Pyrrhus whose costly triumph over the Romans at Asculum Apulum in 279 BC coined the term 'Pyrrhic victory'.⁷⁰ The profound courage of Pyrrhus and his men in the face of harrowing odds is, of course, mirrored by Fortinbras' expedition into Poland 'to gain a little patch of ground/That hath in it no profit but the name'.⁷¹ This is the courage of which the classic poet Simonides spoke when he epigrammatised the famous Lacedaemonian fortitude:

Not seeing death or life in itself as the object of striving,
But to accomplish both nobly — this they considered true
honor.⁷²

This is the courage Fortinbras possesses, who can find a great 'quarrel in a straw/When honor's at the stake'.⁷³ And this is precisely the courage that Hamlet is lacking for, as Cato the Elder once remarked upon hearing some people praise a man who was not only brave but recklessly daring in war, there is a difference between valuing courage highly and life cheaply.⁷⁴

Just as certainly as Pyrrhus and Fortinbras valued honour and justice as the highest attributes of life — attributes for which one may perish so as to sanctify life — Hamlet is motivated solely by his disgust with life, an enmity which he takes verbose pains to express throughout the play in speech after speech, and soliloquy after soliloquy. Those who would romanticise Hamlet's failure to kill Claudius as the noble struggle of the proto-modern conscience against an atavistic vengeance should bear in mind that the only instances of Hamlet in 'action' result in the most callous murders.

In fact, as AC Bradley points out, Hamlet's lack of will is either directly or indirectly responsible for every death in the play, including his own.⁷⁵ He murders Polonius without a trace of compunction and his reaction to

⁶⁹ See Plutarch (1973), p 384: 'Neoptolemos, the son of Achilles, brought a whole people with him to Epirus, conquered the country, and founded a dynasty. These were named "the sons of Pyrrhus" after him ... this was [also] how it came about that Achilles was granted divine honours in Epirus.' On a personal aside, my lineage is Epirote and I, too, am the son of an Achilles (while my mother, ironically, is Andromache) and, although of thoroughly uneducated peasant stock, he knows by heart a centuries old poem eulogising the conquests of Pyrrhus and relating them in precedential fashion to the struggle of early modern Greece against Ottoman oppression.'

⁷⁰ See Grant (1978), pp 87–90.

⁷¹ IV.iv.18–19.

⁷² Quoted in Plutarch (1973), p 70.

⁷³ IV.iv.58–59.

⁷⁴ See Plutarch (1973), p 70.

⁷⁵ See Bradley (1965), p 115: 'In sparing the King, he sacrifices Polonius, Ophelia, Rosencrantz, Guildenstern, Laertes, the Queen, and himself.'

discovering the misdeed he perpetrated is hardly contrite.⁷⁶ This act leads to Ophelia's suicide, which leads in turn eventually to the mock-duel that will inadvertently claim both Laertes and Gertrude, and intentionally Claudius and Hamlet himself. Furthermore, Hamlet not only contrives the murder of Rosencrantz and Guildenstern, *necessitas inducit privilegium quoad jura privata* (*arguendo*), but in a Polonius-like loquaciousness almost gleefully relates to Horatio how he had achieved their deaths by his ability to 'write fair'.⁷⁷ Indeed, it is only with respect to this murderous connivance that Hamlet invokes God in his actions⁷⁸ — as he does on just one other occasion in the play — the murder of Polonius.⁷⁹ This is a rather pathetic irony considering Hamlet's continual doubts about an after-life (and all that even *after* the Ghost's manifestation).

Hamlet's few moments of action, therefore, admit of little courage but originate instead in a reckless, almost 'bestial',⁸⁰ disregard for human life. The fate of Rosencrantz and Guildenstern does not weigh on Hamlet's 'conscience'⁸¹ beyond its vainglorious use as an example of his lexical — indeed, legal — acuity, inasmuch as an instrument of law effectuated their deaths. The unintentionally slain Polonius⁸² is little more than 'guts'⁸³ to him, although the Queen (ever more direct than her son) recognises 'what a rash and bloody deed'⁸⁴ Hamlet has perpetrated. Furthermore, Hamlet's pointless but envy-filled decision to play at swords with Laertes, despite the latter's acknowledged expertise⁸⁵ and Hamlet's unfit constitution, again displays the

⁷⁶ III.iv.38: 'Thou wretched, rash, intruding fool, farewell!'

⁷⁷ V.ii.36.

⁷⁸ V.ii.11–12: 'There's a divinity that shapes our ends,/Rough-hewn them how we will[.]'; V.ii.54: 'Why, even in that was heaven ordinant.'

⁷⁹ III.iv.194–195: 'heaven hath pleased it so,/To punish *me* with this.' (Emphasis added.) Quite patent here is Hamlet's repulsively narcissistic internalisation of exterior events and his inherent indifference to the fate of others. Endlessly self-absorbed, Hamlet has taken the life of another human being but is concerned only with the consequences that might befall his own person. Indeed, Hamlet's immediate response to having murdered Polonius, that 'foolish prating knave' (III.iv.238), is 'I ... will answer well/the death I give him.' (III.iv.197–198)

⁸⁰ All of Hamlet's (re)actions, in fact, seem performed in a state of 'bestial oblivion' (IV.iv.42) to their consequences. Consider that, after having run Polonius through, Hamlet responds to his mother's desperate question, 'What hast thou done?', by saying 'I, know not. Is it the king?' (III.iv.32). Whether Hamlet knew all along it was not the king whom he had just left immersed in prayer, the comment highlights all the more vividly Hamlet's reckless disregard for life: after all, he knew he had killed *somebody*.

⁸¹ V.ii.65.

⁸² His death is only ostensibly inadvertent. The murder of Polonius, himself a wordsmith *non pareil*, symbolises Hamlet's desire to be rid of his *own* inherent 'wordiness', which (he believes) prevents him from killing Claudius.

⁸³ III.iv.235.

⁸⁴ III.iv.33.

