

# LOVE AND SOLIPSISM: LAW AND ARBITRARY RULE IN AESCHYLUS, SHAKESPEARE, SOPHOCLES, AND ANOUILH

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## INTRODUCTION

What distinguishes the rule of law from the lawless, arbitrary rule of brute force—which can almost interchangeably be described as tyranny or as anarchy—is that a lawful rule operates according to principles of generality, regularity, fairness, rationality, and public orientation, whereas the arbitrary or lawless ruler wields power in the service of his (or their) own self-interest or by mere *ipse dixit*. Law is to arbitrariness as reason is to mere will. Thus the “law of the land” guarantee of Magna Carta<sup>1</sup> and the “due process of law” guarantees of modern Constitutions<sup>2</sup> make sense only in a regime that recognizes a basic, inescapable distinction between genuine law and the mere command of the ruler.<sup>3</sup>

Here, I want to explore the dichotomy between lawful and arbitrary rule further, but instead of focusing on legal precedents, I will examine this distinction as it has been represented in literature. This is appropriate

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1. MAGNA CARTA ch. 39 (1297).

2. U.S. CONST. amends. V, XIV.

3. Timothy Sandefur, *In Defense of Substantive Due Process, or the Promise of Lawful Rule*, 35 HARV. J.L. & PUB. POL’Y 283, 285 (2012).

because humanity has deliberated questions of justice and lawful rule more often in literature than in legal decisions, and because literary deliberations are better known to the law-abiding, law-consuming public than are obscure precedents.

I will examine first the primal foundation of lawful rule as depicted in Aeschylus' *Oresteia*, one of western culture's earliest meditations on the meaning of law. Here law is generated through the domestication, so to speak, of the use of force. Domestication, as opposed to domination, channels force through public articulation and a commitment to reciprocal, willing union. In this sense, law really is like love, as W.H. Auden suggested.<sup>4</sup> Athena creates lawful order, not by fiat, but by marrying the Furies to "Persuasion"<sup>5</sup>: the ambient coercive powers of the people—morally justified, but dangerously personal urges for vengeance—are now rationalized in accordance with logical, public, articulable principles. By contrast, in *Richard III*, we see the downward slope: the subversion and near destruction of lawful order by a man who will tear the state apart in order to serve his private ends.<sup>6</sup> The contrast of these two dramas reveals the essentially solipsistic nature of tyranny: the tyrant's ultimate goal is to make the real world yield to his mere command; to make the citizen or subject "collude in a fiction."<sup>7</sup> And if law is like love, the tyrant is like the rapist. The forced surrender of intimacy is the best facsimile of love the solipsist can create, but it can never be actual love, because the two are separated by the same invisible, impenetrable boundary that separates truth from falsehood or genuine loyalty from the rule of terror.

I conclude with a look at the dissenter living in a lawless order, as depicted in two variations on the story of Antigone—the first by Sophocles and the second by Jean Anouilh. In both of these plays, the lawless, arbitrary rule is challenged in the name of law, and in each, the ruler nearly succeeds in substituting his private realm of mere words for the public realm of actual things. This last is a crucial point because what emerges from this study is that the basic premise of all lawful order—the root of all secure liberty—is that there is a gap between the will of the ruler and the genuine law. Whenever such a gap exists—whenever it is meaningful to deliberate over whether the ruler's commands are, in fact, law—the society

4. W.H. AUDEN, *Law, Like Love* (1939), reprinted in COLLECTED POEMS 262 (Edward Mendelson ed., Vintage International 1991).

5. AESCHYLUS, THE EUMENIDES, in THE ORESTEIA, II. 979–84 (Robert Fagles & W.B. Stanford eds., Robert Fagles trans., Penguin 1977) [hereinafter EUMENIDES]. Unless otherwise cited, all quotations from and citations to the Oresteian trilogy and to *Antigone* are to Fagles's translations.

6. See generally WILLIAM SHAKESPEARE, RICHARD THE THIRD (Janis Lull ed., Cambridge Univ. Press 1999) [hereinafter RICHARD III].

7. MARTIN AMIS, KOBAL THE DREAD 61 (2002) ("[T]orture, among its other applications, was part of Stalin's war against the truth. He tortured, not to force you to reveal a fact, but to force you to collude in a fiction.").

will, to that extent, become one of lawful order and of (at least some) freedom. The link between tyranny and solipsism is that where the ruler's will is accounted the law, there can be no actual law, and thus no freedom. As John Locke put the point, nobody can be free "when every other Man's Humour might domineer over him."<sup>8</sup> The depiction of tyranny and lawful order in these literary works makes sense, I contend, only in light of this substantive definition of liberty as an efficacious freedom of will—as opposed to a procedural definition of liberty as participation in a political process.

All tyranny, whether of a single despot or of the majority, is an effort to make the world at large—both the reality of human relationships and the reality of physical nature itself—obey the ruler's unconstrained command. The paradox whereby tyranny is lawless is explained by the fact that tyranny is an attempt to impose by convention what does not originate in nature—and in the end, neither physical nature nor the nature of human relationships can be subjected to such commands. The ultimate demand of the lawless ruler(s) is to substitute his (or their) word for the world—to compel the subject to love him (or them). And because that can never be accomplished, arbitrary rule is doomed to eventual collapse.

#### I. *THE ORESTEIA*: THE MARRIAGE OF PERSUASION

Aeschylus' *Oresteia* tells the foundation myth of the Athenian justice system.<sup>9</sup> The trilogy moves from corruption to purification, as the forces of private passion and revenge, personified in the Furies, are brought to yield to the demands of rational principles of public order. Returning from the Trojan War, Agamemnon finds that the proper order in his city has been destroyed, as his wife, Clytemnestra, has taken up with a lover, Aegisthus. But before the king can restore society to its proper form, Clytemnestra murders him, and this perversion of the proper order cries out for reconciliation. On the orders of the god Apollo, the couple's son Orestes, resolves this conflict by murdering his mother; but that murder demands an equalizing punishment from the Furies, who embody the elemental, passionate demand for vengeance.<sup>10</sup> Orestes is now caught in an untenable position: his act was justified by the Apollonian principles of justice, yet Zeus's law equally requires that the Furies punish matricides; if they do not, it will mean "the overthrow / of every binding law."<sup>11</sup> Orestes,

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8. JOHN LOCKE, *TWO TREATISES OF GOVERNMENT* 324 (Peter Laslett ed., Cambridge Univ. Press 2d ed. 1967) (1690).

9. See generally *THE ORESTEIA*, *supra* note 5.

10. EUMENIDES, *supra* note 5, at l. 394.

11. *Id.* at ll. 506–13.

therefore, prays to Athena, who arrives to resolve the conflict by convening a trial at which Orestes is narrowly acquitted. This newly devised legal system, Athena explains, will ensure that crimes are punished as necessary, while avoiding the tumult that will ensue if society operates by ad hoc vengeance.

It bears emphasis that Athena does not create *justice*, only *law*—that is, the boundaries that limit the use of coercion.<sup>12</sup> *Justice* preexists the action, and the question in *The Oresteia* is only how its demands may be formalized—how it may be tamed. Francis Bacon famously called revenge “a kind of wild justice,”<sup>13</sup> and the question for Athena is how to domesticate justice without destroying it. She accomplishes this by devising a “public and political” court to replace the “private and familial” vendetta, thus ending the cycle of violence with “an orderly and controlled process for hearing claims.”<sup>14</sup> The process she devises is not justified on purely conventional grounds—it is not made right simply because a goddess chooses to implement it. After all, this process is meant to adjudicate between the competing claims of different gods. Rather, Athena convinces the Furies to submit their visceral thirst for revenge to the demands of a preexisting rationality.<sup>15</sup> In other words, this new, lawful order is rooted not in any *ipse dixit* claim by Athena; rather, it is legitimate because it channels or formalizes more primal justified claims according to public reason, thereby transfiguring them into *law*.<sup>16</sup>

This, I believe, explains the conflicting references to “persuasion” at the beginning of *Agamemnon* and at the end of *The Eumenides*. The contrast between the unjust rule of Clytemnestra and Aegisthus in the first play, and the new, just rule implemented by Athena in the final play, is analogized to language itself, which derives its value only from its faithfulness to underlying reality.<sup>17</sup> At the opening of *Agamemnon*, Argos is governed by an essentially arbitrary rule of brute force. Aegisthus is a scheming, boastful tyrant whose principle of political rule is simply

12. Paul Gewirtz, *Aeschylus' Law*, 101 HARV. L. REV. 1043, 1045 (1988).

13. FRANCIS BACON, *Of Revenge* (1625), reprinted in THE MAJOR WORKS 347, 347 (Brian Vickers ed., Oxford Univ. Press 2002).

14. Gewirtz, *supra* note 12, at 1045.

15. See David Luban, *Some Greek Trials: Order and Justice in Homer, Hesiod, Aeschylus and Plato*, 54 TENN. L. REV. 279, 297 (1987) (“The ancient concept of justice represented by the [Furies] is private vengeance . . . . To rebut the [Furies, Athena] counsels against anarchy and despotism.”).

16. See H.D.F. KITTO, THE GREEKS 77 (Aldine Pub. 1964) (1951) (“[T]o Aeschylus, the mature polis becomes the means by which . . . public justice supersedes private vengeance; and the claims of authority are reconciled with the instincts of humanity.”). For a discussion of the concept of public reason, see Lawrence B. Solum, *Public Legal Reason*, 92 VA. L. REV. 1449 (2006).

17. See EUMENIDES, *supra* note 5, at ll. 893–95 (“[I]f you have any reverence for Persuasion, / the majesty of Persuasion, / the spell of my voice that would appease your fury . . .”).

coercion: “You’ll learn,” he tells the Chorus, when they rebuke him for sitting out the Trojan War at home,

in your late age, how much it hurts  
to teach old bones their place. We have techniques—  
chains and the pangs of hunger . . . .

. . . .

Talk on—

you’ll scream for every word . . . .

