

LET'S SKILL ALL THE LAWYERS: SHAKESPEAREAN LESSONS ON THE NATURE OF LAW

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I. SHAKESPEARE AND THE LAW

Despite his limited formal education,¹ Shakespeare's works display a great deal of legal knowledge.² As we shall see, Shakespeare's characters and storylines present intriguing explorations of legal theory and provide good examples of how such theory can go wrong and how such theory can go right. In this article, I shall explore four of the various philosophical views (or parts of views) of the law found within his plays. Among these various views, Shakespeare explores what we would now call a form of legal positivism (i.e., the theory that laws are simply commands of the sovereign) and shows us how such an approach cannot succeed. Shakespeare also beautifully lays out arguments for natural law only to demolish them. Centuries before Holmes formulated his prediction theory, Shakespeare explores a prediction theory of the law (i.e., that the law is a set of predictions as to how the courts will act in certain circumstances) and shows us how this theory fails. Finally, Shakespeare gives us insightful bits and pieces from which we might generate a workable jurisprudence complying with the semiotics of law and its inherent restraints.³

¹ See Stanley Wells, *Shakespeare: A Life in Drama* (NY: W. W. Norton & Co. 1995), 15, who claims that Shakespeare's formal education ended by the age of fifteen.

² See Daniel J. Korstein, *Kill All the Lawyers? Shakespeare's Legal Appeal* (Princeton: Princeton University Press, 1994), xi-xvii (hereafter Korstein); Mark Andre Alexander, "Shakespeare's Knowledge of Law: A Journey Through the History of the Arguments," <http://www.shakespearefellowship.org/virtualclassroom/Law/index.htm>

³ As Shakespeare will help us see, nothing (including law) is simply given in itself. We impose our own meanings on everything we study or do. However, as Emily Dickinson notes, community sets firm semantic limits:

Much Madness is divinest Sense -
To a discerning Eye -
Much Sense - the starkest Madness -
'Tis the Majority

II. POSITIVISM

A. Introduction

One of the best known forms of positivism holds that laws are commands of a sovereign who is habitually obeyed and who is beholding to none other.⁴ If commanded by that sovereign, laws are valid without regard to their moral content.⁵ Instead, they are obeyed to avoid the predictable punishment that would ensue if they are not obeyed.⁶ Shakespeare and logic both make short order of any such concept of law.

B. John, Richard II, Henry IV, Hamlet and the Problem Of Legitimate Sovereignty

Taking Shakespeare's "history plays" in their internal chronologi-

In this, as all, prevails -
 Assent - and you are sane -
 Demur - you're straightway dangerous -
 And handled with a Chain -

Emily Dickinson, *The Poems of Emily Dickinson*, ed. R. W. Franklin (Cambridge: Belknap Press 1998), 278. That is not to say, however, that such meanings cannot shift or change over time. They can with proper persuasion, thus highlighting the inseparability of law and rhetoric even at law's most fundamental levels. For a nice discussion of semantic communities and their resistance to change, see Robert Benson, *The Interpretation Game* (Durham: Carolina Academic Press, 2008), 74-75 (hereafter Benson). By "semiotics of law" I therefore mean the study of legal terms, provisions and discourse within their current, generally accepted semantic framework.

⁴ Edwin W. Patterson, *Men and Ideas of the Law* (NY: Foundation Press 1953), 86-87 (hereafter Patterson). Positivism takes on other forms. For example, Hart defines positivism as "...the simple contention that it is in no sense a necessary truth that laws reproduce or satisfy certain demands of morality, though they often have done so." H. L. A. Hart, *The Concept of Law* (NY: Oxford University Press, 1997 2d ed.), 185-186 (hereafter Hart). As we shall see, this form of positivism runs afoul of certain inherent restrictions of the semiotics of law which do effectively parallel certain moral restraints.

⁵ Patterson *op. cit.*, 87.

⁶ *Id.* at 86. If one believes in the concept of divine right of kings, the threat of punishment would also come from an awful cosmic level. See, e.g., William Shakespeare, *The Tragedy of King Richard The Second*, I,ii, 37-38, Stephen Orgel and A.R. Braunmuller, eds., (NY: Penguin Books, 2002), where Gaunt refers to Richard II as "God's substitute" and "His deputy annointed in his sight..." (hereafter *Richard II*).

cal order, *The Life and Death of King John* (hereafter *King John*) explores both the nature of sovereignty and its legitimacy. In this play, John has usurped the crown from Arthur,⁷ the son of John's older brother Geoffrey. Challenging John's legitimacy, the Frenchman Chastillon therefore begins the play with a snide reference to John's "borrowed majesty."⁸ To complicate matters further, John has a half-brother, Philip the Bastard, who is also the son of John's father, Richard I.⁹

Under these facts, what makes John and not Arthur or Philip the Bastard the king? Assuming for the sake of argument that the people now habitually obey John after the death of his father Henry II, where do we find John's sovereignty and legitimacy in these facts? Is it because the people fear him more? If so, what distinguishes John from a mere criminal that the populace habitually obeys out of fear of physical harm?¹⁰ To distinguish John from such a mere criminal, the law must look beyond the common trait of force since common traits of course make no distinction. Law on its face must therefore be more than mere orders and threats. After Macbeth has lost his ethos as a leader, Angus understands this well:

Those [Macbeth] commands move only in command,
Nothing in love. Now does he feel his title
Hang loose about him, like a giant's robe
Upon a dwarfish thief.¹¹

⁷ This is not factually accurate but serves Shakespeare's purposes in the play. John's brother Richard I actually named John his heir and his succession followed after some uncertainty. See W. L. Warren, *King John*, (NY: Barnes & Noble Books, 1996), 48-50.

⁸ William Shakespeare, *The Life and Death of King John*, Stephen Orgel and A.R. Braunmuller, eds., (NY: Penguin Books, 2002), I, i, 4 (hereafter *King John*).

⁹ There is no clear single historical personage corresponding to the Bastard but, again, the character serves Shakespeare's purposes in the play. All the political plays contain historical liberties and I shall correct none further. I make these initial observations simply to caution the reader to learn his or her actual political history of the times from other sources.

¹⁰ As Hart points out, the interregnum problems under this theory run deeper still. Must not all of Henry II's laws die with him since one cannot obey the dead? Must there not always be an extended interregnum between "sovereigns" since habits require time to be acquired? See Hart, *op cit* 52-55.

¹¹ William Shakespeare, *Macbeth* V, ii, 19-22, Stephen Orgel and A.R. Braunmuller,

Any “sovereign” who claims no more legitimacy than the power to sanction if disobeyed must find the garments of state ill fitting indeed.¹² As King Lear points out, such a sovereign only holds “office” in the sense that a guard dog holds office over beggars and thieves that flee his bite. As Lear quips, “There thou might’st behold the great image of authority—a dog’s obeyed in office.”¹³ Legal office surely means more than this. Isabella is surely correct when she claims:

. . . it is excellent
To have a giant’s strength, but it is tyrannous
To use it like a giant.¹⁴

Shakespeare also shows us that defining law in terms of threats or sanctions not only fails at the level of the “sovereign.” It also fails at the level of the “subject.” For if threat of sanction is required for law, then no law exists in its absence. Thus, Falstaff sees himself beyond the law when he is under no threat of punishment or sanction. He rejoices when Prince Hal is to succeed his father Henry IV because he believes that he can then “take any man’s horses. . .”¹⁵ without threat of sanction. Falstaff understands that criminal acts are decriminalized under such a theory whenever no realistic threat of sanction exists under the circumstances.¹⁶ Such fluid criminality is hardly consistent with rule of law.

eds., (NY: Penguin Books 2002), (hereafter *Macbeth*).

¹² This leads us to a further difficulty with positivism. It is certainly logically possible to imagine a community with a set of laws which it simply obeys and which were never promulgated by a sovereign. When Henry V, for example, takes the throne, he requests the Lord Chief Justice to continue to assist him in application of the laws of England as he had done for his father, Henry IV. See William Shakespeare, *The Second Part of King Henry The Fourth*, V,iii, 102-145 (hereafter *2 Henry IV*). Henry V thus realizes that English law is more than edicts of sovereigns but also includes ancient rights and traditions. *Id.*

¹³ William Shakespeare, *King Lear: A Conflated Text*, IV, vi, 157-159, Stephen Orgel and A.R. Braunmuller, eds., (NY: Penguin Books, 2002) (hereafter *King Lear*).

¹⁴ William Shakespeare, *Measure for Measure*, II, ii, 107-109, Stephen Orgel and A.R. Braunmuller, eds., (NY: Penguin Books, 2002) (hereafter *Measure For Measure*).

¹⁵ *Henry IV, op. cit.*, V, iii, 136.

¹⁶ The sanction element creates still further problems since many legal acts involve no sanctions at all (such as procedural or donative transfer laws). See Hart, *op. cit.*, 27-33.

However, notwithstanding these difficulties from an earthly perspective, might the command theory work if reformulated on a more heavenly level? Might the theory work if God commands, under threat of divine sanction, obedience to the earthly "sovereign"? John certainly attempts this approach. Thus, he messages that "meddling priest," the pope:

. . . [N]o Italian priest
Shall tithes or toll in our dominions,
But as we (i.e., John) under God are supreme head,
So under him that great supremacy,
Where we do reign, we will alone uphold,
Without th'assistance of a mortal hand.¹⁷

Granting *arguendo* the existence of such a God, has John not therefore potentially solved his problem? For if God commands something must it not be legitimate?