⁸⁵ IV.vii.108–120.

violent temerity that often consumes him.⁸⁶ Hamlet's peculiar mania, in fact, seems to have but two modes of expression: disconsolation or truculence. The latter form of behaviour Hamlet believes to have learned from Fortinbras and Laertes; yet once again, because he fails to infer the 'correct' lesson from their examples, Hamlet proves wholly incapable of emulating them, neither in their impetuosity nor in their discretion. While it is true that, immediately after the old king's death, Fortinbras prepares to wage war on Denmark,⁸⁷ he is still capable of being dissuaded from such a violent course of action when the personal honour of his duty to his uncle, the king of Norway, is at risk.⁸⁸ Similarly, although Laertes seems unstoppably bent upon a bloody requital after learning of his father's death,⁸⁹ he too relents when he realises that Claudius was not responsible — that is, when he comprehends that his violent course of action would be misdirected and so unjust and dishonourable.⁹⁰

Hamlet's actions, on the other hand, controvert entirely the precedent set by Fortinbras and Laertes, of whom, as AC Bradley states, 'we are tempted to exclaim that either of them would have accomplished Hamlet's task in a day'⁹¹ and so prove inapposite to deal with his particular circumstance. When passionate retribution is called for, Hamlet is bloodless and meek — thus Claudius lives. When reason undisturbed by emotion is necessary, Hamlet is savage and frenetic — thus Polonius is murdered. Even when Hamlet finally achieves Claudius' death, so much unnecessary blood has already been shed that his revenge is sickeningly anticlimactic. Moreover, that Hamlet's oath to avenge his father is no murderous humour but a just and honourable — indeed, a *lawful* — act of execution renders him even more in the right than either Fortinbras, whose father was killed by the elder Hamlet in fair combat — 'Well ratified by law and heraldry'⁹² — or even Laertes, whose father was killed by Hamlet the younger in an unintentional act of manslaughter. However, Claudius's poisoning of his brother was wilful, premeditated and deliberate murder, to use the traditional common law characterisations; and more than that, Claudius deserved punishment as the worst form of traitor, for by his fratricide he committed regicide as well.

The question of treason is thus an important subcurrent in the play. As noted above in the discussion of the Player's recitation, Priam's murder is likened to treason. Later, Claudius stands fast against Laertes' lethal wrath, confident that 'There's such divinity doth hedge a king/That treason can but

⁸⁶ Which Hamlet himself admits at V.i.275–276: 'For, though I am not splenitive and rash,/Yet have I in me something dangerous.'

⁸⁷ See I.i.107–117 and I.ii.17–25.

⁸⁸ II.ii.64–85.

⁸⁹ Note, in comparison to Hamlet's lack of will to act against the king, that when Claudius asks Laertes 'who will stay thee?', Laertes roars back: '*My will*, not all the world.' See IV.v.155–156. [Emphasis added.]

⁹⁰ IV.v.159–175.

⁹¹ Bradley (1965), p 79.

⁹² I.i.99.

peep to what it would, / Acts little of his will.⁹³ Finally, when Hamlet does at last publicly assault Claudius, the common cry is 'Treason, treason!'⁹⁴ Yet fear of such accusations does not stay Hamlet's hand. While Claudius may be publicly ensconced by the regal aura of divine protection, Hamlet — through his spectral visitation — could not be more aware of how heaven has judged his uncle. Moreover, the people of Denmark are deeply enamoured of the crown prince, so much so that even after he kills Polonius and outrages the king by his incriminating playlet, Claudius cannot act directly against him for fear of 'the great love the general gender bear him'.⁹⁵ Certainly, instead of surreptitiously killing his uncle, Hamlet might have fomented a rebellion had he made known to the people what he only gradually divulged to Horatio alone; it would have been an uprising that would very likely have met with success, given his stature as the beloved true heir to the throne and the common knowledge that under Claudius the state was in disarray.⁹⁶ In this regard, the specific language of the Ghost's command must be considered for, while he does exhort his son to 'revenge',⁹⁷ he does not specifically instruct Hamlet as to the *manner* of retribution, giving free rein instead to Hamlet's own discretion by saying: 'Howsomever thou pursues this act.'⁹⁸ Perhaps a full-scale insurrection would hardly have been needed, for surely medieval Danish law possessed a mechanism of redress for high treason, and there is no reason to doubt that Hamlet's testimony would not have been accepted outright.

Yet, Hamlet never grapples with how he might lawfully proceed against his uncle's treason, but rather with impotent verbosity devises a subterfuge that is only ostensibly meant to ensnare Claudius but is actually, by Hamlet's own words, meant to test whether the vision of his dead father, despite his earlier pronouncement that 'it is an honest ghost',⁹⁹ is rather 'a damnèd ghost'¹⁰⁰ produced by 'imagination ... foul / As Vulcan's stithy.'¹⁰¹ This is, of course, what Hamlet wishes most. Were the Ghost a spurious delusion, then any action against Claudius would indeed be unjustifiably treasonous, and thus Hamlet would be morally divested of his charge.

However, Hamlet's desire to prove the Ghost an unreality is even more profound. As I have argued, the symptom of Hamlet's inaction is his inability to draw correct inferences, his refusal to extract inductively from prior specific examples of 'heroic' behaviour a general principle of action that could in turn direct a response to his peculiar situation. Instead, applying Llewellyn's Janus-

⁹³ IV.v.138–141.

⁹⁴ V.ii.354.

⁹⁵ IV.vii.20.

⁹⁶ I.i.172–179; I.iv.100; I.v.137–140.

⁹⁷ I.v.31.

⁹⁸ I.v.91.

⁹⁹ I.v.154.

¹⁰⁰ III.ii.87.

¹⁰¹ III.ii.89.

like dichotomous methodology, he ignores the troublesome precedent of the 'historical' Pyrrhus, either the noble scion of Achilles who founded the Epirote dynasty or his even more renowned eponymous descendant, while relying rather on the 'fictional' Pyrrhus whom he himself cited — a figure decidedly ignoble, unchivalrous, and whose acts are couched and thus condemned in terms of barbaric treason. Coincidentally, but conveniently, the simile of Janus¹⁰² in regard to Hamlet is also revealing, for the play is virtually teeming with deceits great and small — that is, with covert misdeeds portrayed as innocent accidents. Claudius, Gertrude, Polonius, Rosencrantz, Guildenstern, and Osric, *inter alia*, are all guilty of ultimately lethal duplicity. Even Ophelia and Laertes, whose natures are ill-disposed to double-dealing, are made accomplices in such through Claudius's impressively cunning machinations. Of course, Hamlet too — belying utterly his self-deluded claim to eschew seeming¹⁰³ — is only able to function outwardly through pretence. There is no man nor woman to whom Hamlet does not consistently lie; even to his one confidant, Horatio — who is virtually the only soul in Denmark incapable of falsehood — Hamlet is not wholly truthful. I will return to the relationship of Hamlet and Horatio in regard to this issue of pretence hereafter. At this point, however, it is important to note that the spirit of deceit symbolised by Janus pervades Hamlet's conscience, albeit Shakespeare invokes by name the two-faced deity not in the present play but only twice elsewhere in his corpus: in *The Merchant of Venice*¹⁰⁴ through Solanio's utter exasperation with Antonio's world-weariness which, as mentioned above, may be likened to Hamlet's; and in *Othello*¹⁰⁵ through Iago, whom AC Bradley has argued is Hamlet's counterpart, the former a paradigm of reckless action, the latter of reckless inaction, both of which defy reasonable explanation.¹⁰⁶ Just as the enmity of Antonio for Shylock and Iago for Othello were masked by an outward show of friendship and loyalty, an underlying irrational animus lies at the bottom of Hamlet's inactive masquerade, the pathology of which I believe has been correctly diagnosed by Richard Weisberg as a Nietzschean *ressentiment*, particularly directed toward Claudius.¹⁰⁷