I’ll make you dance, I’ll bring you all to heel.<sup>18</sup>

He and Clytemnestra have come to live decadent and self-indulgent lives at the expense of the commonwealth. The pair are then echoed in the contrast between Apollo and Athena at the end of *The Eumenides*. Whereas the pompous Aegisthus defiles public places—he has transformed the palace into a private nest of luxury and self-indulgent rule—Apollo is the god of reason and protector of public places. So, too, Clytemnestra is the counterfigure to Athena: while the queen is a notorious adulteress, whose concern is wholly with private satisfaction, the goddess is a virgin, supremely public in her concerns. Clytemnestra is a figure of seething passion; Athena the goddess of orderly wisdom. Together, Aegisthus and Clytemnestra have adopted what the Greeks would have seen as characteristically Asian ways into their political rule—something Agamemnon notices immediately when Clytemnestra asks him to walk on the carpet: “what am I, some barbarian peacocking out of Asia?”<sup>19</sup> So, too, Clytemnestra and her lover have perverted their authority to serve their own private purposes—thus “destroy[ing] the polis for ‘private’ revenge.”<sup>20</sup>

It is commonplace to ascribe the downfall of characters like Aegisthus, Clytemnestra, and Agamemnon to their hubris. But while this is true, it

18. AESCHYLUS, AGAMEMNON, in *THE ORESTEIA*, *supra* note 5, at ll. 1651–65 [hereinafter AGAMEMNON].

19. *Id.* at l. 913. This is a significant reference, since the Greeks saw the essential characteristic of despotic, Asian (i.e., Persian) rule as the idea that the ruler’s command was synonymous with law. Herodotus illustrates this repeatedly throughout his *HISTORIES*, most notably with the story of Astyages, who, upon learning that his subject Harpagos plotted rebellion, had the man’s son killed, cooked, and served to him at a banquet. When he revealed to Harpagos what he had just eaten, the man answered that “it was pleasing—as was everything that the king did.” HERODOTUS, *THE HISTORIES*, in *THE LANDMARK HERODOTUS: THE HISTORIES* 67 (Robert B. Strassler ed., Andrea L. Purvis trans., 2007). In RICHARD III, when Richard tells the shocked Mayor of London that it was necessary to kill Hastings without a trial, he says, “What? Think you we are Turks or infidels? / Or that we would, against the form of law, / Proceed thus rashly in the villain’s death, / But that the extreme peril of the case, / The peace of England, and our persons’ safety, / Enforced us to this execution?” RICHARD III, *supra* note 6, at act 3, sc. 5, ll. 40–45. Shakespeare’s audience would immediately have recognized the reference to “Turks” as an invocation of the archetype of lawless rule—just as Aeschylus’ audience would have recognized the reference to Asian practice as a symbol of despotism.

20. J. Peter Euben, *Justice and the Oresteia*, 76 *AM. POL. SCI. REV.* 22, 26 (1982).

must be borne in mind that hubris is not merely aspiration or arrogance; it is not the Christian sin of pride. Rather, at least as far as *The Oresteia* is concerned, hubris is a kind of willfulness: a disorder of character whereby one seeks to make the world conform to one's desires, rather than to conform one's soul to the natural order of the world or of human relationships. As C.M. Bowra put it, hubris "might well reflect an inner lack of courage; it certainly meant a defiance of self-control and temperance; it led inevitably to injustice in its disregard for the rights of others; it often ended in folly when its possessor thought that he could by unjust methods secure the impossible."<sup>21</sup> In *Agamemnon*, the lovers have taken control of the polis for their private indulgence. What Athena offers in counterpoise to their passion, vengeance, and coercion is a public rule of rational order, law, and freedom.

This contrast is manifested by the way persuasion transforms over the course of the trilogy.<sup>22</sup> At the beginning of *Agamemnon*, persuasion is an evil force—the "maddening child of Ruin" that "overpowers" man and leads him to destruction.<sup>23</sup> Clytemnestra persuades Agamemnon, against his better judgment, to walk on the hubristic royal carpet, disregarding "[t]he voice of the people" and acting instead like King Priam.<sup>24</sup> Here, persuasion is perverted by the "lust for glory."<sup>25</sup> It is made to serve the predetermined, passionate goals of the speakers. It is essentially hubristic because it is out of step with the natural order—it is the use of language, not for the legitimate end of convincing the judgment of a true or proper conclusion, but of overcoming legitimate objections with a specious use of reason or an appeal to mere emotion. At the end of the cycle, by contrast, Athena concludes the *Eumenidies* with a hymn to Persuasion, now personified:

. . . Yes, I love Persuasion;  
she watched my words, she met their wild refusals.  
Thanks to Zeus of the Councils who can turn  
dispute to peace—he won the day.<sup>26</sup>

Now Persuasion serves the end of justice because it is a tool for the explication and synthesis of a proper order.<sup>27</sup> A judicial trial persuades

21. C.M. BOWRA, *THE GREEK EXPERIENCE* 89 (New American Library 1959) (1957).

22. See Luban, *supra* note 15, at 311 ("The movement of the *Oresteia*, then, is a transformation of persuasion from a sinister to a benign force."). This change in emphasis with regard to persuasion is reinforced by a change in the language between the formal, complicated poetry of *Agamemnon* and the clearer, easier language of *The Eumenidies*. See Euben, *supra* note 20, at 31.

23. AGAMEMNON, *supra* note 18, at ll. 387–90.

24. *Id.* at ll. 930–34.

25. *Id.* at l. 935.

26. EUMENIDES, *supra* note 5, at ll. 981–84.

(ideally) by convincing the judgment instead of inflaming the passions, and thus it channels the demand for vengeance in a socially beneficial direction. By giving the Furies their vengeance only after a thorough examination of the facts and weighing of other considerations, Athena is able to bring a rational coherence to the competing demands of reciprocal justice. This marks the difference between arbitrary power and lawful rule. As she dedicates the Areopagus as the site for future court trials, Athena explains that law marks a third way between lawless passion and the slave-like desolation of despotism:

. . . terror and reverence,  
 my people's kindred powers  
 will hold them from injustice through the day  
 and through the mild night. . . .  
 Neither anarchy nor tyranny, my people.<sup>28</sup>

This order is not a rationalistic abstract structure, imposed on the world merely by Athena's say-so; rather, it incorporates, without displacing, the passionate demands of the Furies.<sup>29</sup> The injured person will have recompense, but through reverence for the *law*, not through the private process of willful vengeance. Athena's new order democratizes the

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27. See 1 GEORGE THOMSON, *THE ORESTEIA OF AESCHYLUS* 56–57 (1938) (“[Athena] represents that gift of clear, persuasive reason, which, in the view of the Athenians, is the vital condition of human civilisation . . . . It is in this spirit that Athena now addresses herself to the task of putting an end to barbarism on earth.”). A notable contrary view is expressed by David Cohen, *The Theodicy of Aeschylus: Justice And Tyranny in the Oresteia*, 33 *GREECE & ROME* 129 (1986). Cohen sees in *The Oresteia* not the ultimate triumph of legitimate order, but “the arbitrary justice of the right of the stronger: persuasion and compulsion, backed by fear and force.” *Id.* at 139. This unorthodox view casts Aeschylus, long regarded as an essentially conservative writer, as a radical critic of Athenian justice. See also Luban, *supra* note 15, at 311 (“Aeschylus means us to perceive the trial of Orestes as manifestly unfair.”). Certainly such an interpretation would explain Aeschylus’ composition of *Prometheus Bound*, which is hard to see as anything other than a critique of Zeus’s justice. But without access to the rest of the Prometheus trilogy, it seems dangerous to endorse such a drastic reappraisal of Aeschylus’ views. The easier reading of *The Oresteia* is that the new political order is just, even though the formation of that order cannot be justified by appeal to the principles of justice that spring from that order. This paradox—what Pierre Manent calls “the fecundity of evil”—is a common theme in political philosophy. See PIERRE MANENT, *AN INTELLECTUAL HISTORY OF LIBERALISM* 10 (1994). Nor is there any reason that Aeschylus could not simultaneously criticize Zeus’s justice and attempt to reformulate it in a manner he considered more rational. Cf. HERBERT J. MULLER, *FREEDOM IN THE ANCIENT WORLD* 186 (1961) (“Zeus had not given Aeschylus such ideas—it was Aeschylus who was educating Zeus.”); W.G. FORREST, *THE EMERGENCE OF GREEK DEMOCRACY* 215 (1966) (interpreting Aeschylus as “applying more rigorously a principle . . . that the constitution or the law should be independent of and more important than any man or group of men who administer[s] them, or . . . that no kind of personal authority . . . should be allowed to operate except in so far as it was sanctioned by the constitution or the law”).

28. EUMENIDES, *supra* note 5, at ll. 703–09.

29. Gewirtz, *supra* note 12, at 1047 (“Channeled through law, vengeance and hate speak through the one strong voice of civil authority. Only with this vehicle for hate can the play achieve its resolution and civilization move ahead.”).

formerly private vendetta system that enforced the gods' justice. But to democratize this private demand requires that others be persuaded to accept or support it, and that requires articulate justification. To subject such a demand to public scrutiny means to substitute explanation and rational justification for self-determined vengeance. And this triumph of reasoned persuasion<sup>30</sup>—the formation of a lawful order—is what changes the Furies, who are essentially private beings, into the Eumenides, who are essentially public ones.<sup>31</sup> Their demands for retribution are not made into justice by being made public; Aeschylus makes clear that their claims do have priority. But those demands are now systematized or categorized according to principles of rationality, just as a scientist would systematize a natural phenomenon by breaking it down in his mind into its constituent elements, and then reproducing it in a written description, drawing, or model. Similarly, Athena takes the natural demands for reciprocity and makes them safely public—no longer a threat to, but a foundation of, the healthy political society—by analyzing and synthesizing them.<sup>32</sup> Language is a natural metaphor for this process.

Robert Fagles and W.B. Stanford regard the final scene of *The Eumenides* as a kind of wedding ceremony where “[t]he old antagonists, Will and Necessity, have been married by Persuasion . . . .”<sup>33</sup> Marriage, too, is a telling metaphor. The criminal trial system Athena institutes is a formal legal process just as marriage is, and it serves similar functions: the evidentiary function, whereby a document or other evidence is created to provide objective proof of the transaction; the cautionary function, which induces deliberation and prevents inconsiderate action by the parties involved; the channeling function, which signals the enforceability of the transaction, helps affect private action, and indicates what people intend to bind themselves and others to.<sup>34</sup> Ceremonies like marriage or criminal prosecution serve these functions also. The formalities do not give the underlying transaction its normative force—people want to get married because they are in love, or want to prosecute a criminal because they have

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30. Cf. Peter Burian, *Zeus Σωτήρ Τρίτος and Some Triads in Aeschylus' Oresteia*, 107 AM. J. PHILOLOGY 332, 342 (1986) (“The chorus of the *Agamemnon* depicted Zeus’s succession in terms of sheer force . . . . Now [in *The Eumenides*] Zeus triumphs through persuasion: . . . the Zeus of the polis, of law, of debate.”). See also Gerwitz, *supra* note 12, at 1045 (“Athena’s court is public and political; by contrast, the regime it seeks to replace is private and familial . . . .”).

31. As Kitto notes, *supra* note 16, at 77, the actors playing the Eumenides would have ended the performance of the play by leaving the theater in their new robes, symbolizing their new civic role, shortly thereafter to be followed by members of the audience: thus reinforcing their sense of joint participation in the enterprise of legal order.