The problem here, of course, is that even if we accept some notion of the divine right of kings, we cannot as a practical matter determine who holds that right. First, the very disagreement between John and the supporters of Arthur (including the Pope himself) itself demonstrates this. Second, anyone who would appeal to God as ground for his office is not only in the awkward position of contradicting Biblical provisions on the inscrutability of divine will (such as, for example, the story of Job) but would, like Dido's sister, reject much classical wisdom on the subject as well.¹⁸

¹⁷ *King John*, *op. cit.*, III, i, 153-158.

¹⁸ Dido's sister overconfidently believes that Aeneas has come to stay and wed Dido:

Surely by dispensation of the gods
And backed by Juno's will, the ships from Ilium
Held their course this way on the wind. Sister,
What a great city you'll see rising here,
And what a kingdom, from this royal match!

Virgil, *The Aeneid*, tr. Robert Fitzgerald (NY: Everyman's Library, 1992), 96-97 (hereafter Virgil). Aeneas was indeed driven by fate and the gods but for a very different purpose and to a very different end. Dido and Carthage were but a stop on the way to Aeneas' fated founding of the Roman race. The sister's hubris ignores the endless other possible

Not surprisingly, John himself ultimately concedes his sophistry. Finding himself in the end reduced to a wretched figure, he laments as he burns with fever:

There is so hot a summer in my bosom
That all my bowels crumble up to dust.
I am a scribbled form, drawn with a pen
Upon a parchment, and against this fire
Do I shrink up.¹⁹

Richard II also relies upon divine command as his source of legitimate authority. As he puts it:

Not all the water in the rough rude sea
Can wash the balm off from an anointed king.
The breath of worldly men cannot depose
The deputy elected by the Lord. . . .²⁰

With the “security” of such “anointing,” Richard II recklessly banishes his cousin Henry Bolingbroke for six years and subsequently confiscates the property of Bolingbroke’s father, John of

interpretations of these facts just as Jerry Falwell, for example, did in attributing the September 11 bombings to the wrath of God. See ACT UP, “Rev. Falwell Blames for Terrorist Attacks” <http://www.actupny.org/YELL/falwell.html>

¹⁹ *King John*, *op. cit.*, IV, vii, 30-34. Palladas gives us further classical wisdom on this point in one of his more memorable poems:

They say Sarapis spoke within a dream

To a killer one night sleeping underneath
A failing wall: “Poor wretch, get up and seek
Another place to sleep.” The man complied.
The wall collapsed right after he had moved.
His life so spared, the villain then rejoiced
Believing that Sarapis must approve
Of murderers. The man gave sacrifice
Of thanks for his escape when morning came.
Sarapis spoke again to him at night:
“You think I guard the evil? You escaped
A painless death to die upon a cross.”

Palladas, *The Complete Palladas* tr. Harold Anthony Lloyd (CreateSpace, 2010), 15.

²⁰ *The Tragedy of King Richard The Second*, III, ii, 54-57, Stephen Orgel and A.R. Braummuller, eds., (NY: Penguin Books, 2002) (hereafter *Richard II*).

Gaunt. Bolingbroke not surprisingly rebels and raises an army to reclaim his rights. Still resting on divine rights, Richard II philosophically comforts himself:

For every man that Bolingbroke hath pressed
To lift shrewd steel against our golden crown,
God for his Richard hath in heavenly pay
A glorious angel. Then, if angels fight,
Weak men must fall; for heaven still guards the right.²¹

When further challenged on his sovereign status as king, Richard exclaims:

If we be not, show us the hand of God
That hath dismissed us from our stewardship;
For well we know no hand of blood and bone
Can gripe the sacred handle of our scepter,
Unless he do profane, steal, or usurp.²²

Richard II then confidently prophesies:

Tell Bolingbroke, for yond methinks he stands,
That every stride he makes upon my land
Is dangerous treason. He is come to open
The purple testament of bleeding war.
But ere the crown he looks for live in peace,
Ten thousand bloody crowns of mothers' sons
Shall ill become the flower of England's face,
Change the complexion of her maid-pale peace
To scarlet indignation, and bedew
Her pastor's grass with faithful English blood.²³

Unfortunately for Richard, his prophecy lacks present bite and Bolingbroke forces Richard to abdicate and transfer the throne to Bolingbroke (the future Henry IV).²⁴

Of course, Bolingbroke (now Henry IV) can find small security in the deed. Having ousted Richard, Henry IV finds himself back in

²¹ *Id.*, lines 58-62.

²² *Id.*, III, iii, 91-100.

²³ *Id.*, lines 85-100.

²⁴ *Id.*, IV, i.

King John's same uneasy state. With John's and Richard's examples as precedent, Richard's dire prophesy must cause Henry IV much concern. If usurpers cannot maintain certain sovereignty either by appeal to God or by physically seizing the crown, tumultuous times likely lie ahead. Thus, Henry IV laments at the end of the play that he is full of woe "[t]hat blood should sprinkle me to make me grow."²⁵ He is right to lament. The cycles of earthly and heavenly sovereign appeal continue their predictably bloody courses through the two parts of *King Henry the Fourth*, *The Life of King Henry the Fifth*, the three parts of *King Henry the Sixth*, and *The Tragedy of King Richard the Third*.

Similar bloody cycles also play out outside the "history plays." For example, in *The Tragical History of Hamlet Prince of Denmark* (hereafter *Hamlet*), Claudius has murdered the king (Hamlet's father), married Hamlet's mother and assumed the kingship. Although we might think that God would not have endorsed such a result, how do we know this with certainty sufficient to justify the killing of Claudius? How can Hamlet know that Claudius was not in fact acting out God's will? Hamlet of course cannot know this and, confounded, he falls into a bloody, downward spiral that leaves, among others, his mother, Claudius, and himself dead.²⁶

C. Falstaff and Amoralism

In addition to the sovereign legitimacy problems generated by sovereign-command positivism, the theory generates further unacceptable substantive difficulties. If law is simply the command of the sovereign given under threat of sanction, then the content is irrelevant. Evil or nonsensical laws would be law if they are commanded by the sovereign and are obeyed out of fear of sanction.

Falstaff is of course the epitome of one who believes that the sovereign can command what he will. Thus Falstaff tells Prince Hal (the future Henry V):

²⁵ *Id.*, V, vi, 45-46.

²⁶ See William Shakespeare, *The Tragical History of Hamlet Prince of Denmark*, Stephen Orgel and A.R. Braunmuller, eds., (NY: Penguin Books 2002) (hereafter *Hamlet*).

Marry, then, sweet wag, when thou art king, let not us that are squires of the night's body be called thieves of the day's beauty. Let us be Diana's foresters, gentlemen of the shade, minions of the moon; and let men say we be men of good government, being governed as the sea is, by our noble and chaste mistress the moon, under whose countenance we steal.²⁷

For those interested in the rule of law, such implications of command-theory positivism are of course no more appealing than the other difficulties we encountered with the theory.

D. Command Theory Insight

Although Shakespeare helps us to see how the command theory fails at both the earthly and heavenly levels, he nonetheless helps us to see two insights that such theory's failure brings. First, any adequate jurisprudence must account for the symbiotic relationship between the governed and those who govern. Although the notion of the habit of obedience under threat of sanction fails to account for the law, it does reflect the fact that no legal system can work if it is not accepted by a sufficient majority of the "governed." To this point, Shakespeare has John foolishly ask, "Doth not the crown of England prove the king?"²⁸ No matter how securely he holds the physical crown and no matter how many times he might use it to crown himself "king," John of course has no kingly powers if a sufficient majority of the governed do not recognize him as their king. Thus, Salisbury challenges John on superfluous crownings:

... [T]o be possessed with double pomp,
 To guard a title that was rich before,
 To gild refined gold, to paint the lily,
 To throw a perfume on the violet,
 To smooth the ice, or add another hue
 Unto the rainbow, or with taper light

²⁷ William Shakespeare, *The First Part of King Henry The Fourth*, I, ii, 23-29, Stephen Orgel and A.R. Braunmuller, eds., (NY: Penguin Books, 2002) (hereafter *1 Henry IV*).

²⁸ *King John*, *op. cit.*, II, i, 273.

To seek the beauteous eye of heaven to garnish,
Is wasteful and ridiculous excess.²⁹

Second, any jurisprudence which defines law in terms of commands, threats and sanctions may explain a dog “in office”³⁰ or the “authority” of any other menacing figure. It does not, however, demarcate legitimate legal authority from mere force or account for interregal legal continuity. Rules or standards of legitimacy and continuity are required for such things. The failure of command-positivism therefore helps us to see that law must involve standards or rules.³¹

III. NATURAL LAW: ESSENCE AND INQUISITION

A. Introduction

Such failure of both earthly and heavenly command-theory positivism leads one to explore natural law as an alternative. Ulysses in *The History of Troilus and Cressida* (hereafter *Troilus and Cressida*) neatly sums up the proper social and moral order one natural law approach would seek:

The heavens themselves, the planets, and this center
Observe degree, priority, and place,
Insisture, course, proportion, season, form,
Office, and custom, in all line of order,
And therefore is the glorious planet Sol
In noble eminence enthroned and sphered
Amidst the other; whose med’cinable eye
Corrects the influences of evil planets
And posts, like the commandment of a king,
Sans check to good and bad. But when the planets
In evil mixture to disorder wander,
What plagues and what portents, what mutiny,

²⁹ *Id.*, IV, ii, 9-16.

³⁰ *Id.*, IV, vi, 157-159.