Hamlet is a man utterly consumed by an *Existenzialneid*, an abyssal Envy which casts an antipathetic shade over all existence. He is embittered, vindictive, rancorous and, most of all, deeply offended by life itself. For the corporeal world subject to empirical apprehension, he has nothing but disdain and scorn.¹⁰⁸ For any notion of life beyond the grave, he has nothing but

¹⁰² Anachronistically, the modern reader is also reminded of Kafka's gatekeeper to the law, in as much as Janus is lord of gateways.

¹⁰³ I.ii.79.

¹⁰⁴ *The Merchant of Venice*, I.i.52–53.

¹⁰⁵ *Othello*, I.ii.33.

¹⁰⁶ See Bradley (1965), p 187.

¹⁰⁷ See generally Weisberg (1972); see also Weisberg (1984), pp 17–20. On the point of Hamlet's inaction as a species of *ressentiment*, I am particularly indebted to Weisberg.

¹⁰⁸ II.ii.321–326.

mistrust and trepidation.¹⁰⁹ Yet Hamlet's own father was a successful ruler in this world and, by his later appearance as a spirit, gives indubitable testimony to the next. Still Hamlet remains unmoved. Although deeply wounded by Claudius, he cannot respond with a 'true reaction, that of deeds'¹¹⁰ because deeds are accomplished externally and Hamlet despises the exterior plane of reality — even though, importantly, he does not deny its existence outright. As a man of *ressentiment*, Hamlet can only respond with an 'imaginary revenge'¹¹¹ against his uncle, which is of course no revenge at all.

However, while I agree with Weisberg that Claudius serves as the animate locus of Hamlet's envy, he is not in my opinion the prime object of his *ressentiment*. As Weisberg has elaborated, *ressentiment*:

emerges ... from an unresolved sense of insult [that] grates on the intellect as much as on the emotions. The wounded party may eventually find himself thinking of little else, even wallowing in an exaggerated sense of injury. Perversely, though, he elevates the perpetrator of the 'insult,' who dominates his thought to the level of an idol. The rage which should be theoretically directed against this figure he venomously reapplies to innocent third parties.¹¹²

An imagined retribution, however, demands an imagined offence. What then was the 'insult' that set off Hamlet's feelings of *ressentiment*? Surely it was not Claudius's killing of the old king, for there could be a no more *tangible* affront than the murder of one's own father. Instead, the 'insult' that shattered Hamlet's sense of self is simply the awareness that his uncle, though iniquitous, is far more capable than he of acting firmly upon the needs of the hour. Unlike Hamlet, Claudius's ambitions are not 'the shadow of a dream'.¹¹³ His actions, while evil, are *all* decisive: he murders his brother to claim both crown and queen; he openly prepares for war against young Fortinbras while concurrently working for peace through the old king of Norway; he sets Rosencrantz and Guildenstern to spy on Hamlet, initially, and when he suspects that Hamlet might be an actual threat, he covertly uses the same agents to ensure his nephew's death; finally, he even manages to persuade Laertes to murder Hamlet *for* him. Thus the real grievance Hamlet bears Claudius is the umbrage taken by a man of *ressentiment* in the face of a 'man of action'.

Yet Claudius is not alone in this, for Laertes, Fortinbras and even the fictional Pyrrhus imposed directly upon their immediate external environs the dictates of their internal will. All three sought retribution without delay for the murder of their fathers and each, despite briefly being hindered by others,

¹⁰⁹ III.i.64–96.

¹¹⁰ Nietzsche (1887), 1:10.

¹¹¹ Nietzsche (1887), 1:10.

¹¹² See Weisberg (1984), p 19.

¹¹³ II.ii.278.

eventually exacted their revenge. Conversely, Hamlet is held back by no one but himself and, even when he finally kills Claudius, he is prompted not by the original command to avenge his father's murder but rather by the shock of learning that, through Claudius's poison, he is himself moments away from death.¹¹⁴ Indeed, no mention at all is made of the old king and Claudius dies without explanation and almost guiltless, without his fratricide ever having been made public as a fading echo of damnable betrayal before reaping his final reward.¹¹⁵ Instead, Hamlet harps to the last on his mother's 'incestuous'¹¹⁶ remarriage and his own nearly parting words are 'Wretched queen, adieu'.¹¹⁷ Again, as discussed above, the treason that took from him both his father's life and the crown is not his primary concern, if it is indeed a concern at all.

I do not contend, therefore, that Hamlet's inaction is predicated on a lack of will but rather, as a man of *ressentiment*, on a '*will to nothingness*, an aversion to life, a rebellion against the most fundamental presuppositions of life'.¹¹⁸ Hamlet is in love with the oblivion of Limbo — figuratively, in the sense of a 'prison' which is where he claims to reside and so denominates Denmark and all the world,¹¹⁹ and literally, according to Catholic theology, as the place on the edge of Hell reserved for the souls of those pre-Advent righteous, unbaptised infants, and perhaps even his father. The *Limbus Patrum* is the temporary abode of those who died before Christ but whose lives merited entrance into Heaven yet could not enter until He completed His earthly mission. Similarly, Hamlet's father awaits in purgatorial torment for Hamlet to redeem his unrepentant murder.¹²⁰ Yet this is but one of many allusions to Hamlet's main function as the *figura Christi*, for the play as a whole, as I have argued elsewhere, may be read as Christian allegory:

A depraved, maleficent intriguer brings death to a man in a garden. The Father/King, displaced by jealousy and lust, sends forth his only son to redeem a lost Kingdom, punish the guilty, and save the innocent. That Hamlet is such a potential Second

¹¹⁴ Hamlet stabs Claudius only after Laertes confesses to the envenomed sword and plainly states: 'Hamlet, thou are slain.' V.ii.344.