32. Luban, *supra* note 15, at 299.

33. Robert Fagles & W.B. Stanford, *The Serpent and the Eagle*, in *THE ORESTEIA*, *supra* note 5, at 86–87.

34. See Lon Fuller, *Consideration and Form*, 41 COLUM. L. REV. 799, 800–01 (1941) (describing the functions of legal formalities).



been harmed—but the formal institutions of law bring these private motives indoors, so to speak; they domesticate them. They make what would otherwise be inchoate, subjective, or idiosyncratic transactions comprehensible in objective, standardized terms. To say that legal formalities bring private actions “indoors” is not just a turn of phrase; Greek writers often saw laws, or *nomoi*, as analogous to the city’s walls.<sup>35</sup> Just as the visible barrier of the walls marked the city out from the treacherous world, so the invisible barriers of the law mark out the body politic from the general mass of humanity, and so language separated the Greeks from barbarians. This is why Athena tells the Furies that they may make war on those outside the city, but not on those within it: “Let our wars / rage on abroad, with all their force, to satisfy / our powerful lust for fame. But as for the bird / that fights at home—my curse on civil war.”<sup>36</sup> Force may be used on those outside the walls because they are outside the boundary of dialogue, language, persuasion, *logos*. But those within the walls are *politai*, who deserve mutual respect and that critical element that Aeschylus chooses to emphasize: persuasion. “Within the walls,” writes Andrew Benjamin, “conventions pertain. . . . Within the walls and only with them is *nomos* king. The *anomos* is not just outside or beyond the realm of *nomos*. The *anomos* has a specific relation to place.”<sup>37</sup>

The analogy to marriage is worth dwelling on. Auden famously suggested that law is like love, and this is a richer analogy than it might at first seem. Love is not a command from one to another, but a willing, mutual bond—it contains an element of reciprocity and kinship. The married couple creates a house to be governed not by brute force but by cooperative effort. The Greeks—from whom we get the word “economy,” meaning “household management”—were familiar with the analogy of the political state and the marriage union. And it is a particularly apt analogy in a democracy.<sup>38</sup> Unlike the authoritarian rule of Sparta, governed by a

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35. T.A. SINCLAIR, *A HISTORY OF GREEK POLITICAL THOUGHT* 35 (1952); Deniz Coskun, *Religious Skepticism, Cambridge Platonism, and Disestablishment*, 83 U. DET. MERCY L. REV. 579, 587 (2006) (“The contention that laws are not mere arbitrary theoretical constructs, but instead permeate the whole Greek polis, is best explicated by Heraclites’ statement that ‘the people must fight for their laws as for their walls.’ The laws constitute the soul of the polis, the invisible fortress of the polis, next to the visible polis defended by its stone walls.” (emphasis in original)). Sophocles hints at the analogy in *ANTIGONE* when Creon describes Polynices assaulting the city walls and seeking to “burn their temples” and “fling their laws to the winds.” SOPHOCLES, *ANTIGONE*, in SOPHOCLES: *THREE THEBAN PLAYS*, ll. 324–25 (Robert Fagles trans., 1982) [hereinafter *ANTIGONE*]. The ancient Romans also viewed city walls as sacred boundaries uniting the people, analogous to laws. See JOSEPH RYKWERT, *THE IDEA OF A TOWN: THE ANTHROPOLOGY OF URBAN FORM IN ROME, ITALY AND THE ANCIENT WORLD* 135–36 (1988).

36. EUMENIDES, *supra* note 5, at ll. 872–75.

37. ANDREW BENJAMIN, *PLACE, COMMONALITY, AND JUDGMENT* 129 (2010).

38. See LON L. FULLER, *THE MORALITY OF LAW* 39–40 (rev. ed. 1969) (rejecting the image of law as a unidirectional system of social management, arguing that law contains within it reciprocal obligations on the part of the ruler).

unidirectional system of social management, the democracy of Athens was a reciprocal institution, obligating the rulers as well as the citizens. The metaphor of “marriage” that concludes *The Oresteia* is two-fold: it formalizes and civilizes the passions of justice as marriage formalizes and civilizes the physical and spiritual passions. But it also incorporates a promise *on both sides* to cooperate in the formation of a fecund union. That cooperation takes the form of mutual deliberation, loyal opposition, and agreement, through public persuasion and *reason*.<sup>39</sup> If “[t]o be political, to live in a *polis*, meant that everything was decided through words and persuasion and not through force and violence,”<sup>40</sup> so being ruled by law meant a willingness to yield and deliberate fairly in a joint enterprise. Law like love, indeed.

## II. *RICHARD III*: THE TYRANT AS SOLIPSIST

### A. *The Command of Reality*

Shakespeare’s *Richard III* seems virtually to pick up where *The Eumenides* ends.<sup>41</sup> Aeschylus leaves the audience on a triumphant note of reconciliation—precisely the note on which Shakespeare’s brilliant villain enters: the “winter of our discontent” having been “[m]ade glorious summer” by the end of the Wars of the Roses.<sup>42</sup> But Richard immediately confesses that he has laid plots not merely to subvert the new monarch but to take over the throne of England. In the ensuing action, Shakespeare develops his image of the tyrant as solipsist—as the man determined to replace the facts of reality with the narrative concocted by his will.

Being a Christian, and possibly a secret Catholic,<sup>43</sup> Shakespeare’s model of lawful political order was the order of God’s rule, specifically of the Garden of Eden, where authority and reason ran precisely parallel.<sup>44</sup> God’s order governed man directly, so that there could be no gap between the direct commands of civil authority and the underlying demands of legitimate rule. This gap was opened up only by the wiles of Satan, who prevailed upon man to deviate from right reason and exercise independent

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39. Gerwitz, *supra* note 12, at 1046 (“The movement is from a world of passion and subjectivity toward a regime that, in form at least, empowers a more detached authority influenced by reason.”).

40. HANNAH ARENDT, *THE HUMAN CONDITION* 26 (2d ed. 1998). Arendt continues: “According to [Aristotle], everybody outside the *polis*—slaves and barbarians—was *aneu logou*, deprived, of course, not of the faculty of speech, but of a way of life in which speech and only speech made sense and where the central concern of all citizens was to talk with each other.” *Id.* at 27.

41. See generally *RICHARD III*, *supra* note 6.

42. *Id.* at act 1, sc. 1, ll. 1–2.

43. See PETER ACKROYD, *SHAKESPEARE: THE BIOGRAPHY* 446–47 (2005).

44. See *Genesis* 2:1–3:13.

will contrary to divine law. During this period, Satan was often pictured as a paradoxical combination of evil mastermind and clever trickster. It is thus unsurprising that Richard, like Shakespeare's other most Satanic character—Iago in *Othello*—is something like Rumpelstiltskin, whose diabolical master plans are both terrifyingly real and playfully childish. As Peter Ackroyd notes, Iago acts much like the troublemaking clown in a Shakespearean comedy, who manipulates the other characters, bending them out of their normal courses until the entire machinery collapses.<sup>45</sup> Likewise, Richard plucks on every other character's weakness to unravel the whole tapestry of lawful order in newly reconciled England. He expands his own will to corrode that order, coming close to success, only to discover in the end that the one thing he cannot overcome is individual conscience. Lawful order is therefore vindicated—at the last possible moment—because the necessary principle on which that order depends is coherence with reality, which cannot be subverted.

### 1. *The Corrupt Mirror: Forcing Love*

It is fitting that among the first poetic metaphors Shakespeare employs in this play is that of the mirror.<sup>46</sup> In his initial soliloquy, Richard confesses that he is too ugly “to court an amorous looking-glass,”<sup>47</sup> but almost immediately after this, he succeeds in winning Anne, the widow of a man he has himself killed, through a repulsive negotiation over the body of that man's father, the former king. Anne is an ambiguous character in this scene, and Shakespeare does not resolve whether she yields willingly to Richard's combination of entreaty and pressure. But however that may be, his success in manipulating her makes Richard conclude that he has “mistake[n] [his] person all this while!”<sup>48</sup> Now he will fashion for himself a different mirror in which he will appear handsome:

I'll be at charges for a looking-glass  
 And entertain a score or two of tailors  
 To study fashions to adorn my body.  
 Since I am crept in favor with myself,  
 I will maintain it with some little cost. . . .  
 Shine out, fair sun, till I have bought a glass,

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45. ACKROYD, *supra* note 43, at 98.

46. See MARJORIE GARBER, *SHAKESPEARE AFTER ALL* 136 (2004) (“In the Renaissance the mirror was an emblem of instruction and order.”).

47. RICHARD III, *supra* note 6, at act 1, sc. 1, l. 15.

48. *Id.* at act 1, sc. 2, l. 256.

That I may see my shadow as I pass.<sup>49</sup>

The mirror metaphor plays a dual role; a good mirror accurately reflects the world as it is, showing Richard to be ugly and making it impossible to “court” it with genuine signs of affection and respect. But this second mirror is one which will obey Richard’s commands and yield to his wiles, as Anne has. This looking glass will not be courted, but bought—a point Richard repeats three times for emphasis—and this corrupted looking glass will reflect whatever image Richard wills. Any mirror that would make Richard appear handsome would have to be weirdly constructed, indeed, but operating by mere will, Richard proposes to bribe, beg, manipulate, lie, steal, and kill, all to transform England from a true, unbought reflection of nature into a distorted, fun-house mirror; one that reflects the sun’s rays, not parallel, but twisted enough to make the crooked Richard appear a monarch. The people cannot be made to truly acknowledge in their hearts Richard’s legitimate rule; but they can be terrorized until they no longer resist his claim to the throne. In short, he will force them to love him.

Richard’s plan to compel devotion from his subjects makes him something more than a tyrant; it verges on totalitarianism. Here, again, we encounter the metaphor of love. For the unique aspect of totalitarianism, as George Orwell recognized, is that unlike the run-of-the-mill tyrant, the totalitarian ruler aspires to force the citizen to love the ruler.<sup>50</sup> Hannah Arendt, too, saw the essential quality of totalitarianism as a form of terror that “substitutes for the boundaries and channels of communication between individual men a band of iron which holds them so tightly together that it is as though their plurality had disappeared into One Man of gigantic

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49. *Id.* at act 1, sc. 2, ll. 259–67.