³¹ See Hart, *op. cit.*, 80 (noting that “. . . the ideas of orders, obedience, habits, and threats, do not include, and cannot by their combination yield, the idea of a rule, without which we cannot hope to elucidate even the most elementary forms of law.”)

What raging of the sea, shaking of earth,
 Commotion in the winds, frights, changes, horrors,
 Divert and crack, rend and deracinate,
 The unity and married calm of states
 Quite from their fixture?³²

B. Polixenes, Prospero and the Essence of the Natural

Despite Ulysses' beautiful words, Shakespeare makes us question not only whether any such rigid and objective natural order exists but whether it could possibly exist. In *The Merchant of Venice*, Solanio notes that "Nature hath framed strange fellows in her time."³³ As nature framed these "strange fellows," how can they not be natural? Is everything not therefore natural? Is such law based on or derived from such nature not simply therefore the law of whatever happens to be from time to time? If so, what moral or legal guidance can be found in such "natural law"?³⁴

Further dismantling any such notion of "natural law," *The Winter's Tale* makes quick work of the natural order's purported immutability by simply considering plants. In the play, Perdita eschews some "unnatural" flowers that would beautify her then-barren garden:

... [T]he fairest flowers o' th' season
 Are our carnations and streaked gillyvors,
 Which some call nature's bastards. Of that kind
 Our rustic garden's barren, and I care not
 To get slips of them.³⁵

³² William Shakespeare, *The History of Troilus and Cressida*, I, iii, 85-101, see forward to 124. (Stephen Orgel and A.R. Braunmuller, eds., [NY: Penguin Books, 2002]) (hereafter *Troilus And Cressida*).

³³ William Shakespeare, *The Merchant of Venice*, I, i, 51, Stephen Orgel and A.R. Braunmuller, eds., (NY: Penguin Books, 2002) (hereafter *Merchant Of Venice*).

³⁴ Philosophers have struggled since at least the time of Hume to understand how an "is" could beget an "ought." See David Hume, *A Treatise of Human Nature*, P. H. Nidditch ed. (Oxford: Clarendon Press, 2d ed. 1978), 469-70.

³⁵ William Shakespeare, *The Winter's Tale*, IV, iv, 81-85, Stephen Orgel and A.R. Braunmuller, eds., (NY: Penguin Books, 2002) (hereafter *Winter's Tale*).

Polixenes pragmatically replies:

... [S]weet maid, we marry
 A gentler scion to the wildest stock,
 And make conceive a bark of baser kind
 By bud of nobler race. This is an art
 Which does mend nature--change it rather--but
 The art itself is nature.³⁶

In other words, the art of botanical engineering is itself part of nature.

This bucolic exchange calls out the lie of an immutable normative natural order at its most basic level. If we truly believed in such an order, we would live naked, raked with diseases (since it would be unnatural to cure them), and we would take our barren fields simply as we found them. Of course, no reasonable person would find strict adherence to this “natural” order moral or even legal. For not only would it injure oneself should one follow it, it would injure anyone or anything entrusted to one’s care.

Polixenes makes another profound though perhaps less obvious point. Such a purely “natural” life is not only undesirable, it is not possible. We must alter nature to survive. We must breathe in nature’s air and thereby change it. We must eat nature’s produce which we change to flesh and dung. We must rearrange its stones and grass when we walk. In short, we must alter nature to live. As life itself is surely also “natural” and more precious than grass or stones, then the art of living must be the ultimate “natural” thing. In other words, again, “[t]he art itself is nature.”³⁷ If this is so, “natural law” takes us back to ourselves and how we would live within that world in which we are thrust. “Natural law” as something outside of and higher than ourselves therefore makes no sense for living creatures who must elevate themselves above nature.

Shakespeare takes Polixenes’ point to its logical limits in *The Tempest*. In that play, Prospero’s art so thoroughly determines na-

³⁶ *Id.*, lines 92-97.

³⁷ *Id.*, line 97.

ture that one can rarely discern what is “real” and what is not. Prospero summarizes the extent of his works when he renounces his art:

. . . I have bedimmed
The noontide sun, called forth the mutinous winds,
And ‘twixt the green sea and the azured vault
Set roaring war; to the dread rattling thunder
Have I given fire and rifted Jove’s stout oak
With his own bolt; the strong-based promontory
Have I made shake and by the spurs plucked up
The pine and cedar; graves at my command
Have waked their sleepers, oped, and let ‘em forth
By my so potent art . . .³⁸

As we must thus make ourselves by changing nature, we can hardly look to nature as an objective legal or moral guide.

C. *Grand Inquisitors*

Belief that laws are decreed by nature further begets inquisitors and tyrants like Angelo in *Measure for Measure*. When reviving unenforced morality laws, the Duke leaves Angelo in charge of the revival. By doing so, he hopes both to test the effect of revival and to reduce the potentially more severe impact that might occur if enforced directly in the Duke’s name. Thus, the Duke tells the Friar:

We have strict statutes and most biting laws,
The needful bits and curbs to headstrong weeds,
Which for this fourteen years we have let slip,
Even like an o’ergrown lion in a cave,
That goes not out to prey. Now, as fond fathers,
Having bound up the threat’ning twigs of birch,
Only to stick it in their children’s sight
For terror, not to use, in time the rod
Becomes more mock’d than fear’d. So our decrees,
Dead to infliction, to themselves are dead,
And liberty plucks justice by the nose,

³⁸ William Shakespeare, *The Tempest*, V, i, 41-50, Stephen Orgel and A.R. Braunmuller, eds., (NY: Penguin Books, 2002) (hereafter *The Tempest*).

The baby beats the nurse, and quite athwart
Goes all decorum.³⁹

Unfortunately for Claudio in the play, the strict language of the unenforced law provides the death penalty for him. He has committed the capital crime of impregnating a woman out of wedlock, and Angelo sees no flexibility in enforcement. Moral codes require strict enforcement to maintain justice and a commensurate high level of fear. Thus, Angelo coldly opines:

We must not make a scarecrow of the law,
Setting it up to fear the birds of prey,
And let it keep one shape, till custom make it
Their perch, and not their terror.⁴⁰

With respect to the particular long dormant law violated by Claudio, Angelo ruthlessly states:

The law hath not been dead, though it hath slept.
Those many had not dared to do that evil
If the first that did th' edict infringe
Had answered for his deed. Now 'tis awake,
Takes note of what is done, and like a prophet,
Looks in a glass that shows what future evils,
Either new, or by remissness new conceived,
And so in progress to be hatched and born,
Are now to have no successive degrees,
But, ere they live, to end.⁴¹

When Angelo thus takes his charge, Shakespeare helps us to see how belief in fixed natural law breeds improper character traits in rulers. Since impious leaders must also mold nature to survive, their "natural" law will of course fit their evil characters. If left to their own devices, impious leaders will therefore "naturally" cultivate hubris, immorality, self-centeredness and a resulting lack of true compassion for others. Lucio summarizes this well:

³⁹ *Measure for Measure*, *op. cit.*, I. iii 19-31.

⁴⁰ *Id.*, II, i 1-4.

⁴¹ *Id.*, II, ii 90-99.

Upon [the Duke's] place,
 And with full line of his authority,
 Governs Lord Angelo, a man whose blood
 Is very snow-broth; one who never feels
 The wanton stings and motions of the sense,
 But doth rebate and blunt his natural edge
 With profits of the mind, study and fast.
 He - to give fear to use and liberty,
 Which have for long run by the hideous law,
 As mice by lions - hath picked out an act
 Under whose heavy sense [Claudio's] life
 Falls into forfeit. He arrests him on it,
 And follows close the rigor of the statute
 To make him an example.⁴²

Shakespeare also shows us how natural law breeds hypocrisy. As Angelo (like everyone else) must change nature to live, his "natural" law spares him from the hated law and even allows him to demand that Claudio's sister sleep with Angelo to spare her brother.⁴³ Why not? If left to his own devices, the nature he molds will center around him. Fortunately, the Duke intervenes and stops Angelo. Consistent with his more virtuous nature, the Duke imposes his own more heavenly mold on nature:

He who the sword of heaven will bear
 Should be as holy as severe;
 Pattern in himself to know,
 Grace to stand, and virtue go;
 More nor less to others paying
 Than by self-offences weighing.
 Shame to him whose cruel striking
 Kills for faults of his own liking.
 Twice treble shame on Angelo,
 To weed my vice and let his grow.
 O, what may man within him hide,
 Though angel on the outward side!
 How may likeness, made in crimes,

⁴² *Id.*, I, iv, 55-68.

⁴³ *Id.*, II, iv, 140-169.

Making practice on the times,
 To draw with idle spider's strings
 Most ponderous and substantial things?⁴⁴

Although the Duke's words are impressive, they bring little comfort from a "natural" law perspective. The next Duke might have the character of an Angelo.

D. Among the Clouds

The problems with any such natural law run deeper still. Even if the objectively natural exists, we can find no fixed or objective measure of it. Not only do Angelo and the Duke disagree on eternal matters of morality, Hamlet reminds us how even mere clouds are subject to multiple interpretations. Thus, Hamlet muses with Polonius:

HAMLET Do you see yonder cloud that's almost in shape
 of a camel?
 POLONIUS By th' mass and 'tis, like a camel indeed.
 HAMLET Methinks it is like a weasel.
 POLONIUS It is backed like a weasel.
 HAMLET Or like a whale.
 POLONIUS Very like a whale.⁴⁵

Further, as Theseus notes in *A Midsummer Night's Dream*, diverse dispositions dictate different interpretations of nature. Taking three types of persons, he remarks:

The lunatic, the lover, and the poet
 Are of imagination all compact.
 One sees more devils than vast hell can hold:
 That is the madman. The lover, all as frantic,
 Sees Helen's beauty in a brow of Egypt.
 The poet's eye, in fine frenzy rolling,
 Doth glance from heaven to earth, from earth to heaven,
 And as imagination bodies forth
 The forms of things unknown, the poet's pen

⁴⁴ *Id.*, III, ii, 249-264 .