¹¹⁵ Note that, although Hamlet at V.ii.356 calls Claudius 'murd'rous' as he forces him to down the poisoned cup, no one within hearing, if any indeed did hear, would understand the reason for it. Moreover, the Second Quarto omits the word altogether.

¹¹⁶ V.ii.356.

¹¹⁷ V.ii.365.

¹¹⁸ Nietzsche (1887), 3:28.

¹¹⁹ II.ii.260–270.

¹²⁰ The elder Hamlet states that he is 'doomed for a certain term' (I.v.15) until the sins he committed in life are purged; although it is unclear whether Hamlet's killing Claudius would end or even shorten that term, the Ghost's desperate entreaties for Hamlet to act suggest at least that what Hamlet does will have some effect in that regard. At any rate, the Ghost makes no appearance after the death of Claudius.

Adam, such a Christ-figure, is revealed quite early, in the lines concluding the very first scene, where Horatio and Marcellus, hoping for something or someone to deliver the state from mortal peril, remark on the complete impotence of evil during Advent.¹²¹ Likewise, Denmark too awaits the coming of its own 'savior'.¹²²

The allusions here are axiomatic: Gertrude as Eve, the woman deceived into sin by Claudius, whom the Ghost calls a 'serpent'¹²³ and who brought death to the old king in his 'orchard'¹²⁴ — that is, as if to Adam and through him to all humankind, which we see reflected in the dissolute and crumbling state of Denmark, until a Second Adam rise up, for 'as by the offence of one judgment came upon all men to condemnation; even so by the righteousness of one the free gift came upon all men unto justification of life'.¹²⁵ That Hamlet bears this quasi-messianic mantle is patent.

Hamlet is the only son of a king, a nearly mythic Father whose presence exclusively occurs in ethereal revelations and who gives his son a single command meant to reclaim the kingdom from an impending catastrophe, expressed both in the human threat of Fortinbras's coming host as well as in the ominous supernatural portent of the Ghost. Yet, although Hamlet clearly recognises his unique status as redeemer, as the potential saviour of the realm, he refuses to fulfil his duty. 'The time is out of joint,' he declaims reproachfully, 'O cursèd *spite*/That ever I was born to set it right!'¹²⁶ The spirit of his murdered father has just appeared to him, describing in the most 'horrible'¹²⁷ terms the 'sulph'rous and tormenting flames'¹²⁸ to which Claudius condemned him, and yet, but scant moments after swearing a sacred oath¹²⁹ to avenge the murder, Hamlet speaks not of duty or honour or obligation but of somehow having been *spited*.

The author of this sense of personal injury, therefore, is not Claudius. The true target of Hamlet's *ressentiment* is, instead, his own father. Like the Jesus of Kazantzakis's *The Last Temptation*, who rejects the calling that will unavoidably end in his own death and whose fear of that death leads not to a

¹²¹ I.i.172–179. Note that Horatio at this point only 'in part' believes this. I.i.180. [Footnote not in the original.]

¹²² See Pantazakos (1998), p 215.

¹²³ I.v.46.

¹²⁴ I.v.66.

¹²⁵ Romans 5:18. I use throughout the King James Version only out of expediency to convey better the Elizabethan sense of the verse and so provide a context for the play. The translation itself cannot express the complexities of the original Greek text, obviously, and I do not intend the reader to assume I make any theological comment on the verse itself.

¹²⁶ I.v.210–211. [Emphasis added.]

¹²⁷ I.v.87.

¹²⁸ I.v.4.

¹²⁹ I.v.119.

cherishing but to a consequent rejection of life, Hamlet too — hating both death and life in equal measure — spurns his father's command and wallows in wordiness. Like the Jesus of Matthew who cried out, 'O my Father, if it be possible, let this cup pass from me',¹³⁰ Hamlet too wishes nothing more than to be spared his charge. However, the protagonists of both Kazantzakis and Matthew ultimately embrace their duty and their death with the words 'Father, your will be done. Not mine, Father — yours',¹³¹ an instance of *amor fati* that Nietzsche himself praised as 'the freedom from, the superiority over every feeling of *ressentiment*'.¹³² But Hamlet is not free.

According to Nietzsche, the man of *ressentiment* is subject to and characterised by a 'slave morality',¹³³ because he has repressed his natural instinct for freedom (or the will to power)¹³⁴ by deeming thoroughly hostile and evil the external apparent world, within and against which it is immoral/impossible to act, but rather only to react.¹³⁵ This is the very nature of Hamlet's unsolvable renitence. Indeed, his despairing cry at his continual failure to execute Claudius — 'O, what a rogue and peasant slave am I!'¹³⁶ — augurs Nietzsche most presciently. Hamlet, in other words, is not — as a son should be — the good servant of his father, but instead a slave to his own unrealisable hubris. The injury or insult done Hamlet is not directly committed by Claudius. The source of Hamlet's *ressentiment* is his father, the archetype of the perfect king to which Hamlet aspires, but to which he believes he could never measure up. Thus Hamlet does not fault Claudius so much for murdering his father as he blames his father for dying.

Early in the play, even before he has seen the Ghost or learned the circumstances of Claudius's treachery, Hamlet comments 'I am too much in the sun',¹³⁷ a line which employs Shakespeare's primary symbol of kingship in order to express the inadequate prince's deep-seated reluctance to succeed his near-legendary father. The inquiry pursued by some — namely, 'why is not Hamlet made king when his father dies?'¹³⁸ — thus misses the mark; the true question is why Hamlet does not just *take* the throne when his father dies? As the first-born male issue of the prior king he has all legal rights. Moreover, he is well loved by the people of Denmark, certainly well educated and, being at least 30 years old,¹³⁹ hardly too young given the play's medieval setting.¹⁴⁰

¹³⁰ Matthew 26:39.

¹³¹ See Kazantzakis (1961), p 442; Matthew 26:39f.f

¹³² Nietzsche (1895), 40 (Emphasis in original.)

¹³³ Nietzsche (1887), 1:10.

¹³⁴ Nietzsche (1887), 2:18.

¹³⁵ Nietzsche (1887), 1:10.

¹³⁶ II.ii.577.

¹³⁷ I.ii.69.

¹³⁸ See Osborn (1989), p 205.

¹³⁹ V.i.179. The gravedigger mentions that Yorick has been dead for 23 years at the time of the action of the play. See also Bradley (1965), pp 339–341.

¹⁴⁰ Henry V took the English throne in his 26th year.