50. See GEORGE ORWELL, 1984, at 245 (Signet 1983) (1949) (“He loved Big Brother.”). Winston Smith works at the Ministry of Truth, which manufactures new truth by completely rewriting all objective factors from which truth can be determined—and he is broken at the Ministry of Love, which likewise manufactures love by a horrific kind of submersion and compulsion. Smith is not simply tortured into submission in Room 101; he actually *believes* that he loves Big Brother, because his submission and union with Big Brother’s will is so complete as to be indistinguishable in his own mind from the real thing. Erich Fromm noted in an essay on 1984 that “in a system in which the concept of truth as an objective judgment concerning reality is abolished, anyone who is a minority of one must be convinced that he is insane.” Erich Fromm, *Afterword to id.* 257, 264. This is particularly true of feelings, because while an historical fact or artifact (like Smith’s coral paperweight) might be objectively verifiable, an emotional state like love cannot be verified or disconfirmed, since the only reference points are internal. It can therefore be more difficult for the person looking at his or her own behavior to tell whether he or she is experiencing love or not. Something like this probably accounts for the “Stockholm Syndrome,” if such a thing exists. See M. Namnyak et al., “Stockholm Syndrome”: *Psychiatric Diagnosis or Urban Myth?*, 117 ACTA PSYCHIATRICA SCANDINAVICA 4 (2008). It is certainly one of the considerations that causes Jean Anouilh’s Antigone to second-guess her own motivations.

dimensions.”<sup>51</sup> The perverse parallel between the merging of people through terror and the merging of people through love is inescapable.<sup>52</sup> The totalitarian aspires to manufacture, through fear, lies and manipulation, the kind of soulful loyalty and union that, if it were voluntary, we would call loving devotion.<sup>53</sup>

This is nowhere more clear than in the meeting scene in Act III. Richard excuses himself briefly from the conference, allowing the audience to overhear Hastings’s naïve belief in his sincerity, but then he returns to accuse Hastings of treason on the flimsiest of grounds: “Look how I am bewitched. . . . / [T]his is Edward’s wife, that monstrous witch, / Consorted with that harlot, strumpet Shore, / That by their witchcraft thus have marked me.”<sup>54</sup> When Hastings only mildly protests, Richard explodes:

If? Thou protector of this damned strumpet  
Talk’st thou to me of ifs? Thou art a traitor.  
Off with his head! . . .  
Lovell and Ratcliffe, look that it be done.  
The rest that love me, rise and follow me.<sup>55</sup>

Richard puts the others present to a perverse test of loyalty: will they yield to an untruth out of loyalty to him? They surely know that Richard has been crippled all his life, yet they yield to his obvious frame job, terrified they may be next. This tactic is all too familiar from twentieth-century totalitarian dictatorships. But it also eerily echoes a scene in *The Taming of The Shrew*, where the final sign of Kate’s yielding to Petruchio is that she is willing to say what she knows to be false—calling the sun the moon; calling a man a woman—for the sake of loyalty to her husband.<sup>56</sup> In

51. HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 465–66 (1976).

52. Cf. ARENDT, *supra* note 40, at 242 (“Love, by reason of its passion, destroys the in-between which relates us to and separates us from others.”). See also Stéphane Courtois, *Conclusion: Why?*, in *THE BLACK BOOK OF COMMUNISM* 727, 748 (Mark Kramer ed., Jonathan Murphy & Mark Kramer trans., 1999) (“[T]he fundamental problem of totalitarianism [is] the search for a reunified humanity that is purified and no longer antagonistic, conducted through the messianic dimension of the Marxist project to reunify humanity via the proletariat. [The] ideal is used to prop up a forcible unification—of the Party, of society, of the entire empire—and to weed out anyone who fails to fit into the new world.”). In *Reading Lolita in Tehran*, Azar Nafisi argues that “[t]he desperate truth of *Lolita*’s story is not the rape of a twelve-year-old by a dirty old man but *the confiscation of one individual’s life by another*,” observing that the reason her reading group of Iranian women sympathize with Lolita is that “Nabokov had taken revenge against our own solipsizers,” including the Ayatollah Khomeini, who had “tried to shape others according to their own dreams and desires . . . .” AZAR NAFISI, *READING LOLITA IN TEHRAN* 33 (2003) (emphasis in original).

53. To be sure, Richard would not qualify as a true totalitarian under Arendt’s definition, since he lacks a governing ideology, but he comes closer than any other Shakespearean villain.

54. RICHARD III, *supra* note 6, at act 3, sc. 4, ll. 67–71.

55. *Id.* at ll. 73–78.

56. See WILLIAM SHAKESPEARE, *THE TAMING OF THE SHREW* act 4, sc. 5 (Frances E. Dolan ed., Bedford Books 1996) [hereinafter *THE TAMING OF THE SHREW*].

the context of the comedy, that yielding appears for other reasons to be truly loving,<sup>57</sup> but the discomfiting note is echoed at the end of the play, when Kate says that “[s]uch duty as the subject owes the prince, / Even such a woman oweth to her husband.”<sup>58</sup> What Petruchio accomplishes for love and genuine union, Richard tries to replicate through fraud, force, and murder. He is imposing his own substitute for reality by pure fiat: nowhere is the *ipse dixit* nature of tyrannical rule clearer.

Rape is a devilish mimic of the act of love, and a crucial and recurrent metaphor for illegitimate rule. Shakespeare uses it often, most obviously in the *Rape of Lucrece*,<sup>59</sup> but also in *Cymbeline* and *Titus Andronicus*.<sup>60</sup> For Shakespeare, proper love is a self-generated devotion, a willing union between two people—what John Milton would later call “conversation.”<sup>61</sup> This is obvious, for example, in Rosalind’s devotion to Orlando in *As You Like It*, or Portia’s rebuke to Brutus in *Julius Caesar* for not sharing his troubles with her.<sup>62</sup> But when raped, either through brute force or through the fraudulent or oppressive wiles of a devious figure like Richard, the yielding to union is brought about not willingly but through lies, terror, or enforced discipline. Just so, the loyal citizen of the just state supports the government voluntarily,<sup>63</sup> while the victim of tyranny yields as the result of fraud or force. Where the lover engages in sexual union for mutual pleasure and the bearing of a family, the rapist acts for his own purposes, either for sexual gratification or the need to dominate another; he, in a way, consumes his victim, subverting her self-control to make her an

57. *The Taming of the Shrew* discomfits modern audiences because of the apparent paternalism I describe here. See GARBNER, *supra* note 46, at 57–72. But Isaac Asimov’s interpretation of the play is persuasive: Kate is not simply the victim of male domination, although that is obviously part of the story. Instead, both she and Petruchio discover each other as equals; Kate really is a shrew at the outset and learns to treat others with respect, while Petruchio learns to treat Kate with tenderness and finds something more valuable than her father’s money. See 1 ISAAC ASIMOV, *ASIMOV’S GUIDE TO SHAKESPEARE* 443–64 (1970).

58. *THE TAMING OF THE SHREW*, *supra* note 56, at act 5, sc. 2, ll. 159–60. Contrast this with Caliban’s comment to Prospero: “You taught me language, and my profit on’t / Is, I know how to curse. The red plague rid you / For learning me your language!” WILLIAM SHAKESPEARE, *THE TEMPEST*, act 1, sc. 2, ll. 362–64 (Peter Hulme & William H. Sherman eds., W.W. Norton & Co. 2004) [hereinafter *THE TEMPEST*]. Prospero makes no effort to compel Caliban to love him; theirs is an ordinary master and slave relationship.

59. See ANDREW ZURCHER, *SHAKESPEARE AND LAW* 154–87 (2010).

60. See, e.g., Sid Ray, “*Rape, I Fear, Was Root of Thy Annoy*”: *The Politics of Consent in Titus Andronicus*, 49 *SHAKESPEARE Q.* 22 (1998).

61. JOHN MILTON, *THE DOCTRINE AND DISCIPLINE OF DIVORCE* (1644), *reprinted in THE DIVORCE TRACTS OF JOHN MILTON* 93, 103 (Sara J. van den Berg & W. Scott Howard eds., 2010).

62. See WILLIAM SHAKESPEARE, *AS YOU LIKE IT*; WILLIAM SHAKESPEARE, *JULIUS CAESAR* (Arthur Humphreys ed., Oxford Univ. Press 1984) [hereinafter *JULIUS CAESAR*].

63. Obviously the question of consent is a complicated one in a monarchy, and one Shakespeare himself portrayed with his characteristic evenhandedness. See, e.g., WILLIAM SHAKESPEARE, *KING HENRY THE FIFTH*, act 4, sc. 1, ll. 101–281 (T.W. Craik ed., Routledge 1995).

instrument.<sup>64</sup> Rape is a natural analogy to rule-by-conquest as distinguished from rule-by-consent. Love is entreaty, persuasion, and reciprocal union, while rape is command and fear enforcing a unidirectional order. Political theorists in Shakespeare's day often analogized proper political rule to the married household,<sup>65</sup> and in his *First Treatise of Civil Government*, Locke would employ a somewhat similar analogy of self-interested domination and consumption when he asked rhetorically whether Robert Filmer believed that "Princes might eat their Subjects too."<sup>66</sup> Certainly Richard would.

Ultimately, the attempt to force a person into love is an attempt to feign reality. The victim of such an enterprise might mimic the physical actions and words of love, but the inward voluntary loyalty that makes genuine love cannot be manufactured. The result can only be a false love, as when Richard apparently manages to coerce Elizabeth into yielding her daughter to him because:

Without her follows to myself and thee,  
Herself, the land, and many a Christian soul,  
Death, desolation, ruin, and decay.  
It cannot be avoided but by this.  
It will not be avoided but by this.<sup>67</sup>

Like the cabinet meeting, or like Richard's speech to Anne over the corpse of her father-in-law, this passage portrays a kind of verbal rape.<sup>68</sup> Note the decoupling here of child-bearing from family. Richard does not coerce Anne in the earlier scene; lacking the technological apparatus of a modern totalitarian, he can only win her over by entreaty, cleverness, and by applying an intense pressure of the kind that "overpower[s] the volition without convincing the judgment."<sup>69</sup> Anne is, of course, in a precarious

64. Psychologists and historians have long noted that the systematic rape of women in conquered territories is a common tactic in war. See, e.g., MAX HASTINGS, *ARMAGEDDON* 271 (2004) ("It was in East Prussia that the Red Army began to rape women on a scale which surpassed casual sexual desire and reflected atavistic commitment to the violation of an entire society."); Anthony Beevor, *They Raped Every German Female from Eight to 80*, *THE GUARDIAN* (Apr. 30, 2002), <http://www.guardian.co.uk/books/2002/may/01/news.features11>.

65. Ray, *supra* note 60, at 29 ("Because sixteenth-century marriage theorists had positioned women, children, and servants in descending order as the governed or subservient members of the household, the connection between female marital consent and the consent of the governed in the political spectrum may have been more than analogous for philosophers even before the turn of the seventeenth century.").