⁴⁵ *Hamlet, op. cit.*, III, ii, 369-375.

Turns them to shapes, and gives to airy nothing
A local habitation and a name.⁴⁶

Theseus also notes how easily persons of any disposition often confuse themselves: “[I]n the night, imagining some fear,/ How easy is a bush supposed a bear!”⁴⁷

If nature is so elusive even with its mere vapors and bushes, *a fortiori* must not graver notions of “natural” morality elude our sight and expression? In fact, what we can see of nature suggests *no* normative standards beyond those we would impose. Shakespeare frames his great *As You Like It* upon this very point. In that play, the characters may either live in court (where others’ rules are imposed upon them and upon “nature”) or in the wild (where each individual may attempt to impose his or her own rules including even gender rules).

When Duke Senior escapes to the woods of Arden, he is therefore free to say, “Here we feel not the penalty of Adam. . .”⁴⁸ Comparing the woods to court, he can also fancifully ask, “Hath not old custom made this life more sweet/ Than that of painted pomp?”⁴⁹ He can therefore attempt to impose his more pleasing paradigm of “old custom” upon the wild where one may live free of any taint of original sin.⁵⁰ Yet, Duke Senior recognizes and is “irked” by the butchery of nature required to live “naturally”:

Come, shall we go and kill us venison?
And yet it irks me the poor dappled fools,
Being native burghers of this desert city,
Should in their own confines, with forkèd heads
Have their round haunches gored.⁵¹

⁴⁶ William Shakespeare, *A Midsummer Night's Dream*, V, i, 7-17, Stephen Orgel and A.R. Braunmuller, eds., (NY: Penguin Books, 2002) (hereafter *Midsummer Night's Dream*)

⁴⁷ *Id.*, 21-22.

⁴⁸ William Shakespeare, *As You Like It*, II, i, 5, Stephen Orgel and A.R. Braunmuller, eds., NY: Penguin Books 2002) (hereafter *As You Like It*).

⁴⁹ *Id.*, 2-3.

⁵⁰ *Id.*, 2-5.

⁵¹ *Id.*, 21-25.

Jacques (a person the First Lord labels a “melancholy” man⁵²) is also troubled by such killing. With such a disposition, Jacques naturally has a much darker view of Arden. The First Lord describes having seen him earlier in the day:

Today my Lord of Amiens and myself
Did steal behind him as he lay along
Under an oak ...
To the which place a poor sequestered stag,
That from the hunter’s aim had ta’en a hurt
Did come to languish...and thus the hairy fool,
Much markèd of the melancholy Jacques,
Stood on th’ extremest verge of the swift brook,
Augmenting it with tears.⁵³

From Jacques’ perspective, Arden is hardly paradise. Instead, it is colored by his own unique melancholy free of others’ paradigms. As he puts it himself:

I have neither the scholar’s melancholy, which is emulation;
nor the musician’s, which is fantastical; nor the courtier’s,
which is proud; nor the soldier’s, which is ambitious; nor
the lawyer’s, which is politic; nor the lady’s, which is nice;
nor the lover’s, which is all these: but it is a melancholy of
mine own, compounded of many simples, extracted from
many objects, and indeed the sundry contemplation of my
travels, which, by often rumination, wraps me in a most
humorous sadness.⁵⁴

Though Jacques and the Senior Duke live in the same state of nature, they clearly live in different worlds.

These same “natural” worlds not only differ spatially but temporally as well. As Rosalind observes in the play, “Time travels in divers paces with divers persons.”⁵⁵ Time trots for

. . . a young maid between the contract of her marriage

⁵² *Id.*, 26.

⁵³ *Id.*, 29-43.

⁵⁴ *Id.*, IV, i, 10-19.

⁵⁵ *Id.*, III, ii, 301-302.

and the day it is solemnized. If the interim be but a sennight, Time's pace is so hard that it seems the length of seven year.⁵⁶

Yet, time "ambles" for those who sleep easily or have merry lives, "gallops" for the thief on the way to the gallows and stands still for lawyers sleeping between their terms.⁵⁷ Nature thus allows for endless variation (conceptual, spatial and temporal) with no obvious normative guidance. How could it possibly give us objective laws?

This problem of course not only plagues natural law theory based upon "objective" nature as found in Arden or elsewhere. It also plagues at least three other forms of "natural law" theory which purport to rest upon objective criteria beyond the flux of mutable human categories and perspectives.⁵⁸ One such alternative theory of "natural law" rests upon the view of men and women as teleological creatures who should learn and seek their proper ends. Under this view, true laws could be defined as those which advance such proper ends while "law" which runs counter to such proper ends would not be truly law.⁵⁹ Although notions of ultimate ends and goods and of aspirations thereto may be useful instruments of ethical discourse, the claims that men and women truly have objectively-discernable "goods" or "ends" to which they should strive must of course suffer from the very same problems that plague such objective claims

⁵⁶ *Id.*, 306-309.

⁵⁷ *Id.*, 310-324.

⁵⁸ These three additional forms of natural law do not exhaust the number of additional possible "natural law" theories but I believe they are further exemplars of problems inherent in any theory of law based upon the objectively given or the objectively "natural." For a more exhaustive discussion of different forms of "natural law" theory see Patterson, *op. cit.*, 332-375 and J. M. Kelly, *A Short History of Western Legal Theory*, 19-21, 57-63, 102-104, 141-146, 186-189, 222-229, 258-271, 333-334, 374-380, 418-430 (Oxford: Clarendon Press, 1994) (hereafter Kelly).

⁵⁹ For example, Aristotle states, "Every art and every inquiry, and similarly every action and choice, is thought to aim at some good; and for this reason the good has rightly been declared to be that at which all things aim." Aristotle, *Nicomachean Ethics* 1094a1-3, W. D. Ross, tr., *The Complete Works of Aristotle* (Princeton: Princeton University Press, 1991). A detailed examination of Aristotle's legal and political theory is beyond the scope of this article.

about nature itself. Any “natural law” derived from such teleological notions must therefore prove as subjective and fallible as any “natural law” based upon or derived from nature itself.

Another approach to “natural law” defines such law in terms of reason. One formulation by Cicero provides a good example:

True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting; it summons to duty by its commands, and averts from wrongdoing by its prohibitions.”⁶⁰

Yet, to be comprehended, reason, too, must of course be framed and categorized no less than Hamlet’s clouds. Reason therefore cannot be objectively “in agreement with” nature.

A third approach to “natural law” would invoke the law of God.⁶¹ However, this approach must also of course suffer from the same difficulties plaguing the two prior forms just discussed. For man to understand and apply such law of God, such law must be communicated and must serve as the object of human thought. But this of course again injects the same relativity we have just seen. “God’s law” will depend upon the categories and temperaments of the persons who study and expound it. It cannot reveal itself or be revealed in any purely objective fashion that is not ultimately centered in the realm of variable human thought. In fact, such natural law theorists find themselves vexed with the very problems that plague command-theory positivists who invoke the notion of the divine right of kings. For, again, even if we accept some notion of the divine right of kings, we cannot as a practical matter determine who holds those rights. The many bloody sovereignty disputes throughout history leave little doubt on this point. And, again, anyone who would appeal to God to ground his office not only awkwardly con-

⁶⁰ Patterson, *op. cit.*, 342-343. Cicero’s meaning of “nature” is not always clear in his various passages. See *id.* However, this passage suggests law as reason in the sense I wish to note.

⁶¹ Gratian for example related “natural law to the Decalogue and to Christ’s commandment of love of one’s neighbour. . . .” Kelly, *op. cit.*, 142.

tradicts Biblical provisions on the inscrutability of divine will (such as, again, the story of Job) but fails to learn from ancient wisdom on such folly.⁶²

All this is not to say, however, that law cannot have essential (and in that sense perhaps "natural") restraints upon it *within* cognitive or semiotic systems. As we shall see in Section V below, at least ten such restraints exist where law is understood as a system of rules effectively governing social behavior.

IV. PREDICTION THEORY

A. Introduction

If command-theory positivism and the natural law theories just examined do not work, one might be tempted simply to define law in terms of experience with the courts and other officials. Holmes took this view when he maintained that the law is simply a set of predictions of what the courts will do in given circumstances.⁶³ Thus, if I say that murder is illegal, I am saying that I believe some court will likely punish me if I commit the act. If I advise that a certain clause in a contract is valid and binding, I am simply predicting that courts will enforce it.⁶⁴

B. Falstaff and Laws as Predictions

Falstaff certainly believes that the law is little more than the workings of a judicial system which can be predicted and manipulated. Thus, viewing the law as a forecast of the latitude he believes he will receive once Prince Hal accedes to the throne as Henry V, Falstaff exults:

[T]he laws of England are at my commandment. Blessed

⁶² Again, they would make the mistake of Dido's sister who overconfidently believes that Aeneas has come to stay and wed Dido when instead Dido and Carthage are but a stop on the way to Aeneas' fated founding of the Roman race. Virgil, *op. cit.*, 96-97.