Even Fortinbras from a distance speculates that 'he was likely, had he been put on,/To have proved most royal.'¹⁴¹ Notwithstanding the possibility that the monarchs of Denmark in Hamlet's time were elected¹⁴² — that is, elected from a pool of candidates who proved their worth through some heroic deed — Hamlet should have been the leading candidate.

Yet Hamlet does not seem to have prepared at all for his most likely eventual succession. As noted above in regard to the mock duel with Laertes, several comments are made about Hamlet being ill-conditioned and lacking expert swordsmanship,¹⁴³ but then, if he had not (in the action before the play) been readying himself (as he should) to be king by training in the military and political arts, what *was* he doing before his father's death?¹⁴⁴ Why is he at such a late age still — or at least considering — returning to be a student at Wittenberg? Is his comment upon meeting Horatio, 'We'll teach you to drink deep ere you depart',¹⁴⁵ merely a wry observation on Claudius's penchant for revelry or some indication that Hamlet is himself prone to be dissolute? Hamlet, in my view, had no desire to be king. Rather, he dreaded the prospect. With his father dead, however, Hamlet is indeed 'too much in the sun' — that is, the spotlight now turns on him as protagonist, contrary to his innermost wishes, and he is only too relieved that Claudius takes centre stage. The throne of Denmark was never Hamlet's desideratum, nor does he once lament its loss in any of his garrulous declamations. Thus Hamlet does not resent Claudius's actual usurpation as much as the symbolic substitution he effected for the old king, a portrait of whom, in some readings, hangs like a crucifix from Hamlet's neck.¹⁴⁶

As long as the old king reigned, his namesake could freely indulge a vicarious sense of public accomplishment (not to mention private Freudian fantasy) while simultaneously withdrawing from any position of responsibility. With the murder of King Hamlet, however, Prince Hamlet is left no dialectical recourse: he may rule or be ruled, he may be master or slave, but a choice must be made and it is his alone, for even the Ghost's so-called *command* to exact 'revenge' is too vague a law to put in practice, in much the same way that no court could declare its holding merely to be 'do justice'.¹⁴⁷ As a general

¹⁴¹ V.ii.443-444.

¹⁴² Hamlet says that Claudius has 'Popped in between th'election and my hopes' (V.ii.73) and later that 'th' election lights on Fortinbras' (V.ii.392-393). Nonetheless, I read the import of 'election' beyond the pertaining mechanism of succession. See below.

¹⁴³ Hamlet mentions that he has been in 'continual practice' (V.ii.225) only since Laertes left for France after his father's funeral some weeks or perhaps months before. Given the doubts both Horatio and Gertrude express so freely about Hamlet's fighting prowess, it is more probable that Hamlet had not engaged in any notable practice before that time.

¹⁴⁴ For study of this question, see generally Bradley (1965), pp 333-339.

¹⁴⁵ I.ii.182.

¹⁴⁶ III.iv.63.

¹⁴⁷ See Alexander (1996), pp 506-507.

principle of action, however, as a 'commandment'¹⁴⁸ and with all the religious significance thereby connoted, Hamlet's duty is clear. Yet he is 'too much in the sun' — that is, too much longing to be his father's son rather than trying to be his own man. The old king is idolised out of all proportion — divinised almost, as Hamlet likens him to Hyperion,¹⁴⁹ Jove,¹⁵⁰ Mars¹⁵¹ and Mercury,¹⁵² while comparing Claudius to a satyr¹⁵³ and calling him a 'murderer and a villain,/A slave that is not twentieth part the tithe'¹⁵⁴ of his brother. This contrast, however, is even more significant as Hamlet specifically links it to himself: 'My father's brother, but no more like my father/Than I to Hercules.'¹⁵⁵ Whether Claudius truly suffers in comparison to the old king is actually irrelevant to Hamlet, who is instead obsessed by his own perceived inadequacies. His virulent obloquies against Claudius are thus, in fact, self-directed, for Hamlet is once again 'too much in the sun' — that is, too much like his adoptive father and so too little like his real father.

This is the 'insult' that has rendered Hamlet powerless. This is the source of Hamlet's inaction, the *ressentiment* he feels toward the father he can equal neither in life nor death. The 'imaginary revenge' he inflicts upon his father is, ironically, to commit against his uncle no real revenge at all. In a manner of speaking, then, Claudius is as much the *innocent* victim of Hamlet's misdirected guilt as any other. While his actions are certainly beyond the pale of sympathy, he at least remains — even in his evil — always recognisably human. Hamlet, however, represents something else entirely: as the *figura Christi* he is 'too much in the sun' in yet a final sense, but in the end he is a *failed* Christ, and his is a failure not of faith but of law — and more than that, it is a failure of faith in the law in action.

There is in the play an anachronistic undercurrent of subtle illusions to Lutheran disputations concerning the salutary value of works against justification solely by faith, arguments initially offered only 40 years before Shakespeare's birth and certainly still prominent in his day. The most important of these in regard to Hamlet may be the controversy of antinomianism, which began to take root in England contemporaneously with the play. In the parlance of Protestant theology, antinomianism means that faith in Christ frees one from the obligations of moral law — originally, in particular, the Mosaic law:

It is the belief that God dwells within, indeed that one is divine,
and hence external law is invalid (as is its enforcer the king) ...
[T]he antinomians reject law and seek an alternative source of

¹⁴⁸ I.v.109.

¹⁴⁹ I.ii.144; III.iv.66.

¹⁵⁰ III.iv.66.

¹⁵¹ III.iv.67.

¹⁵² III.iv.68.

¹⁵³ I.ii.144.

¹⁵⁴ III.iv.110–111.

¹⁵⁵ I.ii.157–158.

normative order outside or beyond the bounds of the common law, beyond what is officially and culturally inscribed on the legal subject. These antinomian tendencies culminate in parricide/regicide — in breaking the bonds of filiation.¹⁵⁶

Thus the common, or more precisely the *communal*, good, does not exist — the measure of an individual's faith alone circumscribes what is moral, irrespective of the consequences wrought by such an internalised faith in action. For the antinomian, then, the ultimate declaration of faith is not 'I believe *in* the Christ' but 'I *am* the Christ'. The law in this way is indeed made flesh and every person an internally sanctioned autogenous source of law.