66. LOCKE, *supra* note 8, at 178.

67. RICHARD III, *supra* note 6, at act 4, sc. 4, ll. 412–16. Richard's emphasis on "will" here is particularly telling.

68. See A.D. NUTTALL, *SHAKESPEARE THE THINKER* 51 (2007).

69. This is the classic definition of "undue influence" from *Hall v. Hall*, [1868] 1 L.R.P. & D. 481, 481 (Eng.).

position in a realm where the throne is teetering and where Richard has already killed her male protectors. In yielding, she occupies an ambiguous position between rape victim and willing collaborator, one that victims of totalitarian regimes, like Winston Smith, often occupy.<sup>70</sup>

Anne's submission to Richard's clever and terrifying entreaties is not clearly the result either of compulsion or collaboration; a woman in her time and position would have good reason to seek the safest among unpleasant alternatives. But it is clear that she is not willing to become Richard's wife. Richard's approach is intrusive: he does not offer to bring Anne to *his* bed, but frankly seeks entrance into "your bed-chamber."<sup>71</sup> When she afterwards regrets having yielded, Anne says her heart "[g]rossly grew captive to his honey words."<sup>72</sup> Anne blames herself, as many victims of tyranny do, for becoming accomplices to what they know is evil rather than willingly accepting destruction.<sup>73</sup>

Over the course of the play, as Richard's willfulness becomes more pronounced, he becomes more explicit in his coercion. In a more brazen act than his compulsion of Anne, Richard holds Lords Stanley's son hostage while Stanley goes on a mission for him<sup>74</sup>—a tactic tyrants have frequently employed to compel obedience from their subjects.<sup>75</sup> If political loyalty is analogous to love, Richard's act here is a brazen attempt at political rape, which Stanley nevertheless manages to resist. Richard, too, slaps a messenger whom he merely suspects of bringing bad news, and tries to make up for it by paying off the messenger with gold.<sup>76</sup> As he becomes

70. Helen occupied the same position in the literature of the Trojan War, being simultaneously pitted as the victim of Paris' abduction, and condemned for having eloped with Paris and started the war. See Hanna M. Roisman, *Helen in the Iliad; Causa Belli and Victim of War: From Silent Weaver to Public Speaker*, 127 AM. J. PHILOLOGY 1 (2006). Gertrude seems to occupy a similar position in *Hamlet*. It seems unfair to conclude that Gertrude is "guilty . . . of being a woman," GARBNER, *supra* note 46, at 494; that is much too simple. Rather, Hamlet—like Antigone in Jean Anouilh's version of that play—is caught, as young people often are, by his disgust at necessary compromise. Gertrude likely had little choice but to marry Claudius or become his next victim; Hamlet's condemnation of her "frailty" or sexual corruption is not misogyny, it is understandable frustration at her understandable compromise with an evil she was powerless to fight. But see LISA JARDINE, "No Offence I' Th' World": *Unlawful Marriage in Hamlet*, in READING SHAKESPEARE HISTORICALLY 35, 39–42 (1996) (explaining Hamlet's outrage at the marriage in terms of Renaissance marriage law).

71. RICHARD III, *supra* note 6, at act 1, sc. 2, l. 115.

72. *Id.* at act 4, sc. 1, l. 80.

73. Nobody has captured this particularly horrific aspect of tyranny better than the Hungarian poet Gyula Illyés in *A Sentence About Tyranny*. Gyula Illyés, *A Sentence About Tyranny* (1956), reprinted in LEOPARD V: AN ISLAND OF SOUND: HUNGARIAN POETRY AND FICTION BEFORE AND BEYOND THE IRON CURTAIN (George Szirtes and Miklos Vajda eds., 2004). For Illyés, tyranny "is the chain slaves wear / that they themselves prepare; / you eat but it's tyranny / grows fat, his are your progeny / in tyranny's domain / you are the link in the chain, / you stink of him through and through, / the tyranny IS you." *Id.* at 56.

74. RICHARD III, *supra* note 6, at act 4, sc. 4, ll. 494–96.

75. *Id.* at act 5, sc. 3, l. 345.

76. *Id.* at act 4, sc. 4, ll. 507–16.



increasingly paranoid—an effect heightened by his repeatedly asking what time it is—and as he tightens the brutality of his coercion, Richard sees his subjects nevertheless increasingly abandoning him. He can force obedience, but he cannot force loyalty, and the harder he tries, the more farcical he becomes. He aspires to be a Macbeth, but evaporates into an Iago.<sup>77</sup> In the end, he is abandoned in a field without even a horse to support him.

Such sudden falling away of mimicked loyalty is a phenomenon on which Arendt commented in her study of totalitarianism:

The fanaticism of totalitarian movements, contrary to all forms of idealism, breaks down the moment the movement leaves its fanaticized followers in the lurch, killing in them any remaining conviction that might have survived the collapse of the movement itself. But within the organizational framework of the movement, so long as it holds together, the fanaticized members can be reached by neither experience nor argument; identification with the movement and total conformism seem to have destroyed the very capacity for experience . . . .<sup>78</sup>

The reason for such apparent strength during the regime's survival, and for its sudden evaporation, is that the subject's loyalty is like a mimicked love—it is not self-generated, but maintained by intense pressure from outside. When that pressure loosens sufficiently, the individual's actual feelings of resentment, loneliness, despair, and repression finally come rushing out. What appear to be iron ties of discipline and coercion are frail against the inner reality which feels no genuine attachment.

## 2. *Conscience and Universal Humanity*

Richard's solipsistic effort to substitute his will for the lawful order originates with his denial that political order reflects any underlying objective system of justice. Instead, he declares that the political order is only a product of mere convention—essentially a fiction or a game. Conscience, the internal governor that keeps the subject loyal to the proper moral order, is only a fantasy, and law is maintained not by reciprocity but by command and obedience:

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77. Cf. A.P. Rossiter, *Angel with Horns: The Unity of Richard III*, in SHAKESPEARE: THE HISTORIES 66, 84 (Eugene M. Waith ed., 1965) (“Look the right way through the cruel-comic side of Richard and you glimpse Iago. Look back at him through his energy presented as evil, and you see Macbeth.”).

78. ARENDT, *supra* note 51, at 307–08.

[C]onscience is a word that cowards use,  
Devised at first to keep the strong in awe.  
Our strong arms be our conscience, swords our law!<sup>79</sup>

Richard's dismissal of conscience echoes the conversation between the two henchmen he sends to murder Clarence. They pause for a moment to reflect in their own dark way on conscience's power: the knowledge of wrong, one comments, is "a dangerous thing"<sup>80</sup> because—as Richard will discover—"it makes a man a coward."<sup>81</sup> Yet it cannot be escaped:

A man cannot steal but it accuseth him. A man cannot swear but it checks him. A man cannot lie with his neighbour's wife, but it detects him. 'Tis a blushing, shamefaced spirit that mutinies in a man's bosom. It fills a man full of obstacles.<sup>82</sup>

Shakespeare contrasts this rejection of conscience by Richard and his ruffians with the jailhouse conversation between Brakenbury and Clarence shortly before the murder.

With regard to love, honor, and other values, says Brakenbury, there is really no difference between royal figures and common men: "Princes have but their titles for their glories, / An outward honour for an inward toil, / . . . between their titles and low name / There's nothing differs but the outward fame."<sup>83</sup> This conversation and that between the two jailers immediately preceding work like a syllogism: Brakenbury reflects (a) that even royals are but men; the assassins that (b) all men are subject to justice and to conscience. The conclusion that follows from these premises is dramatized in the action of the play.

Richard can fool the church,<sup>84</sup> find lackeys to murder adversaries, and manipulate the forms of law to undermine their substance. Indeed, he specializes in disguising his acts as lawful by confining them to the forms of law. In Act III, when the queen has sought sanctuary for her children—well aware that Richard aims to murder them—his henchman, Buckingham, uses legal formalism to justify breaching their sanctuary. Children, he argues, cannot seek sanctuary: "This prince hath neither claimed it nor deserved it, / And therefore, in mine opinion, cannot have

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79. RICHARD III, *supra* note 6, at act 5, sc. 3, ll. 311–13.

80. *Id.* at act 1, sc. 4, ll. 135–36.

81. *Id.* at l. 129.

82. *Id.* at ll. 130–33.

83. *Id.* at ll. 78–83.

84. Richard does this repeatedly and easily throughout the play. *See, e.g., id.* at act 3, sc. 7; *id.* at act 1, sc. 3, ll. 316–17. It is only when Elizabeth resists Richard's pressure in act 4, sc. 4 that Richard's spell is broken. Thus, while Richard is quite adept at manipulating the forms of lawfulness, he cannot penetrate their substance—which resides in the sincere loyalty of an honest citizen.

it. / Then taking him from thence that is not there, / You break no privilege nor charter there. / Oft have I heard of sanctuary men, / But sanctuary children ne'er till now."<sup>85</sup> Buckingham is using formally plausible legal arguments to act in a way that is substantively lawless. In *The Eumenides*, by contrast, Athena is not for a moment distracted by the mere forms of lawfulness: "you are set," she says in refutation of the Furies, "on the name of justice rather than the act."<sup>86</sup>

### 3. *Richard's Nightmare*

The climax of Richard's solipsism comes in his nightmare before the battle of Salisbury Plain. Here, it becomes clear that while Richard can drown his own conscience, ignore it, and even try to intimidate it, as he has done to his subjects, he cannot destroy it or its capacity to hold him to the demands of justice. Today it is easy to reject this notion as a pre-modern, Christian ideal; it is commonly believed that conscience is only a product of social conditioning, so that the individual's moral sense can be altered if his social circumstances are altered. While there is no doubt that Shakespeare believed in the universality of Christian moral truth, and the consequent inescapability of internal conscience,<sup>87</sup> it would be a mistake to see this as the whole of his argument. Richard's conscience is not a little angel or Jiminy Cricket standing on his shoulder rebuking him; it is an inescapable element of his conscious awareness of himself.<sup>88</sup> It is not simply a normative force, but a combination of the descriptive and evaluative. Richard cannot be ignorant of the fact that he is in reality unworthy of admiration, and, confronted with himself, he cannot have recourse to the tools he has used on his subjects—he cannot force himself to love himself the way he (thinks he) can force others to love him. Like anyone else, he can stand outside his own actions and personality and weigh them with some degree of objectivity. When he does this, he cannot escape the knowledge that he is unworthy of love. He cannot force himself to love himself, or believe his professions of self-love are genuine:<sup>89</sup>

Is there a murderer here? No. Yes, I am.  
Then fly. What, from myself? Great reason why:  
Lest I revenge. What, myself upon myself?

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85. *Id.* at act 3, sc. 1, ll. 51–56.

86. EUMENIDES, *supra* note 5, at l. 443.

87. Shakespeare's villains often confess themselves in overtly Christian tones, most notably Claudius in *Hamlet*.

88. NUTTALL, *supra* note 68, at 56 (“‘[C]onscience,’ invoked in the speech, is closer to our ‘consciousness’ than to ‘reforming moral insight’ . . .”).

89. *See id.* at 55–56.