⁶³ Patterson, *op. cit.*, 119-120.

⁶⁴ See *Id.*

are they that have been my friends, and woe to my lord chief justice!⁶⁵

Although Prince Hal may have also shared a similar view while still a prince, such a view will of course not work once Hal becomes king. As king, the law is something he must apply and it does not make sense to say that he is merely predicting what he will do when he applies the law. When he was on the other side of the law, Henry might have amused himself with the fancy that law is simply a prediction of what actions enforcement officials might take. But as king, his official actions are actions, not predictions of actions. As a logical matter, he can no longer play Falstaff's game. He therefore rejects Falstaff⁶⁶ and asks the Chief Justice to assist him instead in the application of English law.⁶⁷

V. SEMIOTIC THEORY

A. Introduction

As Shakespeare has shown us, stable legal systems cannot rest upon questionable foundations (such as sovereign commands under threat of sanction, natural law in the forms explored above or law as mere prediction.) As he also helped us see with the failure of command-theory positivism, any such stable systems must involve standards or rules.⁶⁸ For purposes of the remainder of this article, I shall therefore work from what I believe to be several uncontroversial, high-level statements about the nature and purpose of law. First, the general purpose of the law is to provide "guides to human conduct and standards of criticism for such conduct."⁶⁹ These guides are normally provided for the "primary purpose of setting the citizen's relations with other citizens. . ."⁷⁰ This guidance is accomplished by

⁶⁵ *Henry IV*, V, iii, 137-139.

⁶⁶ *Id.*, V, v, 47, 56-59

⁶⁷ *Id.*, V, iii 102-145.

⁶⁸ See again Section III(D) of this article.

⁶⁹ Hart, *op.cit.*, 249.

⁷⁰ Lon Fuller, *The Morality of Law* (New Haven: Yale University Press, rev. ed., 1969),

“subjecting human conduct to the governance of rules.”⁷¹ One could refine this understanding of law further⁷² but this start should suffice for purposes of this article. If we take this general approach, Shakespeare helps us recognize the following things about “law” as so understood. First, law requires some degree of compliance by those putatively subject to it. As *Richard II* shows us, it does not suffice for Richard II to believe that he is king; his “subjects” must act in such a way as well. Thus, there must be some workable mechanism for determining whether a system of laws is in place and, if so, who its officials are. Second, assuming such a legal system exists, one must of course have some workable mechanism for validating law within it. Without such a mechanism, we are left with no way, for example, to settle the potential desuetude of the old statutes Angelo would enforce in *Measure for Measure*. Third, as Angelo also demonstrates, there must be some workable mechanism for changing such statutes should they remain in full force and effect. Fourth, as Angelo’s recalcitrance in his conviction and sentencing of Claudio also shows, law must be subject to reasonable adjudication. Fifth, as Angelo further shows, confusing law with morality actually creates moral difficulties. Since morality is generally considered fixed at any given time⁷³ the old statutes could not be altered in time to spare Claudio if they are confused with morality.⁷⁴ This would, of course, violate the third principle stated above. Sixth, to restrain the Angelos in office, we must understand what law *qua* law permits and prohibits (which I shall call law’s inherent restraints). We shall explore each of these six areas in turn.

207-208 (hereafter *Morality Of Law*).

⁷¹ *Id.* at 46.

⁷² For example, Hart notes that law is distinguished from other bodies of rules by, *inter alia*, its “general claim to priority over other standards.” Hart, *op. cit.*, 249.

⁷³ See *id.* at 175-178. This is not to say that moral notions cannot evolve and improve over time and that people cannot make deliberate attempts to foster such evolution. However, morality by its nature changes gradually where it changes at all. Law, on the other hand, must have flexibility to adapt immediately as the circumstances require.

⁷⁴ See Hart, *op. cit.*, 175-178. I shall discuss the risks of such mixture in further detail in Section VI(5) of this article.

B. Six General Requirements

1. Compliance Requirement

For any legal system to exist, a substantial majority must accept its rules. By this, I mean that a substantial majority must accept such rules as a behavioral guide. For example, "A accepts the rule that he should drive on the right side of the road" means that A drives on the right side of the road *because* the rule tells him to do so. It does not mean that he drives on the right side simply out of habit or because all other people seem to do so or because he thinks it is the safer side to drive on the right side. "Acceptance" in this sense occurs as and when rules apply to a situation at hand. Such acceptance is testable by watching A's behavior *and* by asking him why he is behaving in such a way.⁷⁵ (Of course, this standard of general acceptance must be a relative one which admits more flexibility as the importance of specific laws decrease. For example, we should most certainly say a legal system fails if half of the population disobeys its highest court half of the time. Yet we would not necessarily say that a legal system fails because half of the population jaywalks half of the time.)

Again, *Richard II* gives us a powerful example of the perils of ignoring such facts on the ground. Believing that he is divinely ordained and therefore divinely protected, Richard infers that he need not consider his subjects' behavior. Thus, Richard overconfidently claims when discussing Bolingbroke, the future Henry IV:

Not all the water in the rough rude sea
Can wash the balm off from an anointed king.
The breath of worldly men cannot depose
The deputy elected by the Lord.
For every man that Bolingbroke hath pressed
To lift shrewd steel against our golden crown,
God for his Richard hath in heavenly pay

⁷⁵ Acceptance is thus not a concept of continuous conscious acceptance which would potentially make the law go in and out of existence as people slumber, examine their need for allegiance or think on other things.

A glorious angel. Then, if angels fight,
Weak men must fall; for heaven still guards the right.⁷⁶

Of course, Richard II soon learns that legal systems do not depend upon angels, waterproof balms or physical crowns. They instead require testable compliance. Had he performed such tests and acted accordingly, he might have kept his life, his physical crown and whatever kingly power he possessed.

2. Grounding Requirements

Actual compliance with a legal system of course requires a means of determining both the content of the system as well as the legitimate officials of the system. One cannot comply with unknown rules or officials and one does not comply when one follows false rules or officials. In *Richard III*, Shakespeare gives us a chilling yet verbally clever account of the chaos that ensues when sovereignty and law are shifting and unclear. Queen Elizabeth (wife of Edward IV), Queen Margaret (Widow of Henry VI) and the Duchess of York (the mother of Richard III, Edward IV and Clarence) are together on stage while the latter two lament the deaths caused by Richard III's meddling with the grounds of royal succession:

QUEEN MARGARET : . . . Tell over your woes again by
viewing mine.
I had an Edward [Edward, Prince of Wales], till a Richard
[Richard III] killed him;
I had a husband [Henry VI], till a Richard [Richard III]
killed him:

(To Queen Elizabeth)

Thou hadst an Edward [Prince Edward], till a Richard
[Richard III] killed him;
Thou hadst a Richard [Richard, Duke Of York], till a
Richard [Richard III] killed him.

⁷⁶ *Richard II*, *op. cit.*, III, ii, 54-62.

DUCHESS OF YORK: I had a Richard [Richard III's father] too, and thou didst kill him;
I had a Rutland [her youngest son] too, thou holp'st to kill him.

QUEEN MARGARET: Thou hadst a Clarence too, and Richard [Richard III] killed him.
From forth the kennel of thy womb hath crept
A hellhound that doth hunt us all to death⁷⁷

Before his death by Richard III's sword, Henry VI had foretold such chaos:

And thus I prophesy: that many a thousand
Which now mistrust no parcel of my fear,
And many an old man's sigh, and many a widow's,
And many an orphan's water-standing eye—
Men for their sons', wives for their husbands',
And orphans for their parents' timeless death—
Shall rue the hour that ever thou wast born.⁷⁸

Of course, Henry VI also reaped the fruit of similar contempt for the foundation of legal order. Henry VI "inherited" his throne from Henry V, heir of Henry IV. As noted earlier, Henry IV "acquired" his throne through the forced abdication and murder of Richard II. Before Henry IV seized the crown, the Bishop of Carlisle gave his own chilling prophecy:

The blood of English shall manure the ground,
And future ages groan for this foul act;
Peace shall go sleep with Turks and infidels,
And in this seat of peace tumultuous wars
Shall kin with kin and kind with kind confound;
Disorder, horror, fear and mutiny
Shall here inhabit, and this land be called
The field of Golgotha and dead men's skulls.

⁷⁷ William Shakespeare, *The Tragedy of King Richard The Third*, IV, iv 39-48, Stephen Orgel and A.R. Braunnmuller, eds., (NY: Penguin Books, 2002) (hereafter *Richard III*).

⁷⁸ William Shakespeare, *The Third Part of Henry The Sixth*, V, vi, 39-43, Stephen Orgel and A.R. Braunnmuller, eds., (NY: Penguin Books, 2002) (hereafter *3 Henry VI*).

O, if you raise this house against this house,
 It will the woefullest division prove
 That ever fell upon this cursèd earth.
 Prevent it, resist it, let it not be so,
 Lest child, child's children, cry against you woe!⁷⁹

With his powerful metaphor of the house divided against itself, the Bishop underscores the lesson of *Richard III* that legal systems collapse without a stable ground, i.e., without generally accepted rules determining current law and officials.⁸⁰

These plays therefore highlight four important points about such basic legal grounds. First, as Richard II learns through his ouster, the question of their existence turns on whether a sufficient majority accept the grounds as validating rules for the system.⁸¹ As Richard II also learns through his ouster, such acceptance is measured as and when the issue comes into play. Of course, in the case of

⁷⁹ *Richard II op. cit.*, IV, i, 142-149.