While Luther's own doctrine concerning the primacy of faith over works (for which he was condemned by the Diet of Worms) paved the way for an antinomian extreme, the author of this particular heresy was Johannes Agricola, himself a teacher of theology at the University of Wittenberg, where Luther preceded him. The difficulties of time notwithstanding, one may fairly wonder, given this background, what exactly Hamlet was studying in Wittenberg, or why his schooling there is 'most retrograde'¹⁵⁷ to Claudius's 'desire',¹⁵⁸ or why the voluble Polonius meets his final judgment at a 'certain convocation of politic worms'.¹⁵⁹ Perhaps nihilism alone does not prompt Hamlet to declare that 'there is nothing good or bad but thinking makes it so';¹⁶⁰ perhaps his ambivalence towards action is rather more profoundly rooted in an antinomian belief that the individual conscience is the ultimate lawgiver and, consequently, the only judge of what is lawful.¹⁶¹

The clearest example of Hamlet's antinomianism emerges in his contemplation during the graveyard scene of what he takes to be a lawyer's skull.¹⁶² This short, seemingly inconsequential — even superfluous — passage is replete with legal jargon almost exclusively relating to the holding and ultimate distribution of property. Hamlet calls his lawyer 'a great buyer of land',¹⁶³ and he speaks of 'tenures',¹⁶⁴ or holdings of properties, and the use of 'fines',¹⁶⁵ and 'recoveries',¹⁶⁶ that are essentially modes of converting an estate in tail, which cuts off the regular succession of heirs at law, into fee simple, which bequeaths a freehold estate of virtually infinite duration. Yet this is

¹⁵⁶ See Slaughter (1992), p 233.

¹⁵⁷ I.ii.117–118.

¹⁵⁸ I.ii.117–118.

¹⁵⁹ IV.ii.22–23

¹⁶⁰ II.ii.268–271.

¹⁶¹ A position hardly reconcilable to the common law tradition. Cf Madison (1787), No. 10: 'no man is allowed to be a judge in his own cause; because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity.'

¹⁶² V.i.100–119.

¹⁶³ V.i.106.

¹⁶⁴ V.i.102.

¹⁶⁵ V.i.107.

¹⁶⁶ V.i.108.

exactly what Hamlet so forcefully denies — namely, the notion that property is a lasting possession secured by law to pass eventually to its rightful heirs. Here we see a subtle reference to Hamlet's failure to succeed to the throne. Hamlet is his father's rightful heir, and as such should possess genuine 'statutes' and 'recognisances' that would acknowledge a legal right far greater than his usurping uncle's mere parol guarantee of succession.¹⁶⁷ Cheated of his birthright, the Crown Prince has the complete imprimatur of law to seek some form of 'recovery' or 'fine' against his uncle.

As discussed above, however, Hamlet fails to take his throne by any means, whether violent, legal or a combination of both (a procedure which was perfectly acceptable in Hamlet's era). Moreover, Hamlet does not attribute this failure to his own lack of will but, as a true antinomian, to the non-existence of external law. Inasmuch as the antinomian believes that law dwells only within the individual, as such it too is 'mortal' in the most literal sense. The relevance of setting this passage in a graveyard is thus manifest, for if law exists only in flesh and blood then of necessity it will 'deconstruct, decompose, [and] die'¹⁶⁸ along with the individual.

Thus the antinomian rejects the concept of law as an external — indeed, *eternal* — force in order to preserve his 'deified' self. Normatively, the individual passes away, but the law remains; for the antinomian, however, any law without the individual is dead, any law within the individual is dying, and neither has any general application beyond the particular individual conscience that was or is its source. In this context, then, Hamlet's caustic attack on the law is not primarily directed towards laymen but against lawyers — against those who by their fidelity to the ethos of law as discarnate, ongoing and applicable beyond the caprice of the specific individual case as a general guiding principle. In short, Hamlet inveighs against lawyers because their notion of law destroys Hamlet's belief in his own divinity, which is yet another example of Hamlet as *figura Christi* inasmuch as the long-standing perverse charge of deicide against Jews is based on the law having destroyed the 'divine' Jesus. Again, however, Hamlet is a failed Christ even in this, for his rejection of legal 'fine' and 'recovery' may also be read as a denial of Christian 'sin' and 'redemption'. Hamlet comes not as a Good Shepherd¹⁶⁹ to fulfil the law¹⁷⁰ for the benefit of his people beset with strife; rather, he reviles them as 'sheep and calves which seek out assurance'¹⁷¹ in the law and thus scorns allusively the Kingdom of Christ, even as he then explicitly derides the conquests of Alexander¹⁷² — both of whom, like Hamlet himself, are sons of a great king, young princes who set out win an empire, and both of whom, again like Hamlet himself, died around the age of 30. Whether, or in what measure, either Christ or Alexander were successful, I leave to the reader; but on the

¹⁶⁷ I.ii.113: 'You are the most immediate to our throne.'

¹⁶⁸ See Slaughter (1992), p 232.

¹⁶⁹ John 10:11.

¹⁷⁰ Matthew 5:17.

¹⁷¹ V.i.118–119.

¹⁷² V.i.204–223.

symbolic level they are clearly meant to reflect poorly on Hamlet's inaction. After all, Alexander's immense ambition was halted only by mutiny and poison, as was Christ's, whose final word, nonetheless, was *tetelestai*, which may best be rendered as 'I have accomplished my task'.¹⁷³

Yet even the antinomian can 'act', to speak perversely, through the justification of his self-directed faith, and Hamlet *is* actually so moved when he kills Polonius and arranges the murder of Rosencrantz and Guildenstern. Since the antinomian believes himself divine, all others are necessarily *lesser* men. In this light, therefore, we see what Hamlet meant when he said to Polonius's corpse, 'I took thee for thy better',¹⁷⁴ or when he described the deceased Rosencrantz and Guildenstern to Horatio as 'base natures',¹⁷⁵ who were justly killed for their heretical interposition 'between the pass and fell incensed points of mighty opposites'¹⁷⁶ — that is, between himself and Claudius. Still, if Hamlet is thus capable of acting as an antinomian, what is it that prevents him from killing the king? Part of the answer to this central inquiry is that, unlike the others whom Hamlet has so brutally 'acted' upon, he does not regard Claudius as a *lesser* personage at all. Polonius, Rosencrantz and Guildenstern were not 'base' only because they were inferior in rank and station to Hamlet, but because none of them was capable of acting directly, resorting instead to word-traps to catch him, much as Hamlet lays them for his uncle. The base nature Hamlet condemns in them, and by which they are condemned, is precisely what Hamlet despises in himself. Claudius, on the other hand, while certainly devious when appropriate, is not only their 'better' but Hamlet's as well — again, not merely in rank and station, but because his natural predilection is towards direct action. Indeed, it is his one attempt to proceed indirectly — namely, by his clandestine plans to have Hamlet killed first by England and later by Laertes — that ultimately backfires and leads to his own death.