Alack, I love myself. Wherefore? For any good  
 That I myself have done unto myself?  
 Oh, no. Alas, I rather hate myself  
 For hateful deeds committed by myself.  
 I am a villain. Yet I lie, I am not.  
 Fool, of thyself speak well. Fool, do not flatter.  
 My conscience hath a thousand several tongues,  
 And every tongue brings in a several tale,  
 And every tale condemns me for a villain. . . .  
 There is no creature loves me,  
 And if I die no soul shall pity me.  
 Nay, wherefore should they, since that I myself  
 Find in myself no pity to myself?<sup>90</sup>

This is Richard's only true soliloquy. Until now, all his soliloquies have been clearly directed toward the audience, whereas here he is for the first and only time actually and emphatically alone.<sup>91</sup> In the solitude of his nightmares, he finds he cannot substitute will for reality within his own mind, and cannot fool himself to believe in the deception to which he has forced his subjects to swear themselves. Thus Richard at last curses himself for his fate. He cannot force Richard to love or admire Richard, or even to pretend he does.<sup>92</sup>

### B. Tyranny as Solipsism

Rule by *ipse dixit* is unconstrained. It is not lawful rule because it is not subject to a general principle of rationality. The ruler is the judge in his own case, and, in a profound sense, a solipsist. He seeks to substitute his will for the world around him—to create the reality he perceives by commanding people to say that the world is as he wishes it to be. *The Oresteia* tells the story of the subjection of individual passions to the rational order of a lawful state. Shakespeare's *Richard III*, by contrast, shows the breakdown of the lawful state in the service of one man who seeks to bend the civil order to suit his own will. Aeschylus, who begins his plays with a tragedy but ends with a comedy,<sup>93</sup> depicts the triumph of

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90. RICHARD III, *supra* note 6, at act 5, sc. 3, ll. 187–206.

91. NUTTALL, *supra* note 68, at 53; GARBER, *supra* note 46, at 156–57.

92. Cf. 1 MARK TWAIN, FOLLOWING THE EQUATOR 151 (1897) (“We can secure other people’s approval, if we do right and try hard; but our own is worth a hundred of it, and no way has been found out of securing that.”).

93. We have noted that *The Eumenides* ends with something like a marriage, and is thus almost by definition a comedy.

rational order, while Shakespeare's tragedy portrays the hubristic attempt of a man to conquer that rational order—and his ultimate failure to do so.

In our own age, when law is routinely assumed to be synonymous with the will of the ruler, imposed upon the populace by a lawmaker who stands above, it is sometimes hard to see that the basic seed of the rule of law lies in the proposition that there is a difference between law and the ruler's will. If such a difference exists, there must be principles—even if only procedural ones—by which the ruler's will can be tested to see whether it actually *is* law. And making that determination must, at some point, involve deliberation and persuasion. As the criteria for lawfulness become more elaborate, the structure of lawful order will become richer, and the field of lawful liberty widens. But when the ruler claims that his will simply *is* the law, then no such analysis can take place—power becomes a single, indivisible field of mere command, impenetrable by reasoned analysis just as the solipsist can make no differentiations in “his” reality. It is at that point that the ruler becomes a tyrant. This image of tyranny as a form of solipsism recurs throughout Shakespeare's works. In *Julius Caesar*, for example, while Caesar resists the title of monarch, pushing away the crown that is offered to him, he still remains only the leading citizen of a republic.<sup>94</sup> However else he might be honored by the people, his will is not yet taken as law. Of course, Mark Antony, his leading deputy, wants Caesar to become a tyrant, and says that “When Caesar says ‘Do this’, it is performed,”<sup>95</sup> but Caesar himself makes no such claim—until one crucial moment. That comes when, in response to Calpurnia's dream, he decides not to attend the Senate that is waiting on him. Calpurnia, embarrassed, wants to pretend her husband is sick, but Caesar rejects this: “Shall Caesar send a lie?”<sup>96</sup> Of course, the only alternative to a lie is to send the truth—that Caesar is unwilling to go because his wife is afraid for his life. But he does not do this, either. Instead, he takes a third way: he asserts his arbitrary will, contrary to the lawful order of attending the Senate: “Decius, go tell them Caesar will not come. . . . / The cause is in my will: I will not come. / That is enough to satisfy the Senate.”<sup>97</sup> It is at this point that his bombast becomes something more. Caesar has finally become the dictator—a word whose Latin root is quite appropriate here—who substitutes his arbitrary word for the traditional order of Rome. It is at precisely this point that it becomes appropriate to slay him to preserve the Republic.

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94. See generally JULIUS CAESAR, *supra* note 62.

95. *Id.* at act 1, sc. 2, l. 10.

96. *Id.* at act 2, sc. 2, l. 65.

97. *Id.* at ll. 68–72.

If, as I have argued, Shakespeare sees tyranny as a kind of solipsism, one should be able to detect the theme also in *The Tempest*, where the wizard Prospero is the most obvious solipsist in all of Shakespeare's works. He rules over Caliban and Ariel for his own self-interest—indeed, commanding the entire spirit world “to enact / My present fancies”<sup>98</sup>—not through any degree of consensual loyalty, but by the forces of torture, magic, and emotional manipulation (both guilt and repeated promises of liberty).<sup>99</sup> He even reigns over his beloved daughter with a dictatorial hand, ranting obstinately at her when she fails to listen closely to his story, and even using magic to make her go to sleep.<sup>100</sup> Prospero is certainly not as cruel as Richard is, but, as Kenji Yoshino notes, he stands at the very cusp of being corrupted by his power.<sup>101</sup> He has spent a dozen years obsessing on the wrong done to his royal title, and arranging a scheme for revenge.

Yet Prospero ends happily, because unlike Caesar or Richard, he submits to the natural—that is, not merely conventional—claims of justice and mercy. Prospero is brought up short by Ariel's pity for the captives,<sup>102</sup> and decides, though perhaps through clenched teeth, to forgive his brother,<sup>103</sup> and to seek no further punishment—indeed, he stops his brother from subsequent apologies.<sup>104</sup> At this point, when many weaker personalities might be expected to extract some extra vengeance, Prospero realizes that “[t]he rarer action is / In virtue than in vengeance” and chooses to give up his powers, once they have served their two-fold purpose of accomplishing justice in the case of his brother, and love in the case of his daughter.<sup>105</sup> “[W]ith my nobler reason 'gainst my fury / Do I take part.”<sup>106</sup> Here Prospero accomplishes within himself what Athena accomplishes for Athens in *The Oresteia*—submitting the elemental desire for vengeance to a lawful, reasoned principle. And it is only in this way that Prospero can accomplish in his island kingdom the two-fold goal of justice in Alonso's case and love in Miranda's. Justice and love parallel the “safety and happiness” that the American Declaration of Independence regards as the twin goals of political order, and at that point it is appropriate that Prospero

98. THE TEMPEST, *supra* note 58, at act 4, sc. 1, ll. 121–22.

99. See, e.g., *id.* at act 1, sc. 2, ll. 263–300, 368–77.

100. *Id.* at ll. 66–186.

101. KENJI YOSHINO, A THOUSAND TIMES MORE FAIR: WHAT SHAKESPEARE'S PLAYS TEACH US ABOUT JUSTICE 233 (2011).

102. See THE TEMPEST, *supra* note 58, at act 5, sc. 1, ll. 17–20 (“ARIEL: Your charm so strongly works 'em / That if you now beheld them, your affections / Would become tender. / PROSPERO: Dost thou think so, spirit? / ARIEL: Mine would, sir, were I human. / PROSPERO: And mine shall.”).

103. *Id.* at ll. 106–34.

104. *Id.* at ll. 247–53.

105. *Id.* at ll. 27–28.

106. *Id.* at ll. 26–27.

gives up his power. It is no wonder that Yoshino sees in Prospero a figure not unlike George Washington.<sup>107</sup>

Paul Cantor argues that Prospero is set on the island to learn more Machiavellian methods of political rule, and in particular, how to command those whom he is destined by nature to rule.<sup>108</sup> But this is unconvincing. First, Prospero's rule over Caliban and Ariel is hardly based on genuine loyalty, and the play's reconciliation comes not in the form of a willing political union; instead, Prospero sets them free. Second, Prospero's ultimate abdication of his magic cannot be effectively explained in Machiavellian terms; certainly the Machiavelli who recommended brutal and public punishments to put the public in awe<sup>109</sup> cannot be reconciled with the Prospero who takes the side of nobler reason against fury. Third, there is no indication in the play that Prospero "learns the need to rule,"<sup>110</sup> much less, learns "that a ruler must display noble anger in public."<sup>111</sup> Prospero *begins* the play in anger, ranting at length about the injury done to him; but his revenge play is transformed by the spirit of Christian forgiveness and love.<sup>112</sup> It is noteworthy, for instance, that Prospero offers Alonso forgiveness *before* Alonso has apologized.<sup>113</sup> He manages to overcome his initial solipsistic and corrupting rule by giving away his powers and, in the end, directly addressing the audience in the plainest human terms. He simply asks for their applause—or their "prayer"—with the same honest manner that one asks to be pardoned of sin.<sup>114</sup>

For Shakespeare as for the Greeks, tyranny is a type of solipsism, whereby the ruler seeks to command the world—to see the world as the creature of his will. He does not make this argument as democratic propaganda; he simply sees the tyrant's effort to impose his will on the subject as a type of disorder, as a kind of rape. The tyrant pursues a perverted facsimile of harmonious order which will serve his own self-interest, instead of a just rule for the benefit of the political family. It is because such a perverted order cannot qualify as genuine law that the tyrant cannot be said to reign lawfully.

107. YOSHINO, *supra* note 101, at xii.

108. Paul A. Cantor, *Prospero's Republic: The Politics of Shakespeare's The Tempest*, in SHAKESPEARE AS POLITICAL THINKER 239, 239–55 (John Alvis & Thomas G. West eds., 1981).

109. See, e.g., NICCOLO MACHIAVELLI, THE PRINCE 30 (Harvey C. Mansfield trans., Univ. of Chicago Press 2d ed. 1998) (1532) (lauding Duke Valentino for executing Remirro de Orco and leaving the bloody tools on display in the public square).

110. Cantor, *supra* note 108, at 243.

111. *Id.*

112. See GARBER, *supra* note 46, at 871–72.

113. THE TEMPEST, *supra* note 58, at act 5, sc. 1, ll. 131–32.

114. *Id.* at epilogue, l. 16.

III. *ANTIGONE*: THE DISSIDENT AS SPOKESMAN FOR REALITY

But what of the dissident? Is the personality that resists tyrannical rule not also essentially willful? Here I want to compare the outcast as depicted in different *Antigones*—the ancient work by Sophocles and the modern version by Jean Anouilh. In both cases, we see the ruler's attempt to cast over reality his spell of words defeated by the dissident's insistence on the world of fact.

