The Woman Will Be Out: A New Look at the Law in Hamlet

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I. INTRODUCTION

Many readers have noted the abundant references to law in Shakespeare's *Hamlet*. Indeed, a whole subgenre of criticism has developed around the question of whether Shakespeare's knowledge of law, as reflected in this play and others, is detailed and extensive enough to indicate legal training. These critics, however, have so far lacked scholarly backgrounds in Early Modern English literature and culture, and thus fail to connect the legal language and themes of the play to its other concerns about gender and rule. By the same token, literature scholars writing about the play have lacked backgrounds in English legal history. Bringing both perspectives to bear, I show that the play's legal allusions are closely related to its other concerns about gender, and that these themes in turn partake of changes in the broader culture, namely, the end of the forty-year reign of Elizabeth, a woman ruler, and an ensuing backlash against female political power. In sum, I will show that placing the play's legal references in context reveals that they are part of a process of ejecting the feminine from the political realm.

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Most of us are at least vaguely familiar with the play’s plot and themes. Hamlet’s father has been murdered, and the young prince has been cheated out of the succession by his mother’s “o’erhasty” remarriage to the dead king’s brother, Claudius, who has assumed the throne. In the first act, the dead king’s ghost appears to Hamlet to warn him that Claudius was the murderer, and makes the young prince swear to take revenge. Hamlet famously delays and agonizes about what to do, until a play he has performed at the court, and his uncle’s reaction to it, convince him that the ghost told him the truth. The play ends in mayhem, as Hamlet and Claudius are stabbed with a poisoned sword, and Claudius and Gertrude drink poison.

As even this brief description suggests, several legal doctrines are at issue in the play. This article will focus on the sixteenth-century legal regimes of kingship, property, widowhood, and suicide, and show how they work together in the play to discredit female political power. First, with respect to the law of kingship, the play is deeply concerned with the legal/political doctrine of the King’s Two Bodies. This belief, dating from the early middle ages, held that a king had both a mortal body, which was subject to aging and death, and an immortal body, which was timeless and incorporeal and passed on to the next sovereign. At one point, Hamlet explicitly refers to this doctrine, when he says about the dead Polonius, “[T]he body is with the king, yet the king is not with the body.” Although more than one scholar has read this remark as a reference to the Two Bodies doctrine, no one has previously linked it with the play’s concern with female power and with the female body’s corrupting effect on this immortal body. As I will show, Hamlet undermines the idea that the female body can serve as a locus for the coexistence of these two bodies, implicitly undermining Elizabeth’s legitimacy as monarch.

Also crucial to the play’s themes is the law of property, an aspect of English law that was in flux at the time. The sixteenth century had seen one of the most significant changes in the English law of property since the Norman conquest: in 1536, Parliament, under the kind of pressure only Henry VIII could apply, had passed the Statute of Uses, which changed the way land could be devised and inherited. The traditional passage of land in medieval common law had been through

4. Id.
5. SHAKESPEARE, supra note 2, at act 4, sc. 2, ll. 26-27.
6. KANTOROWICZ, supra note 3.
primogeniture and dower; indeed, the common law offered no method for devising land by will.\(^8\) Parallel with the system of primogeniture, however, there had evolved a system of "uses"—governed by Chancery, not the common law courts—by which an owner could divest himself of the legal title to his property in favor of one or more trustees who would allow the divested owner to enjoy the benefits of the land without having legal title and therefore avoiding the payment of feudal dues.\(^9\) The Statute of Uses was Henry VIII’s failed attempt to close this legal loophole by limiting and making more difficult the creation of uses.