⁸⁰ Richard III and Henry IV might defend their actions in terms of the arbitrariness of the fundamental grounds of any legal system. To avoid infinite regress, fundamental grounds of legal systems (like basic grounds of any other systems) can require no grounds themselves. Richard III and Henry IV might therefore respond that nothing of moral significance has occurred as a result of their usurpations since they have merely substituted one arbitrary ground for another. However, in addition to being self-defeating (since the same argument could equally be turned on them), the argument would miss the point of such basic grounds. Their sole purpose is to support a broader structure which collapses when they are removed. Just because one's neighbor arbitrarily chose bricks instead of stone as the foundation for his house, it does not follow that one may rightfully demolish the house by removing its "arbitrary" foundation. It also misses the point that systems resting upon such "arbitrary" grounds may be evaluated by multiple criteria including morality and effectiveness of purpose. Bloody and chaotic systems violating such evaluation risk rejection by those whose acceptance is required for such systems' very existence.

⁸¹ On the point of grounds and validity, Hart correctly notes, "We only need the word 'validity', and commonly only use it, to answer questions which arise *within* a system of rules . . ." See Hart, *op. cit.*, 108-109. We do not, therefore, apply the term to the ultimate standards or grounds of a system itself but to the rules within the system. Those tests themselves are simply accepted as proper measures just as the standard meter bar in Paris is posited as the standard metric measure. *Id.* (Hart takes this example from Wittgenstein who notes, "There is *one* thing of which one can say neither that it is one metre long, nor that it is not one metre long, and that is the standard metre in Paris." Ludwig Wittgenstein, *Philosophical Investigations*, G.E.M. Anscombe, tr., (Oxford: Blackwell 3d ed., 2001), §50 at 21e.

many legal rules, the issue potentially only arises at the official level since the public may, for example, never concern themselves with the more technical rules of law.⁸² Second, as all the history plays show, ground or basic rules can be criticized as immoral. They can be criticized as counterproductive. They can be criticized for any reason whatsoever which is external to the system of rules.⁸³ If such criticism holds and sways sufficient opinion, it can destroy such ground or basic rules by eliminating the recognition required for them to hold. Third, nothing logically forbids ground rules from incorporating moral elements. Richard II and King John, for example, do this when they assert their divine right to rule. However, so doing involves the risks of confusing law and morality discussed in this article,⁸⁴ risks one need not take to have a moral legal system.⁸⁵ Fourth, Hamlet's cloud problem discussed in Section IV(D) above of course also apply here. Ground rules are also seen through the eyes of the beholder and are therefore subject to interpretive dispute. Where such dispute exists, resolution comes either through force or verbal persuasion. Rhetoric therefore plays a critical role at the most fundamental levels of the law and is therefore inseparable from any full analysis of the law.

3. Means of Change

As the world and as community standards change, the law must of course keep pace or become at best irrelevant, at worst misguided or even detrimental to the state and thus the legal system itself. As Coriolanus puts it in *The Tragedy of Coriolanus* (hereafter *Coriolanus*):

⁸² See Hart, *op. cit.*, 116-117.

⁸³ See note 78 *supra*.

⁸⁴ See note 71 *supra* and related text and Section VI(F) of this article.

⁸⁵ One may construct a legal system compatible with a given morality without incorporating that morality in the legal system's ground rules. For example, if a given morality requires equal protection and due process for all, one may ground a legal system with a constitution that requires equal protection for all and provides due process for all. The moral system itself need not be incorporated to achieve that result.

What custom wills, in all things should we do't [i.e., if we do it],
 The dust on antique time would lie unswept
 And mountainous error be too highly heaped
 For truth t' o'er-peer. . . .⁸⁶

One can see no clearer example of “unswept” statutes than those statutes Angelo would enforce against Claudio (but not himself) in *Measure for Measure*. The need to correct these laws goes beyond the issue of fairness to Claudio. In truth, the need for change goes to the very survival of the state and thus the law itself. To this point, Pompey asks the ancient Lord Escalus in the play, “Does your worship mean to geld and spay all the youth of the city?”⁸⁷ Taking the statutes literally might well require action to such effect (if not worse) and that would of course ultimately destroy the city. Pompey therefore prophesies that if the law is enforced for ten more years, he “. . . will rent the fairest house in [the city] after threepence a bay . . .”⁸⁸ He knows that rental prices will collapse because demand will disappear as people do.

As laws interact with the governed in a legislative or deliberative manner, constitutional, statutory and regulatory change must be possible and accomplished as required. As laws also interact with the governed in a forensic or judicial manner, change must also be possible and accomplished here. A state which does not permit appropriate legislative or judicial⁸⁹ change not only risks unfairness but eventual annihilation. Should Angelo have his way in both such areas, he might well prove the last man standing (no pun intended), a feat of course due only to his hypocrisy.

⁸⁶ William Shakespeare, *The Tragedy of Coriolanus*, II, iii, 117-120, Stephen Orgel and A.R. Braunmuller, eds., (NY: Penguin Books, 2002) (hereafter *Coriolanus*).

⁸⁷ *Measure For Measure*, *op. cit.*, II, i, 232-43.

⁸⁸ *Id.*, 255-56.

⁸⁹ In addition to their interpretive naïvetés demonstrated by Hamlet’s cloud problem, those who claim instead that judges should “simply enforce the law as it is” make their beds with Angelo and share his misplaced arrogance, hypocrisy and recklessness with respect to the future of the state.

4. Means of Adjudication

Shakespeare helps us see that even long-held and “settled” law cannot be applied unthinkingly. Application involves judgment and flexibility as required by the facts (which themselves, like Hamlet’s cloud, are of course always subject to interpretation). In *Measure for Measure*, Claudio cannot be automatically condemned even if one accepts the old statutes as valid. First, Claudio has a potential defense.⁹⁰ Second, it would warp even the old statutes if he were improperly convicted because it would change their meaning by having them do what they were not intended to do. Thus, even Angelo “dressed in a little brief authority” must give Claudio a fair, reasonable and objective hearing or risk violating the laws himself.⁹¹

5. The risks of confusing law with morality

Hart gives several cogent reasons for maintaining a clear distinction between law and morality. First, as we have seen, mixing law and morality makes the law too difficult to change since morality is generally considered fixed at any given point in time.⁹² We cannot simply decree that good is now evil or evil is now good—if morality evolves such evolution requires a gradual and often highly-contentious process. We can of course reword statutes but their moral import must remain the same if law and morality overlap.

⁹⁰ Claudio claims he has a “true contract.” *Measure for Measure*, *op. cit.* I,ii, 144-154.

⁹¹ Even if Claudio does not succeed with his legal defense, the law must also provide for the possibility of mercy or reprieve. This follows as a straightforward logical matter since one cannot anticipate (as Claudio’s predicament illustrates) all the possible consequences of any law. If a possible consequence of a law is inconsistent with the purpose of a law, application of the law in that case of course makes no sense (and may in some cases even effectively violate the law if the result is what the law meant to proscribe). The law must allow, indeed, that in at least some situations:

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.

Merchant of Venice, IV, i, 182-185.

⁹² See Section V(A) and Hart, *op. cit.*, 175-178.

This does not, however, make the law truly flexible or subject to real change. Claudio would find no solace in a reworded statute that still demands his death.⁹³

Hart also wisely notes that confounding law and morality gives bad laws an aura of morality that makes them difficult to challenge even if such laws are otherwise easily changeable.⁹⁴ Consistent with Hart's concerns, Angelo clearly demonstrates the potential immorality such confusion can cause in the name of morality. Whether Angelo is a true zealot or a hypocrite using "morality" for his own ends, natural law theory as he wields it creates horrendous problems for both the individual and the state. As we have seen above, Angelo's enforcement of the old statutes not only wrongly threatens Claudio with death but it threatens the very survival of the state itself.⁹⁵

Furthermore, as Hart notes, confusing law and morality generates the analytical problems that flow from adulteration of any concepts. Just as we would confound economic analysis by confusing "money" with "gold" or confuse physics by confounding "atoms" with "points," we would confuse legal analysis by mixing law and morality. As Hart puts it:

A concept of law which allows the invalidity of law to be distinguished from its immorality, enables us to see the complexity and variety of these separate issues; whereas a narrow concept of law which denies legal validity to iniquitous rules may blind us to them.⁹⁶

If we wish to understand the concept of law, we are therefore

⁹³ One might argue that laws can change under a natural law approach because we may be confused in what we consider good or evil. Once we see our error, we can and should change the law accordingly and law therefore can and should change. However, in addition to ignoring the problem of Hamlet's cloud, changing the law in such a case concedes the point that law and morality were not the same before the change and thus need not be the same.

⁹⁴ See Hart, *op. cit.*, 210-212.

⁹⁵ See Sections III(C) and V(B)(3) above.

⁹⁶ Hart, *op. cit.*, 211.

more likely to succeed if we analyze the concept shorn of all extraneous notions. Claudio's predicament demonstrates this well. Angelo reads his rigid view of morality into the statutes. However, the Duke also reads a very different and more lenient morality into them.⁹⁷ Whose reading is correct? We have Hamlet's cloud problem here not only at the inevitable level of the words of the statutes themselves but also at the further level of the conflicting moral elements they putatively contain. What is to be gained by this double complexity? Reasoned legal discourse will surely more likely succeed if we can first agree on the meaning of the rule itself and then turn to the moral implications of that meaning as a separate question. One Hamlet cloud problem at a time (rather than two intermingled cloud problems compounding questions upon themselves) surely increases the odds of successful, reasoned discourse.