Nonetheless, Hamlet remains powerless before his superior uncle, suspended in self-doubt because Claudius is a man who accepts the world for what it is, even when it is evil or hostile. In Nietzschean terms, he partakes of the master morality enough to become at least master if not moral, wholly unlike Hamlet's slave morality which, akin to antinomianism, says "'NO" to what comes from outside, to what is different, to what is not oneself'.¹⁷⁷ However, since the actions of an antinomian are founded on the belief in his personal apotheosis, when he begins to doubt this faith in himself, the egocentric godhead he has erected inevitably topples and, being without an exterior, non-corporeal conception of 'action', nothing remains but death — or, more specifically, suicide. This is exactly Hamlet's problem. He suffers a crisis of faith in himself to which he subtly — perhaps even subconsciously —

¹⁷³ John 19:30.

¹⁷⁴ III.iv.39.

¹⁷⁵ V.ii.67.

¹⁷⁶ V.ii.68–69.

¹⁷⁷ Nietzsche (1887), 1:10.

alludes when he says, 'by my fay, I cannot reason',¹⁷⁸ a crisis which, even before the disclosure of his uncle's treachery and the imposition of his father's dread command, is so severe as to lead him to contemplate 'self-slaughter'.¹⁷⁹

Although Hamlet's forced confrontation with Claudius ostensibly engenders this crisis, I assert rather the converse — namely, that the crisis engendered the confrontation. By 'crisis' I mean to refer not merely to a turning point, but to the sense of the original Greek *krisis* — that is, 'judgment', for Hamlet has judged the world — indeed, has judged life itself — as evil because the words of law that would order the world into something worth living are, in fact, dead. As the graveyard scene conveys, the law cannot survive the individual despite all 'vouchers'¹⁸⁰ to the contrary, and so the law of one generation is simply inapplicable to any that follow. To Hamlet, bereft of his legacy, the lawful 'inheritor himself'¹⁸¹ ultimately receives 'not a jot more'¹⁸² than 'dust',¹⁸³ thus, the past does not pass down a great fund of law for the benefit of the present or future and the concept of precedent is a cruel farce. In fact, Hamlet's view of law accords — again somewhat perversely — with the maxim *stare decisis et quia non movere*, especially in Lord Coke's famous translation of the final clause, for Hamlet surely does believe that law, being dead, 'ought to rest in peace'¹⁸⁴ — as should his father.

However, this 'rest', this inaction, the last remnant of his fallen faith, is hardly peaceful, given the many deaths to which it leads. Neither is it expectant, for Hamlet is finally a failed Christ again in his inability to resurrect a living spirit from the dead letter of the law — that is, he cannot infer from past examples a working principle for his present conflict. This notion of resurrection is metaphorically tempting as it apparently expresses the indispensable need for an external rule of relevance¹⁸⁵ that can determine what elements of a past case control the future and which are no longer valid. Yet the nature of such a rule is not at all clear. Is the test of a proper adherence to precedent whether it is, in a quasi-Kantian sense, *contre coeur*?¹⁸⁶ Should the rightness or value of prior decisions as a current constraint be ignored in favour of considering only the future effect of a decision to the present controversy?¹⁸⁷ Does the proper operation of *stare decisis* reject 'a distorted

¹⁷⁸ II.ii.284–285.

¹⁷⁹ I.ii.136.

¹⁸⁰ V.i.110.

¹⁸¹ V.i.114.

¹⁸² V.i.115.

¹⁸³ V.i.217.

¹⁸⁴ See *Spicer v Spicer* (KB 1620) Cro Jac 527, 79 Eng Rep 451.

¹⁸⁵ Schauer (1987), pp 576–580.

¹⁸⁶ Radin (1963), p 3.

¹⁸⁷ Schauer (1987), pp 575–576.

preoccupation with the canonical statements of previous decision-makers'?¹⁸⁸ Are the words of law, in short, a mere 'distraction'?¹⁸⁹

The problem of Hamlet's inaction responds directly to these questions. Initially, the Ghost's command to Hamlet was not in the least *contre coeur*: it was not the order, but Hamlet, who proved to be heartless because he unnaturally transformed the most personal question of his father's murder into the most impersonal disquisition on not taking action. As Nietzsche said (not insignificantly) in *The Anti-Christ*: 'Nothing works more profound ruin than any "impersonal" duty, any sacrifice to the Moloch of abstraction.'¹⁹⁰ In that light, the lesson of Hamlet's inaction is that the human element in decision-making — namely, prejudices, perspectives and, most importantly, instinctive hunches — cannot be exorcised and any attempt to do so is not only fated to failure but may be lethal in consequence.

Hamlet's inaction also teaches that a forward-looking consideration of precedent is also dangerous inasmuch as it necessitates impossible value-judgments of truth and falsehood upon the future contingent effects of present decisions, ultimately leading to a bivalent fatalism that is, in effect, no decision at all. Consider in this regard the question of whether Hamlet should have killed Claudius at prayer.¹⁹¹ Seemingly ready to do the deed at last in this, his best opportunity at any time in the play, Hamlet hesitates almost immediately, stumped by the assumption that to kill Claudius in an act of contrition would send him to heaven and so foil Hamlet's revenge.¹⁹² But why should he assume the truth of this? Although he may be praying, Claudius is not engaged in the formal sacrament of confession as ministered by a priest, nor is Claudius's *miserere* audible. In any event, although according to the Ghost's command, Hamlet was explicitly enjoined from acting in any way against his mother because her fate alone to be left to 'heaven',¹⁹³ as for Claudius, the Ghost commissioned Hamlet to dispatch him presently 'howsomever'.¹⁹⁴ Moreover, Shakespeare openly signals that Hamlet's assumption was completely erroneous in the last two lines of the scene, but a moment before Hamlet's happy exit, as Claudius laments aloud: 'My words fly up, my thoughts remain below;/Words without thoughts never to heaven go.'¹⁹⁵ Finally, Hamlet cannot possibly know what *will* happen to Claudius in the hereafter; all Hamlet knows for certain is his duty here and now. Caught thus in this dilemma, Hamlet withdraws from an active participation in the question of duty to a purely reactive fatalism that, by the play's end, becomes a virtual credo of *ressentiment*: 'If it be/now, 'tis not to come; if it be not to come, it will

¹⁸⁸ Schauer (1987), pp 572–573.

¹⁸⁹ Schauer (1987), pp 574–575.

¹⁹⁰ See Nietzsche (1895), 10.

¹⁹¹ III.iii.77–103.

¹⁹² III.iii.79–80.

¹⁹³ I.v.93.