Gender is implicated throughout this tug of war between the king and aristocrats over land. Despite conventional wisdom to the contrary, available legal subterfuge did not result in more women inheriting land. Amy Erickson has shown that people used "loopholes"—such as uses—in the law to keep land holdings out of female hands, rather than to let women acquire it.\(^10\) For example, under the system of primogeniture, a daughter should have inherited before a non-lineal male descendant, but fathers of daughters at times circumvented this requirement to ensure that ancestral lands would pass to a male heir, sometimes employing the device of the "use" to do so.\(^11\) The passage of land was an important part of the transmission of aristocratic identity, and men viewed women as less desirable receptacles for this identity.\(^12\) Despite occasional circumvention in this regard, however, primogeniture was an important way of transmitting aristocratic identity from father to son, and it depended on a notion of land as something other than chattel, devisable at will. It depended on seeing land and the heirlooms that passed with it as tangible aspects of aristocratic and patrilinear identity. So differently understood were these two kinds of property, that the very terms for their transmission differed: the word for a devise of land was “will” while a devise of chattels, or movables, was a “testament.”\(^13\)

Needless to say, the system of uses left the king short of income, and the Statute of Uses emerged from Henry’s attempts to remedy the problem and replenish his coffers.\(^14\) The law sought to extirpate and

\(^8\) Id.

\(^9\) Id.

\(^10\) AMY ERICKSON, WOMEN AND PROPERTY IN EARLY MODERN ENGLAND (1993).

\(^11\) Id.

\(^12\) This preference was not just a result of anti-feminism, of course: it also made sense under feudalism, a system under which a lord of an estate could be called upon to call up soldiers and lead them into battle. Elizabeth’s inability to fit into this feudal warrior model contributed to the anxiety about her reign.

\(^13\) OXFORD ENGLISH DICTIONARY 342 (2d ed. 1989). The existence of these two terms explains the seemingly redundant phrase “last will and testament.”

extinguish uses once and for all.\(^1\) Both *Hamlet* the play and Hamlet the Prince are deeply concerned about royal property rights and the possibility of being cheated out of them by legal chicanery. Like Henry VIII, Hamlet wants his feudal rights, which the system of primogeniture would have given him.

By 1582 the Statute of Uses was being used to facilitate exactly the kind of conveyance it was supposed to prevent, and was interpreted to mean that the beneficiary of a use was immediately seized.\(^2\) There were thus two regimes in place for the passage of land at the turn of the century: the traditional common law system of dower and primogeniture, by which land passed to a bodily heir, and the conveyance by use, which meant that land could be devised by will to someone not related to the family. There was tension between these two regimes: testamentary bequests treated land like any other movable good—that is, as a chattel—but the system of primogeniture freighted land with much more meaning. Primogeniture treated land as a material expression of aristocratic identity passed from father (usually) to son; conveyance disrupted this regime.\(^3\)

Magnifying this concern was the fact that the Tudors had at times treated the kingdom itself as chattel, and now Elizabeth, lacking bodily heirs, was also in a position of having to bequeath it, rather than letting it pass to a child of the royal body.\(^4\) The confluence of Elizabeth's aging body, unable, like a male ruler's, to produce a successor, and the inheritance laws which undermined land as a marker of aristocratic male identity, served as a lightning rod for anxiety about female rule. The play expresses these concerns throughout in the complexities of young Hamlet's inheritance.

Widowhood, as seen through the law and culture, also focuses this anxiety about female power. Gertrude's widowed status, and her behavior in that role, is central to the play's concerns. The law allowed widows to remarry, and most did, but the widow remarried was nonetheless a highly suspect cultural figure, depicted as lecherous and disloyal.\(^5\) The figure of Gertrude plays on a gap between the letter of the law and cultural attitudes. Degraded by its carnal nature, the female

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\(^1\) Roland Green Usher, *The Significance and Early Interpretation of the Statute of Uses*, 3 ST. LOUIS L. REV. 205-209 (1918). Ironically, the statute ultimately served to legalize the conveyance of land by uses. *Id.* at 214.

\(^2\) *Id.* at 213. The Statute of Wills, passed in 1540, made land passable by will. JESSE DUKEMINIER ET AL., *WILLS, TRUSTS, AND ESTATES* 202 (7th ed. 2005).


\(^4\) See DAVID BEVINGTON, *TUDOR DRAMA AND POLITICS: A CRITICAL APPROACH TO TOPICAL MEANING* 142 (1968); DAVID LOADES, *TUDOR GOVERNMENT* 45 (1997).

body was an inimical host for the body politic. The remarrying widow was a cliché in popular culture at the time, and the play’s scathing depiction of Gertrude uses this cliché to question a woman’s fitness for rule.