Finally, these points lead to Hart's observation that a wider concept of law permits a broader study of rules including what makes rules "iniquitous."⁹⁸ The merits of this, I believe, speak for themselves.

6. The Semiotic Decalogue

i. Law and the Requirement of Rules

Again, for purposes of this article, I accept what I believe to be those several uncontroversial statements about the purpose and nature of law previously set forth. Summarizing them again, the general purpose of the law is to provide "guides to human conduct and standards of criticism for such conduct."⁹⁹ These guides are normally provided for the "primary purpose of setting the citizen's relations with other citizens. . . ."¹⁰⁰ This guidance is accomplished by "subjecting human conduct to the governance of rules."¹⁰¹ Again,

⁹⁷ See *Measure for Measure*, *op. cit.*, III, ii, 249-264.

⁹⁸ See Hart, *op. cit.*, 207-212.

⁹⁹ See note 66 *supra*.

¹⁰⁰ See note 67 *supra*.

¹⁰¹ See note 68 *supra*.

we could refine this understanding of law further¹⁰² but this start should suffice for purposes of this article. If we take this general approach, Shakespeare helps us to see at least ten inherent requirements that apply to any legal system regardless of its political stripe or persuasion.¹⁰³

First, there must of course be rules. In *The Second Part of Henry The Sixth*, the rebel Cade well understands that a lawless society cannot have rules. Thus, he would create an incoherent England under his command:

There shall be in England seven halfpenny loaves sold for a penny, the three-hooped pot shall have ten hoops, and I will make it felony to drink small beer¹⁰⁴

Consistent with the legal vacuum such abolition of rules must entail, Butcher announces his famous line: "The first thing we'll do is kill all the lawyers."¹⁰⁵ Cade goes beyond this; he orders the demolition of the Inns of Court and the burning of all the records of the realm.¹⁰⁶ Surely if Cade and his followers succeed in such endeavors, there can be no law in England. Abolishing all rules in any other realm would of course have the same effect.

ii. The Requirement of Public Rules

Since unknown rules cannot be intentionally followed, it of course follows that rules must be public if they are to be standards of conduct for a person or persons.¹⁰⁷ Although no further proof

¹⁰² See note 69 *supra*.

¹⁰³ The first seven requirements listed below generally conform with Fuller's requirements. See *Morality of Law*, *op. cit.*, 39. See also Hart, *op. cit.*, 207.

¹⁰⁴ William Shakespeare, *The Second Part of Henry the Sixth*, IV, ii 70-72, Stephen Orgel and A.R. Braunmuller, eds., (NY: Penguin Books, 2002) (hereafter *2 Henry VI*).

¹⁰⁵ *Id.*, line 81. As we learn shortly later, their target includes more than lawyers. They also mean to kill "[a]ll scholars, lawyers, courtiers, [and] gentlemen . . ." *Id.*, IV, iv 35-36.

¹⁰⁶ *Id.*, IV, vii. 1-2, 13.

¹⁰⁷ Hart makes an important distinction between viewing rules from an internal or external point of view. Rules are viewed from an internal perspective if they are accepted as guides for conduct. They are viewed from an external perspective if they are simply predictions as to how people will behave. See Hart, *supra* note 4, at 89. Since a secret

seems required, Shakespeare gives us an amusing example of this requirement. In *The Taming of the Shrew*, Petruchio first redefines rules of language without publicly so stating:

PETRUCHIO Come on, a God's name; once more toward
our father's.
Good Lord, how bright and goodly shines the moon!

KATE The moon? the sun. It is not moonlight now.

PETRUCHIO I say it is the moon that shines so bright.

KATE I know it is the sun that shines so bright.¹⁰⁸

Should Kate continue to use the standard rules of English grammar, the two will be in a confounded stalemate. Petruchio of course knows this and therefore makes his new rules clear:

PETRUCHIO Now, by my mother's son, and that's myself,
It shall be moon or star or what I list,
Or e'er I journey to your father's house.¹⁰⁹

With his rule now public (that rule being: things are called whatever I call them from time to time), Kate can play along and things move forward without further difficulty. Thus, she "concedes":

KATE Forward, I pray, since we have come so far,
And be it moon or sun or what you please.
An if you please to call it a rush candle,
Henceforth I vow it shall be so for me.

PETRUCHIO I say it is the moon.

KATE I know it is the moon.

rule is unknown, it of course cannot be accepted as a standard of conduct. However, an outsider who does not know the rule might be able to infer its existence externally, i.e., as an external rule of behavior of those in-the-know persons who embrace it internally.

¹⁰⁸ William Shakespeare, *The Taming Of The Shrew* V, v, 1-5, Stephen Orgel and A.R. Braunmuller, eds., (NY: Penguin Books, 2002) hereafter *Taming Of The Shrew*.

¹⁰⁹ *Id.*, lines 6-8.

PETRUCHIO Nay, then you lie. It is the blessed sun.

KATE Then, God be blessed, it is the blessed sun,
 But sun it is not, when you say it is not,
 And the moon changes even as your mind.
 What you will have it named, even that it is,
 And so it shall be still for Katharine.¹¹⁰

iii. The Requirement of Understandable Rules

For the same reasons that rules must be public to be accepted as rules of conduct, they must of course also be understandable. Petruchio and Kate's dialogue above can also be seen as illustrative of this point. Calling the sun "the moon" would not be comprehensible to the average person and could hardly serve as a workable guide for conduct without further explanation. For example, if Petruchio asks a third party to paint a picture of the "moon" without further explanation, that third party will of course paint a picture of the moon and not the sun as Petruchio means.

iv. The Requirement of Possible Performance

If law is to govern behavior, it of course cannot do so if it requires the impossible. For persons cannot comply with the impossible and that by definition defeats the very purpose of a rule.¹¹¹ One could give comical examples of this absurdity such as requiring men every fifth of March to dance on the head of a pin. Shakespeare, however, shows us in *Lucrece* that the matter is far from humorous. In this poem, Lucrece "follows" a "rule" which she of course cannot follow: she must under no circumstances have sex with a man other

¹¹⁰ *Id.*, lines 12-22.

¹¹¹ One might object that impossible rules can serve as guidance if the purpose of the rule is to confound, i.e., to guide behavior into a confounded state. That would, however, equivocate on the term "to guide." Rules do not "guide" persons externally as strings "guide" kites across the sky. Instead, rules set standards of behavior which one either accepts or refuses to accept. Thus, a person who believes that he must square a circle on the fifth of March would in the rule-bound sense be guided to square a circle, not to confound himself.

than her husband. When she is raped, she finds herself in a logically-generated moral quandary that gives her no guidance for future behavior. Thus, she turns upon herself and her very existence:

Out, idle words, servants to shallow fools,
 Unprofitable sounds, weak arbitrators!
 Busy yourselves in skill-contending schools;
 Debate where leisure serves with dull debaters;
 To trembling clients be you mediators:
 For me, I force not argument a straw,
 Since that my case is past the help of law.

In vain I rail at opportunity,
 At Time, at Tarquin, and uncheerful night;
 In vain I cavil with mine infamy,
 In vain I spurn at my confirm'd despite;
 This helpless smoke of words doth me no right:
 The remedy indeed to do me good
 Is to let forth my foul-defilèd blood.¹¹²

Such behavior follows no rules; instead, it ends her following rules.

v. *The Requirement of Consistent Administration*

If rules are to guide conduct, they must of course be administered in a sufficiently consistent manner to permit reasoned and predictable action by those trying to play by the rules. *Measure for Measure* as discussed earlier gives us a clear example of how selective enforcement of law proves treacherous for Claudio yet opportunistic for Angelo.¹¹³ This approach writ large would of course render any putative legal system incoherent as a set of rules for human guidance.

vi. *The Prohibition of Retroactive Abuse*

Measure for Measure also shows us how abuse of retroactive application of law can undermine a putative legal system. The laws

¹¹² William Shakespeare, *Lucrece*, 1016-1029, Stephen Orgel and A.R. Braunmuller, eds., (NY: Penguin Books, 2002) (hereafter *Lucrece*).

¹¹³ See Section IV(C) above.

selectively applied in this play were arguably also retroactive ones. Reviving these sexual behavior laws that had "slept"¹¹⁴ and suddenly applying them to all would effectively violate the principle that rules may not be impossible to perform. Requiring change of past behavior to comply with rules is of course impossible to perform.¹¹⁵

vii. The Requirement of Sufficient Stability

The possibility requirement also applies to the present stability of the legal system. Even without selective enforcement, retroactive abuse, and patently impossible rules, one may effectively have impossible performance where the legal system is in constant flux. In such a situation, the law could not serve as guidance because no course of action could keep up with such flux. If, for example, Cade had succeeded making his mouth "the Parliament of England,"¹¹⁶ there could have been no law to the extent his mouth was in constant flux.

viii. The Protection of Speech Required by the Previous Seven Requirements

If rules are to serve as guides for conduct, then they must actually fulfill that function. They cannot serve as guides for conduct without a certain degree of implicit freedom of speech. First, there must be speech involved in conveying and implementing the rules. Second there must be speech involved in enforcing the rules. Third, enforcement involves the empirical questions of how to follow the rules and whether the rules are being followed and to what end and effect. There must be speech involved in these continuing empirical questions so long as the rules remain in place. Discontinued

¹¹⁴ *Measure For Measure*, II, ii, 90.