A. *Sophocles*

Antigone is probably literature's most famous civil disobedient.<sup>115</sup> Sister to Polynices and Eteocles, who died on opposite sides of the Theban civil war, she faces down the city's new ruler, her uncle Creon. He has decreed that while the heroic Eteocles is to be given a hero's burial, his rebellious brother is to be left unburied and unmourned, to rot and be eaten by dogs. Antigone, in observance to Zeus's prescribed funeral rites, defies Creon's order by sprinkling a handful of ritual dust over the body.

Sophocles presents Creon as a tyrant in keeping with the theme I have developed here—a solipsist who believes that law is the will of the ruler. This is made most clear in his confrontation with his son, Haemon, when Creon insists on unquestioning obedience: "that man / the city places in authority, his orders / must be obeyed, large and small, / right and wrong."<sup>116</sup> His son answers, in deferential terms, that the ruler's fallibility counsels against unquestioning obedience: "[I]t would be best by far, I admit, / if a man were born infallible, right by nature. / If not . . . , / it's best to learn from those with good advice."<sup>117</sup> Although the Chorus quickly recognizes this as good sense, Creon rejects it solely on the basis of his own pride:

CREON: Am I to rule this land for others—or myself?

HAEMON: It's no city at all, owned by one man alone.

CREON: What? The city *is* the king's—that's the law!

HAEMON: What a splendid king you'd make of a desert island—you and you alone.<sup>118</sup>

For Creon, the city *belongs* to the king, as his own private property to dispense at will.<sup>119</sup> Creon is clearly reduced to insisting on obedience

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115. See generally *ANTIGONE*, *supra* note 35.

116. *Id.* at ll. 748–51.

117. *Id.* at ll. 806–09.

118. *Id.* at ll. 823–27.



simply because he says so.<sup>120</sup> He can provide no warrant for his act—knowing that public opinion is already slipping through his fingers, dooming even the propaganda effect he hoped for—yet he insists on obedience to his command simply because it is his command. Indeed, Creon’s devotion to his own will is so complete that, like Richard III, he becomes paranoid, sure that anyone who speaks in a way that conflicts with his will must have been bribed by his enemies—be it the guard who brings him bad news, or Tiresias, who warns him of his impending doom. He perceives any acknowledgment of the possibility of failure as feminine weakness.

But if Creon is abusing the state by enforcing his mere will as law, what is Antigone doing? Is her resistance not also an attempt to assert her will as the real law? Patricia M. Lines contends that it is, arguing that Antigone suffers from the flaws of “self-certainty and self-isolation” that “cut short all possibilities for full deliberation.”<sup>121</sup> Lines points out that the Chorus, in addressing Antigone, chastises her for being “*autognotos*”—variously translated as “self-willed,” “stubborn,” “self-determined”<sup>122</sup>—and for being *autonomos*, that is, a law unto herself. Antigone is thus “the lone individual, refusing to sway or be swayed by any in the community,”<sup>123</sup> and is as much a victim of her hubris as Creon.

This argument is initially appealing, yet it seems an exaggeration to see Creon’s claims as justified,<sup>124</sup> and it is clearly wrong to say that he “is ready to discuss the issue, to listen, to question, to entertain self-doubt.”<sup>125</sup> On the contrary, Creon would prefer to see his son flee forever into exile than to admit the possibility that he is wrong, or that his wrongness absolves the citizen of obedience.<sup>126</sup> Sophocles certainly presents both Creon and Antigone as stubborn, but Antigone has good *reasons* for her stubbornness, and no reason to compromise or subordinate herself to

119. Thus Creon betrays the noble principles of his “inauguration speech,” and particularly his acknowledgment that “whoever places a friend / above the good of his own country, he is nothing . . .” *Id.* at ll. 203–04.

120. See also Warren J. Lane & Ann M. Lane, *The Politics of Antigone*, in GREEK TRAGEDY AND POLITICAL THEORY 162, 170 (J. Peter Euben ed., 1986) (“[Creon’s] prohibition is arbitrary in its foundation. The decree lacks the usual community sanction of the advice and consent of the city elders.”).

121. Patricia M. Lines, *Antigone’s Flaw*, 12 HUMANITAS, no.1, 1999, at 4, 13, available at <http://www.nhinet.org/humsub/lines12-1.pdf>. A similar argument is found in MARTHA NUSSBAUM, THE FRAGILITY OF GOODNESS: LUCK AND ETHICS IN GREEK TRAGEDY AND PHILOSOPHY 63–67 (1986).

122. ANTIGONE, *supra* note 35, at l. 962. Fagles translates it “your own blind will.”

123. Lines, *supra* note 121, at 11.

124. It comes as little surprise that G.W.F. Hegel, the supreme philosopher of totalitarianism, would come to Creon’s defense. See ALBIN LESKY, GREEK TRAGIC POETRY 140 (Matthew Dillon trans., Yale Univ. Press 1983).

125. Lines, *supra* note 121, at 13.

126. ANTIGONE, *supra* note 35, at ll. 850–900.

Creon's demands, backed as they are only by unjust dictates and force. Nor is it possible to interpret Antigone's stubbornness as obstructing the deliberative process central to political rule. Antigone does *not* stand for unreasoned coercion, and asks for no action or favors from Creon. Her protest is, like any act of genuine civil disobedience, a means of raising an issue to the general consciousness: Haemon reports to Creon that the general public is now in doubt about the rightness of Creon's decision, just the sort of public discussion Creon had hoped to forestall.<sup>127</sup> Antigone begs her fellow citizens to speak out, but they refuse out of fear of Creon.<sup>128</sup> Antigone may be stubborn, but she does not, as Creon does, reject out of hand the possibility that she may be wrong. "What law of the mighty gods have I transgressed?" she asks, and receives no answer.<sup>129</sup> Antigone is simply not blameworthy for her commitment to principle. Throughout the play, it is Creon who embodies the proud refusal to deliberate and who insists up to the crisis moment on imposing his will through force.

Such an interpretation is strengthened if we consider the interesting role of the Chorus. If Sophocles points an accusing finger at Creon, he also seems to point it at the Chorus, whose cowardice is evident not only in its refusal to speak up for Antigone when challenged, but also in its frequent equivocations—for instance, declaring in the confrontation between Creon and Haemon that both sides have a good point,<sup>130</sup> and betraying Antigone as she heads toward death. Although the Chorus secretly admits that "now, even I'd rebel against the king,"<sup>131</sup> it immediately toadies up to him the instant he appears again: Antigone, it says, is just uttering "the same rough winds, the wild passion,"<sup>132</sup> and the self-assured Creon waves her off to the

127. Compare *id.* at ll. 228–31 (Creon forbidding the mourning of Polynices), with *id.* at ll. 770–83 (Haemon reporting that the public is quietly coming to side with Antigone).

128. *Id.* at ll. 563–65.

129. *Id.* at l. 1013.

130. *Id.* at ll. 560–65, ll. 810–12.

131. *Id.* at l. 895. Fagles's translation here is slightly exaggerated. By "rebel," the Chorus appears to mean that it is so overwhelmed by emotion that it cannot resist weeping—which Creon has forbidden: "γῦν δ' ἤδη γὰρ καὶ τὸς θεσμῶν / ἔξω φέρομαι τὰ δ' ὄρων ἴσχειν δ' / οὐκέτι πηγάς δύναμαι δάκρυ / τὸν παγκοίτην δὲ ὄρω θάλαμον / τίγδ' Ἀντιγόνην ἀνύτουσαν." Seamus Heaney renders, "But the law and all it stands for / Cannot hold back my tears." SEAMUS HEANEY, *THE BURIAL AT THEBES* 50 (2004). Elizabeth Wyckoff translates "Now I am carried beyond all bounds. / My tears will not be checked." SOPHOCLES, *ANTIGONE*, in 1 SOPHOCLES ll. 801–02 (David Grene & Richmond Lattimore eds., Elizabeth Wyckoff trans., 1969). Paul Roche renders "And now you [Aphrodite] turn on me / Unman my loyalty / Unloose my tears . . ." SOPHOCLES, *ANTIGONE*, in *THE OEDIPUS PLAYS OF SOPHOCLES* 191 (Paul Roche trans., 1958). E.F. Watling translates, "here is a sight beyond all bearing, / At which my eyes cannot but weep . . ." SOPHOCLES, *ANTIGONE*, in *SOPHOCLES: THE THEBAN PLAYS* 148 (E.F. Watling trans., 1947). Nevertheless, Antigone clearly recognizes that the Chorus is choosing to side with Creon against her in her moment of need; when the Chorus tells her that she is going to death in glory, she interprets their words as mocking. *ANTIGONE*, *supra* note 35, at l. 930. It is hard not to see the Chorus as sneering at her precisely to curry favor with Creon and to cover up what they know is their own betrayal of principle.

132. *ANTIGONE*, *supra* note 35, at l. 1022.

guards, dismissing her words as “wasting time.”<sup>133</sup> It is little wonder that Antigone “appeal[s] . . . to the city over the heads of the chorus, the city’s symbolic representative on stage.”<sup>134</sup> Through apathy and intimidation, the Chorus of citizens has abdicated its proper role; having happily applauded Creon’s initial promises of just rule, it now fails to hold him accountable for those promises when he breaks them. We have no reason to take the Chorus’s rebuke of Antigone—for going “too far, the last limits of daring— / smashing against the high throne of Justice!”<sup>135</sup>—as Sophocles’ real opinion of Antigone. Instead, their words betray the Chorus’s own weakness and timidity.<sup>136</sup> There is an irony in its accusing Antigone of *autonomia*: a city’s *demos* is *supposed* to be autonomous, and yet these citizens are not—they willingly accept Creon’s tyrannical rule; they collude in the fiction. If the Chorus is the audience’s on-stage representative, it is not a flattering representation, and the device reminds the audience of their own need to support those with moral courage. Indeed, the very last lines of the play serve just this didactic purpose: “Wisdom is by far the greatest part of joy, / and reverence toward the gods must be safeguarded. / The mighty words of the proud are paid in full / with mighty blows of fate, and at long last / those blows will teach us wisdom.”<sup>137</sup>

Antigone, in short, is motivated by her adherence to reality as she perceives it and for which she *can* give a reasoned account. But it is an account to which Creon refuses to listen and which the Chorus, though sympathetic, is unwilling to help her defend. This is why the audience rightly sees Antigone’s suffering as a form of victory and Creon’s as a just punishment. She is the victim of a corrupt ruler and a city inhabited by people who refuse to face the dilemma before them. Antigone is motivated by her loyalty to the real world of justice; Creon by his private will; the Chorus by its cowardice.

133. *Id.* at l. 1024.

134. Robert Fagles, *Introduction* to *ANTIGONE*, *supra* note 35, at 29.

135. *ANTIGONE*, *supra* note 35, at ll. 943–44.