Finally, the law of suicide plays an important role in the play’s resolution. Whether Ophelia kills herself or drowns accidentally, the abundant references to suicide make clear that it is an important theme. Contemporary law deemed suicide a felony because it deprived the king of a subject and a member of the body politic. As a result the deceased’s lands were forfeited to the king. Ophelia’s death, removing her from the political realm as well as the literal community of the burying ground, removes her, and the female body she represents, from the body politic. I argue that Ophelia’s burial metaphorically inverts the real life sixteenth century case of Hales v. Pettit, in which a male suicide forfeited his lands to the female sovereign. As I will show through an examination of the allusions to Hales v. Pettit in the graveyard scene, Ophelia’s death and burial, conversely, allow Hamlet to reclaim his kingdom and identity through a symbolic forfeit of land by the female Ophelia.

In Part One, I will show in detail how the Queen’s aging and childlessness created a cultural crisis about the King’s Two Bodies. Part Two turns to the play, and shows how the changing regime of property law combined with the peculiarities of Elizabeth’s position generated anxiety about the transmission of aristocratic identity, and how these concerns are expressed in the play by Old Hamlet’s Ghost. Part Three discusses how Gertrude’s widowhood undermines the acceptability of female rule, and Part Four explains the legal—and political—ramifications of Ophelia’s suicide. Throughout the play, Shakespeare undoes the iconography with which Elizabeth had legitimated her female rule. The legal and iconographic themes come together in the graveyard scene, where Ophelia’s putative suicide and contested burial complete the process by which political power and aristocratic identity are gendered male. In this scene, I will argue, Hamlet uses the language of property law, specifically language reminiscent of the Statute of Uses, to reclaim his father’s identity and kingdom, while Ophelia’s suicide and burial, under the law of the day, remove her—and the female body itself—from this closed body politic.

My method privileges neither law nor literature, but rather seeks to

21. Id.
draw a picture of a cultural moment which integrates both. Specifically, I argue neither that the play passively “reflects” the law, nor that the law mirrors concerns of the play. Instead, I show that both, taken together, reveal a significant shift in the understanding of the relationship between gender and political power, and that this shift was part of a reaction to the forty-year reign of an unmarried female Queen. Thus, I see both the play and the law as producing and being produced by the culture. My argument begins with law and ends with law, but it necessarily unfolds through a discussion of the end of Elizabeth’s reign and the anxieties attendant on it, and the emergence of these anxieties in the play.

II. THE CRISIS OF THE KING’S TWO BODIES

Elizabeth was sixty-eight in 1600, and popular desire for a male successor was palpable.\(^2\) Sieur de Maisse, Ambassador Extraordinary from Henri IV of France, observed in 1597 that the nobility “would never again submit to the rule of a woman,”\(^3\) and Steven Mullaney attributes the celebratory spirit among Londoners at James’ accession six years later as relief at “the regendering of monarchy.”\(^4\) An Essex laborer was pilloried in 1591 for exhorting “let us pray for a king” for “the Queen is but a woman and ruled by noblemen . . . we shall never have a merry world while the Queen liveth.”\(^5\) As Francis Bacon described it a few years after Elizabeth’s death, “the name and government of Elizabeth was assailed with a variety of wicked libels, and there was a strange ferment and swelling in the world, forerunner of some greater disturbance.”\(^6\)

Elizabeth’s aging body and childlessness posed a crisis at many levels. In practical terms, her lack of a named successor ignited fears of civil war, or at least severe instability. Her dwindling reign posed a conceptual crisis as well for the doctrine of the King’s Two Bodies. As noted above, this philosophy held that the anointed king was a locus

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23. See, e.g., Jean E. Howard & Phyllis Rackin, Engendering a Nation: A Feminist Account of Shakespeare’s Histories 4 (1997) (suggesting that “Henry V may have been popular in 1599 in part because it depicts the rule of a male monarch, a king who is also a martial hero and who serves as point of identification for those audience members weary of the rule of a woman”); Katherine Eggert, Nostalgia and the Not Yet Late Queen: Refusing Female Rule in Henry V, 61 ENG. LITERARY HIST. 523 (1994); Steven Mullaney, Mourning and Misogyny: Hamlet, The Revenger’s Tragedy, and the Final Progress of Elizabeth I, 1600-1607, 45 SHAKESPEARE Q. 139 (1994).