¹¹⁵ This is not to say that a retroactive rule is always incoherent or impossible to perform in the relevant sense. For example, if a society has consistently operated on the mistaken view that certain property vesting rules were in effect three hundred years ago, a retroactive rule implementing such rules could serve as proper guidance for the living since they could continue to comply with a rule that they had already believed was in place.

¹¹⁶ *Henry VI*, IV, vii, 13-14.

rules also present continuing empirical questions requiring speech since previously-undiscovered evidence regarding such discontinued rules might present itself at any time. "Rules" suppressing such rules-required speech would therefore contradict the very concept of rules.

Statements involving the law encompass a much wider range than might first be thought, and this effectively requires very broad freedom of expression. For example, a statement such as "Angelo broke the fifty-five mile per hour legal speed limit on Tuesday" of course on its face involves the legal system. This is the case even where there is no actual legal limit and even where there is no speeding by Angelo since it asserts a putative legal claim against him.

Acknowledging this, however, requires acknowledging that an infinite number of other related statements also involve the legal system. These would include, for example, statements such as "Angelo was going x miles per hour," "Angelo's car was travelling x miles per hour," "Angelo was at home in bed on Tuesday," "Angelo never speeds," "Angelo cannot drive," and "Angelo spends his days in seated meditation." These statements would be protected because they all potentially relate to the prosecution or defense of the charge made against Angelo.

Acknowledging this, however, further requires acknowledging that these statements involve the legal system even in the absence of any present charge against Angelo. Prosecutors must have pre-charge freedom to make such a charge and Angelo and others must of course have the freedom to create the record for any such potential charge or its defense. Denying such freedom would restrict the speech required to implement and test the effectiveness of rules regarding speeding and would thus contradict the very notion of such rules.

Of course, acknowledging this also requires acknowledging endless civil law counterparts of this criminal example. For example, the statement "Angelo was looking for chocolate in Europe yesterday" can involve the civil law in endless ways. To the extent "chocolate" has an express or implied meaning under applicable

commercial law, the phrase on its face involves the law. However, it could also be a defense to claims that Angelo committed a physical tort in North Carolina yesterday or evidence that he did not sign a quitclaim deed in North Carolina yesterday. Again, no present tort or property claim need be asserted for this to be the case since such claims could be asserted at any time. And, again, denying freedom to make such statements would restrict the speech required to implement and test the rules regarding the legal definition of chocolate, the physical torts in questions or the execution of quitclaim deeds and would thus, again, contradict the very notion of such rules.

Acknowledging this, of course requires acknowledging that very little (if any) expression exists independently of the law.¹¹⁷ Acknowledging this requires acknowledging the broad degree of freedom of expression required for the governance by rules¹¹⁸ even in

¹¹⁷ As Borges puts it, “[I]n the human languages there is no proposition that does not imply the entire universe; to say *the tiger* is to say the tigers that begot it, the deer and turtles devoured by it, the grass on which the deer fed, the earth that was mother to the grass, the heaven that gave birth to the earth.” Jorge Luis Borges, “The God’s Script” in *Labyrinths*, L.A. Murillo, tr. (NY: New Directions Books, 2007), 171. The law, of course, is a part of this universe. If, however, interrelation is somehow questionable under a specific formulation, expression can be rephrased to remove all doubt. For example, “I do not like the color of your hair” can be restated as “This American citizen does not like the color of your hair.”

¹¹⁸ This requirement of course does not apply to all verbal or other acts purporting to be expression. Where “expression” on its face contradicts or does not involve the freedom of expression required for governance by rules, such “expression” may be restricted without contradicting the notion of rules. For example, calling a person “faggot!” simply to hurt or insult him is verbal battery. Battery deliberates nothing and therefore on its face cannot play any role in the discussion or analysis of rules. Furthermore, rules permitting such gratuitous battery would sanction chilled expression in the battered. This on its face is of course inconsistent with the freedom of speech required for the governance of rules. Fictional entities also require different analysis. For example, since corporations are legal fictions which can only speak to the extent the law provides, any questions of corporate free speech are necessarily compound questions requiring analysis of whether putative speech is actually corporate speech and, if so, whether such speech is permitted of corporations by the law that creates and empowers them. If the corporation cannot speak under such analysis, this has no effect on net expression. Corporations can only speak through others and the speech of others (such as shareholders, officers and employees of the corporation) is not muted by the corporation’s inability to speak.

the absence of provisions such as the First Amendment.¹¹⁹ This of course requires acknowledging that all legal systems must permit broad freedom of expression even in the absence of written requirements to such effect.¹²⁰

Thus, Shakespeare allows his “fools” to play the chorus even where “wiser” men would not. The Fool in *King Lear*, for example, freely reminds King Lear of the foolishness of submitting himself to the power of his thankless daughters Regan and Goneril while rejecting his loyal daughter Cordelia. Thus, the Fool remarks even to a king, “Thou shouldst not have been old till thou hadst been wise.”¹²¹ Feste in *Twelfth Night, or, What You Will* [hereafter *Twelfth Night*] similarly freely notes that foolery “. . . does walk about the orb like the sun; it shines everywhere.”¹²² In *Twelfth Night*, he also freely proclaims, “I say there is no darkness but ignorance. . . .”¹²³ Touchstone, though a duplicitous and pedantic fool, still serves as a good “touchstone” against which others may measure their purity in *As You Like It*.¹²⁴

¹¹⁹ Compare *The Federalist* No. 84 (Alexander Hamilton) setting forth Hamilton’s reasons why a bill of rights is unnecessary and even potentially dangerous.

¹²⁰ One might argue that this line of argument proves too much. For example, espionage is a rule-governed activity. Does that mean that CIA agents, for example, are therefore free to speak publicly about whatever they do and whatever they find? Of course not—such freedom would contradict the very rules of their profession. However, the epistemological and other concerns we have noted would require their freedom to speak to the extent consistent with such rules. Some might respond, “Then what about a law requiring everyone to be a ‘Y’ which is defined as one who always keeps strict silence?” Would not speaking violate the inherent rules of that “game” and therefore effectively deny freedom of expression to everyone? However, again, such a “law” is simply not possible. Rules cannot be implemented, enforced or followed without speech. It would not help to modify the law to provide for “strict silence except to the extent required to implement, enforce or follow the law.” What falls under that caveat is itself subject to interpretation, implementation and compliance which of course requires the very freedom of expression it would suppress.

¹²¹ *King Lear*, *op. cit.*, I, v 41-42.

¹²² William Shakespeare, *Twelfth Night, or, What you Will*, III, i 38-39, Stephen Orgel and A.R. Braunmuller, eds., (NY: Penguin Books, 2002) (hereafter *Twelfth Night*).

¹²³ *Id.*, act 4, sc. 2, lines 42-43.

¹²⁴ See Harold Bloom, *Shakespeare: The Invention of the Human*, (NY: Riverhead Books, 1998), 218-221.

ix. The Equal Protection Required by the Previous Eight Requirements

Since governance by rules requires freedom of speech to the extent noted above, commensurate equal protection must follow hand in hand for those entitled to freedom of speech. To the extent disparate treatment limits protected speech, governance by rules inherently limits such disparate treatment. For example, a rule-governed society could not lawfully segregate school systems based on an arbitrary factor such as skin color. Separating students and teachers on such a basis clearly interferes with the free flow of ideas and therefore cannot legitimately occur within a rule-based society. That is not to say, of course, that such a practice cannot physically occur in a given society otherwise governed by law. We unfortunately know that such a practice can and has occurred. Yet, where it has occurred, the practice cannot be lawful (even if the "inferior" race accepts it) because it violates the inherent restraint of governance by rules. Shakespeare understands this well: his fools such as Feste, Touchstone and Lear's Fool are allowed to mix freely with all classes of society.

x. The Due Process Required by the Previous Nine Requirements

Meaningful equal protection and freedom of speech cannot of course exist without due process protections. Thus, governance by rules also requires sufficient due process protections to guarantee such freedom of speech and equal protection. Procedural due process is also required by the very nature of governance by rules. Without such procedural due process guarantees, rules implode as internalized guides for individual conduct because the consequences of compliance (and even what constitutes compliance itself) become uncertain. Without such procedural due process, one becomes a Desdemona¹²⁵ subject to condemnation no matter what

¹²⁵ Desdemona is murdered by her husband, Othello, who erroneously believes she has been unfaithful to him. See William Shakespeare, *The Tragedy of Othello, the Moor of*

one does. This is not rule-governed activity under any meaningful sense of the term.

VI. CONCLUSION

With Shakespeare's help, we can thus see a clearer picture of the law and its inherent restraints shorn of the false bravado of a Richard III and the false pieties of an Angelo. Although Shakespeare helps us see how command-theory positivism, prediction-theory accounts of the law, and the natural law accounts explored do not stand scrutiny, he also helps us see how the concept of governance by rules has at least ten inherent restraints which prohibit much mischief.¹²⁶ Though not from Moses, this semiotic decalogue demands its Nurembergs.

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Venice, Stephen Orgel and A.R. Braunmuller, eds., (NY: Penguin Books, 2002).

¹²⁶ To the extent these inherent restraints morally fail, at least two further safeguards apply. First, the substantial acceptance requirement always applies and substantial acceptance will by definition cease when the governed find a legal system too dissolute for their continued acceptance. Tyrannical force may continue to be used when such acceptance ceases, but such force is not law and will hopefully face its Nuremberg. Law requires governance by rules, and such governance requires internalizing rules, a requirement no longer met when rules are rejected by the governed. Second, despite what others may do, individuals can of course refuse to obey immoral law.