136. The Chorus’s equivocations and unwillingness to support Antigone bring to mind Martin Luther King’s description of what he called “a sort of quasi-liberalism which is . . . so bent on seeing all sides, that it fails to become committed to either side. It is a liberalism that is so objectively analytical that it is not subjectively committed. It is a liberalism which is neither hot nor cold, but lukewarm.” Martin Luther King, Jr., *Give Us The Ballot* (May 17, 1957), in *A CALL TO CONSCIENCE: THE LANDMARK SPEECHES OF DR. MARTIN LUTHER KING, JR.* 47, 50 (Clayborne Carson & Kris Shepard eds., 2001).

137. *ANTIGONE*, *supra* note 35, at ll. 1466–70. While this language falls heavily on Creon and the Chorus itself, it reflects no condemnation of Antigone. Incidentally, there is precedent for the Chorus serving as a symbol for the audience and thus as a civic teaching device; Aeschylus’ *Seven Against Thebes* (which also features Antigone) ends with the Chorus dividing in two, representing the division of the *demos* caused by civil strife. And as we have seen, *supra* note 31, *The Eumenides* similarly ends by identifying the audience with the Eumenides upon exiting the theater.

*B. Anouilh*

Jean Anouilh updated the Antigone myth for the twentieth century, producing a work that, in a reversal from Sophocles, is much more concerned with Antigone than with Creon.<sup>138</sup> He focuses on Antigone's personal motivations, and sees them as more equivocal than does his predecessor. His Antigone is haunted by her shortcomings, feeling especially that she is not as beautiful and desirable as the essentially vacuous Ismene. She seems to know that it is wrong to leave Polynices unburied, but not why; she loves and values the memory of her brother, more even than she values the love of Haemon, something she clearly cherishes. Yet in her confrontation with Creon, in which she justifies her actions, she gives no solid ideological or political justification for her acts; rather, her motivation is personal. Creon is not so much a tyrant in her eyes as a figure who temporarily obstructs her direct, personal confrontation with the universe. And in her final letter to Haemon before her death, she writes, "I don't even know what I am dying for."<sup>139</sup> Antigone in this play embodies the spirit of youth far more than in Sophocles' version.

Heavily influenced by existentialism, Anouilh more than once depicted heroes or heroines driven toward accomplishing roles they choose for reasons they cannot fully articulate. For some, this radically undermines Antigone's claim to justification; her self-destructive defiance seems more of an *acte gratuit* than a principled resistance to tyranny in the name of higher principle.<sup>140</sup> But another reading is possible: Creon's tyranny has so thoroughly enveloped the society that although it makes life no longer rationally tolerable, it also manages to systematically erase any clear rationale for rejecting it. This proposition is familiar to us, with our experience of modern, all-consuming totalitarian regimes that control a nation's history and public discussion, and are rooted in ideologies that reject the possibility of objectively verifiable reality. The dissenter stands for truth against the ruler's fictional pretense. But the totalitarian state

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138. See generally 1 JEAN ANOUILH, *ANTIGONE*, in *FIVE PLAYS* 1 (Lewis Galantière trans., 1958).

139. *Id.* at 50.

140. See, e.g., DAVID BRADBY, *MODERN FRENCH DRAMA: 1940-1990*, at 35 (2d ed. 1991) ("Anouilh's heroes and heroines need to experience the intense thrill of a moment of choice, but they do not want to pass beyond it. . . . Once a person commits herself to a particular course of action, her mental energies become concentrated upon this project which is outside herself and which she has to struggle to bring to fruition."); LEONARD CABELL PRONKO, *THE WORLD OF JEAN ANOUILH* 204 (1961) ("[Antigone's] action rises not from a desire to satisfy the religious law, for she feels it is meaningless. Rather, it is an inner compulsion, a desire to be true to herself, that motivates her actions. . . . Her action is a symbol of her liberty."); Susan W. Tiefenbrun, *On Civil Disobedience, Jurisprudence, Feminism and the Law in the Antigones of Sophocles and Anouilh*, 11 *CARDOZO STUD. L. & LITERATURE* 35, 46 (1999) ("Antigone's act of civil disobedience is undertaken for reasons of personal desire and not for adherence to a philosophical belief in the moral exigencies of natural law.").

manages to erase reality—to conceal it so thoroughly as to deprive the citizen of any leverage against the ruler’s claims. Where reality is socially constructed, the power that constructs society can also construct reality itself, and, as Eric Fromm wrote, “in a system in which the concept of truth as an objective judgment concerning reality is abolished, anyone who is a minority of one must be convinced that he is insane.”<sup>141</sup> Modern totalitarianism interprets dissent as a kind of mental disease because there can be no truth value in resisting the very state whose dictates constitute the truth. It is no wonder then that Antigone is unable to articulate a rational foundation for her rebellion.<sup>142</sup>

Thus our confidence in Antigone’s cause is shaken when Creon attacks Polynices’ character—telling Antigone that he was no martyr, only a petty street thug, and that Eteocles, his sainted brother, was not actually a hero, but a nearly indistinguishable thug who accidentally ended up on the victorious side of the war.<sup>143</sup> But Anouilh gives us no reason to *believe* this allegation, and he puts it in the mouth of a supremely pragmatic, untrustworthy dictator whose sole motivation is to keep the ship of state afloat, regardless of its direction or reason for being.<sup>144</sup> For Creon, law is essentially a system of management, with no element of reciprocity, and he sees obedience to his word as the definition of lawful order. The megalomania of his rule becomes a closed system in which the survival of the state is prized for its own sake. Creon’s statement is propaganda, no less than is his edict forbidding the mourning or burying of Polynices: they are totalitarian attempts to rewrite history and erase people’s very existence,<sup>145</sup> and they deprive Antigone of any objective basis for asserting her independent judgment, just as Winston Smith is deprived of any solid evidence on which to challenge the rule of Big Brother.<sup>146</sup> Yet like Smith, Antigone somehow senses that the regime’s demands for compromise are rooted in evil—that it is, in Creon’s words, “dirty work.”<sup>147</sup> Antigone does

141. Fromm, *supra* note 50, at 264.

142. I know of no literary exploration of this point that rivals the *Twilight Zone* episode, *Number 12 Looks Just Like You*, adapted from Charles Beaumont, *The Beautiful People* (1952), reprinted in *THE TWILIGHT ZONE: THE ORIGINAL STORIES* 506 (Martin Harry Greenberg, Richard Matheson & Charles G. Waugh eds., 1985).

143. ANOUILH, *supra* note 138, at 38–40.

144. *Id.* at 37.

145. ARENDT, *supra* note 51, at 434–35 (“In totalitarian countries all places of detention ruled by the police are made to be veritable holes of oblivion into which people stumble by accident and without leaving behind them such ordinary traces of former existence as a body and a grave. . . . The operation of the secret police . . . miraculously sees to it that the victim never existed at all.”)

146. Cf. ORWELL, *supra* note 50, at 204 (“‘It exists!’ [Smith] cried. ‘No,’ said O’Brien. . . . ‘It does not exist. It never existed.’ . . . ‘Who controls the past controls the future; who controls the present controls the past’ . . .”).

147. ANOUILH, *supra* note 138, at 52.

not, as one critic contends, “say ‘no’ to life.”<sup>148</sup> To the contrary, she loves life and would like to continue living, but there *is* no life in Thebes—only a half-plausible facsimile fashioned by Creon’s dictates.<sup>149</sup>

Anouilh does not sabotage the Antigone myth; rather, he has updated *Antigone* for a totalitarian world where meaningful civil disobedience is impossible. If such disobedience “must be . . . open and visible, illegal, and performed for a moral purpose to protest an unjust law or to object to the status quo and with the expectation of punishment,”<sup>150</sup> the totalitarian state has armed Creon with the power to eradicate any such acts. Antigone, like Winston Smith and so many real victims of totalitarianism, simply disappears down the Memory Hole like her brother, unmourned.<sup>151</sup> Her only choice is to seize her own moral purity at the price of accomplishing nothing: to remain pristine at the cost of becoming sterile. One recalls that the Greek word for one who refuses to concern himself with political affairs was “idiot.” In Creon’s world, only the idiot is sane.

Antigone’s rebellion is not causeless—it is not so much an existentialist act of self-assertion as a rebellion against politics itself. But it is futile, and her confusion about her motives is forced upon her by a political system that controls her history, isolates her from reality, and deprives her of the foundation from which her rebellion could achieve any public meaning or serve as the basis for deliberation.<sup>152</sup> The only alternative to Creon’s will is oblivion.

However differently Sophocles and Anouilh may view the nature of heroic motivation, the point here is the relationship between law and will. Both playwrights see tyranny as, essentially, the society in which law becomes merged with the will of the ruler—that is, where law’s constituent elements of generality, regularity, fairness, rationality and public-orientation have been replaced by mere *ipse dixit*. Both have different perspectives on the rebel. For Sophocles, the difference between the rebel and the tyrant lies in the rebel’s adherence to reality, even in the face of public opposition an adherence tempered by a willingness to deliberate publicly about the reasons and justification of her action. For Anouilh, modern society has obscured our ability to compare the real world with the

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148. BRADBY, *supra* note 140, at 36.

149. Robert P. Lawry, *Ethics in the Shadow of the Law: The Political Obligation of a Citizen*, 52 CASE W. RES. L. REV. 655, 695 (2002).

150. Tiefenbrun, *supra* note 140, at 36 (footnotes and italics omitted).

151. The term “Memory Hole” originated in ORWELL, *supra* note 50, at 35.

152. See PRONKO, *supra* note 140, at 28 (“[W]e are thrown into a world where being right perhaps means nothing, and where nobility could very well be on the side of those absurd, intractable beings who refuse to play the dishonorable game of a sobered existence.” (quoting Gabriel Marcel, *De Jézabel à Médée*, REVUE DE PARIS, LVI<sup>e</sup> année (juin 1949))).

political world, so that the rebel can hardly articulate her reasons for rebelling—and the only rational choice is to reject politics entirely.

#### CONCLUSION

For all their differences, Aeschylus, Sophocles, Shakespeare, and Anouilh find common themes when they examine the rule of law and its opposite, the arbitrary claim to power. Lawful rule domesticates coercion, channeling it by making it serve substantive values of generality, regularity, fairness, rationality and public-orientation. Law also contains a tacit commitment to reciprocity and mutual effort. The arbitrary ruler or tyrant, by contrast, exercises power to serve his own ends, or in specific cases, by his mere exertion of will. He aspires to rule by *ipse dixit*, a fundamentally solipsistic notion, which contrasts with true law just as rape contrasts with loving union. To resist that solipsism in the name of truth—to refuse to collude in the fiction—is the motive of the heroic dissident. She clings to her vision of the truth, not because it is her will, not because it serves her private ends, but because it *is* the truth. The lawless ruler seeks to reconfigure reality as a creature of his will—while the heroic dissident insists on reality even when it is contrary to her desires. The difference between the rule of law and arbitrariness is thus figuratively the difference between love and hate, and, literally, the difference between truth and falsehood.