25. Mullaney, supra note 23, at 139.

26. Emmison, Elizabethan Life: Disorder (1970). The perception that Elizabeth was under the sway of her male ministers was another source of anxiety about her.

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for two bodies, one corporeal, the other metaphysical.28 It is this second, mystical body which allowed for the continuity of kingship: although the king's body natural was susceptible to decay and death, the body politic lived on in the person of the new king.29 The mystical body was perfect, unsullied by corruption, decay, carnality or death.30

Although Elizabeth had constructed an elaborate iconography to bolster her claim to the mystical body, a woman on the throne undermined the Two Bodies concept.31 Contemporary stereotypes about women made the female body a less easily imagined locus for the perfect, timeless body politic than a male one.32 Part of the problem with respect to the body politic was that women were deemed to "embody" aging, and thus physical decay, in a way that men did not.33 Age in men was deemed to confer wisdom, experience, and authority, but in women, age conferred only negative attributes.34 Post-menopausal women were seen as having outlived their use, embodying an obscene sexuality.35 Aging women appear in works of art as tainted with sin and representing the Vices, in contrast to young women, who embodied the Virtues.36 Contemporary society saw youth and innocence, on the one hand, and extreme age and sin, on the other, as two stark alternatives for the female body.37 There was no middle ground; no woman was seen as partaking of moderate maturity between youth and age.38

Because of the corruption seen in the aging female body, Elizabeth's physical deterioration and imminent death threatened the separate, inviolate existence of the corporate royal body: the physical frailties associated with the body natural seemed to overcome and corrupt the

28. KANTOROWICZ, supra note 3, at 7-23.
29. Id.
30. Id.
34. Nanette Salomon, Positioning Women in Visual Convention: The Case of Elizabeth I, in ATTENDING TO WOMEN IN EARLY MODERN ENGLAND 64, 82 (Betty S. Travitsky et al. eds., 1994).
35. Boesky, supra note 33, at 135.
36. Salomon, supra note 34, at 64, 82 (referring to Andrea Mantegna's Wisdom Triumphant over the Vices, painted for Isabella d'Este around 1502).
37. Id.
38. Id.
body politic, rather than remaining subordinate as the theory demanded.\(^{39}\) Indeed, by the late 1590s, the Queen's aging, and the meaning the culture placed on that aging, had created a kind of crisis in Elizabeth's self-representation.\(^{40}\) While her official portraits presented her as an eternally youthful embodiment of the body politic, her actual physical appearance fully reflected her age. In 1597, Henry IV's agent described her long, thin face and her yellow, broken teeth; another observer in 1598 noted "her face oblong, fair but wrinkled; her eyes small, yet black and pleasant; her nose a little hooked, her lips narrow and her teeth black . . . she wore false hair and that red."\(^{41}\) In contrast, her portraits, whose production and dissemination were carefully controlled, showed the ageless Gloriana, Petrarchan object of longing.\(^{42}\) Elizabeth's body itself expressed the coexistence of these conflicting images: she dressed and acted in such a way so as to maintain the appearance of youth and erotic appeal, yet her body bore the signs of her age.\(^{43}\) The spectacle of female decay in the "body natural" undermined belief in the presence of the "body politic" in that same body.

Because of the female body's association with sexuality and corruption, the Queen's aging body threatened the perfection of the body politic. Since her ascension, the rumors about Elizabeth's sexual activities suggest a perception of her body natural as "potentially

\(^{39}\) I am not the first to connect the revenge tragedy genre as a whole with the king's two bodies notion. Revenge drama, the genre which prevailed on the English stage in the late Elizabethan and early Jacobean years, involved an evil ruler abusing his power, usually through murder and rape, and a hero who dies in carrying out revenge. Lee Bliss sees this connection as enabling a critique of monarchy: "In splitting [the kings] two bodies and allowing the private man's lust to subvert the royal figure's responsibilities, the king has forced his subjects to reevaluate not merely their duty to him, but the whole system of values and beliefs he theoretically embodies." \textit{Lee Bliss, The World's Perspective: John Webster and the Jacobean Drama} 205 (1983). Adding gender to the mix, Eileen Allman suggests that the heroines of the revenge drama, like the androgynous image of Queen Elizabeth "challenge the presumption of male authority . . . shatter[ing] the dogmas that imprison both sexes." \textit{Eileen Jorge Allman, Jacobean Revenge Tragedy and the Politics of Virtue} 36 (1999).