¹⁹⁴ I.v.91.

¹⁹⁵ III.iii.102–103.

be/now; if it be not now, yet it will come. The readiness is all ... Let be.'¹⁹⁶ Or could he have equally ended with '*stare decisis*'?

Over the course of the play, Hamlet's inaction has evolved from its original conflict of life versus after-life to the apparent world versus the 'real' world. He has thus, in Nietzschean terms, converted from pagan to Christian. Whereas Hamlet's primary question early in the play was 'To be or not to be,'¹⁹⁷ — that is, whether this life is superior or inferior to the next, or more precisely, and in pre-Socratic fashion, whether action (or motion) is in the nature of reality actual or mere illusion. Shortly before his death, however, Hamlet answers this question, as noted above, with 'let be' — that is, he rejects outright the question of the illusion of action in this life because it is this life itself which is illusory. This world is only apparent, only seeming. The 'real' world is the other world, the after-life, as yet unattainable but promised to the elect not by virtue of their actions but by virtue of their faith. Thus, by the final scene in the play, Hamlet is no longer tormented by his failure to act on his father's behalf but relies rather on 'a special providence'¹⁹⁸ that will requite Claudius for having 'popped in between th' election and my hopes'.¹⁹⁹

Hamlet's new-found faith, however, is now thoroughly Christian, as his asserting that even 'the fall of a sparrow'²⁰⁰ evinces a divine purpose is a deliberate echo of the Sermon on the Mount: 'Are not two sparrows sold for a farthing? And one of them shall not fall on the ground without your Father.'²⁰¹ As such a Christian, Hamlet naturally suffers an inclination to interpret the past, especially the law of the past, in a manner akin to what Nietzsche called '*the worst readers* ... those who proceed like plundering soldiers: [who] pick up a few things they can use, soil and confuse the rest, and blaspheme the whole.'²⁰² As such a Christian, Hamlet would indeed agree that a fidelity to canonical language is a distortion of meaning, that the 'words, words, words'²⁰³ of law are but a distraction from its 'real' purpose. And, in the end, it is as such a Christian — or rather as the *figura Christi* — that Hamlet dies, borne out on the shoulders of 'four captains',²⁰⁴ as if they were the four Evangelists,²⁰⁵ borne out upon the order of Fortinbras, upon whom does Hamlet 'prophesy th' election lights',²⁰⁶ and whose pity for and praise of Hamlet liken him not to the Pyrrhus that he was but to the Constantine he may well become when he hears Hamlet's tale from Horatio, Hamlet's dearest

¹⁹⁶ V.ii.234–238.

¹⁹⁷ III.i.64.

¹⁹⁸ V.ii.234.

¹⁹⁹ V.ii.73.

²⁰⁰ V.ii.234.

²⁰¹ Matthew 10:29.

²⁰² Nietzsche (1879), Maxim 137.

²⁰³ II.ii.210.

²⁰⁴ V.ii.441.

²⁰⁵ In Zeffirelli's film version, Hamlet dies in a cruciform position.

²⁰⁶ V.ii.392–393.

disciple, as it were who, having been prevented by the dying Hamlet from offering himself up 'to a similar death in sweet and gentle piece of heart'²⁰⁷ as an 'antique Roman',²⁰⁸ was charged instead — again by Hamlet — to 'report [him] and [his] cause aright/To the unsatisfied',²⁰⁹ as if Horatio were now a latter-day Paul, the missionary to the world for Hamlet's Christ.

Yet what is the message, what is Hamlet's *Good Word*, if not — again to borrow from Nietzsche — a *Dysangel*,²¹⁰ the 'bad tidings',²¹¹ of a mere belief, a mere faith in a greater reality that lies (truly *lies*) beyond the limits of aesthetic (within which I most certainly include linguistic) perception, a faith that 'has been at all times ... only a cloak, a pretext, a *screen*, behind which the instincts played their game'?²¹² What, then, is the moral, the lesson, the *meaning* of Shakespeare's allegory of *Hamlet*? That 'only Christian practice, a life such as he who died on the Cross *lived*, is Christian',²¹³ that 'Even today, *such* a life is possible, for *certain* men even necessary',²¹⁴ that such a life is '*Not* a belief but a doing, above all a *not*-doing of many things, a different *being*'?²¹⁵ In the end, Shakespeare says, Hamlet is not like Christ; as for whether Christendom is not as well — and if it is indeed not, what must be done — he leaves for us to decide.

The value of *Hamlet* for the law, more specifically, is that it defines a significant parameter of this decision: is our relationship to the precedents of the past one of responsibility, of obligation, of duty²¹⁶ — in short, of *covenant*, that is satisfied with uncertainty, with *untruth* even, or is it inexorably drawn into a reckless inaction against the law's so-called 'dead hand', a mode of interpretation predicated on the *belief* that there is some as yet unattained but promised principle of reasoning that will uncover the law's *real* meaning,²¹⁷ that will resurrect from the dead letter the *spirit* of the law. Although the play offers a clear example of how death is ineluctable when the son rejects the law of the father, this metaphorical (and metaphysical) question, despite appearances, is not as simple as choosing whether we are Jews or Christians. Even the ancient Greeks expressed their inductive methodology in the idea that a general theory literally 'saves' particulars — that is, interprets without doing violence to them.²¹⁸ But if, as I suggest, the concept of resurrection is indeed the metaphorical (and metaphysical) root of the legal problem of *stare decisis*,

²⁰⁷ Nietzsche (1895), 40.

²⁰⁸ V.ii.374.

²⁰⁹ V.ii.371–372.

²¹⁰ Nietzsche (1895), 39.

²¹¹ Nietzsche (1895), 39.

²¹² Nietzsche (1895), 39.

²¹³ Nietzsche (1895), 39.

²¹⁴ Nietzsche (1895), 39.

²¹⁵ Nietzsche (1895), 39.

²¹⁶ See Kronman (1990).

²¹⁷ See White (1996), p 589.

²¹⁸ See Barker (1958), p xxviii.

perhaps, as Shakespeare suggests through *Hamlet*, we must first re-examine — perhaps even revalue — how we live, what we believe and wherein our salvation truly lies.

Abraham saith unto him, They have Moses and the prophets; let them hear them.
 And he said, Nay, father Abraham: but if one went unto them from the dead, they will repent.
 And he said unto him, If they hear not Moses and the prophets, neither will they be persuaded, though one rose from the dead.²¹⁹

There needs no ghost, my lord, come from the grave
 To tell us this.²²⁰

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²¹⁹ Luke 16:29–31.

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