\(^{40}\) Mullaney, \textit{supra} note 23, at 139. The Tudor succession, as noted \textit{infra}, had been troubled for some time, and for other reasons as well: Henry VIII's ceaseless manipulation of the succession by disinheriting of all three of his children at various times, and his attempt to control succession through instructions written into his will both offered the possibility of an elected, rather than inherited, succession. See Bevington, \textit{supra} note 18, at 142 (1968); Loades, \textit{supra} note 18. For further discussion of the strain on the theory of the king's two bodies at the end of Elizabeth's reign, see \textit{Lena Cowen Orlin, Private Matters and Public Culture in Post-Reformation England} (1994) (noting that Elizabeth's aging and imminent death created a conflict between loyalty to the institution of monarchy and the body of the living monarch). Marie Axtom observes that "from the death of Henry VIII to the accession of James I dispute over the succession to the English crown was a principal focus of political instability and unease." \textit{Marie Axtom, The Queen's Two Bodies: Drama and the Elizabethan Succession}, at ix (1977).

\(^{41}\) Salomon, \textit{supra} note 34, at 82.

\(^{42}\) \textit{Id.}

\(^{43}\) Mullaney, \textit{supra} note 23, at 139.
corrupt in a manifestly female way." Claire McEachern has pointed to the instability inherent in the idea of the body politic—the danger of "excessive corporeality," that the body natural’s private desires would taint the decisions made by the body politic. As McEachern puts it, political theory of the period decreed that the well-ordered body of the commonwealth “should be a body only to a certain degree.” One of the problems with the idea of the king’s two bodies lies in the danger that the monarch’s “private will”—lust, greed, etc.—can overcome the will of the body politic to the detriment of the common good. McEachern explains, “in the political cosmology where a well-ruled body represents proper community, social disorder results from a private local, willful body, a body more body than politic.” Such a body puts private, carnal desires ahead of the well being of the commonwealth; it fails to supply the deficits in its natural body with the resources of its corporate one.

Because of the traditional association of the female body with the flesh and the male body with the purity of the spirit, the body of a female monarch was a locus where the body politic was particularly susceptible to the corruption McEachern describes. Expressing a common sentiment of the age, Martin Luther said, “we are but woman because of the flesh, that is, we are carnal, and we are man because of the spirit . . . we are at the same time both dead and set free.” This notion prevailed in medicine as well as theology: practitioners and scholars took for granted the Aristotelian formulation that the male contributed the form and the soul to the fetus, while the female contributed matter.

Elizabeth’s gender and age problematized the Two Bodies notion in yet another way: her ability to bear children was limited by age, while a male ruler’s was not. A male king could always produce an heir—as Henry VIII had proved by fathering Edward VI in his forty-sixth year—but Elizabeth, as a female, had a limited time span in which she was capable of having a child. If she failed to marry and produce an heir, the kingdom would face instability and perhaps the chaos of civil war. As Elizabeth neared the end of her childbearing years, her counselors and Parliament became anxiously vociferous in their unsuccessful pleas

44. Levin, supra note 31, at 147.
45. McEachern, supra note 32, at 105.
46. Id.
47. Id.
48. Id.
49. Id.
51. Id.
52. Id.
to her to marry, and marry soon. An unmarried queen, by her very biology, threatened the continuity of kingship and the stability of the kingdom. As I show below, Hamlet's depiction of Gertrude as a licentious widow expresses this dilemma by showing us a female ruler whose carnal desires have corrupted her ability to rule and to transmit the kingdom to its rightful heir. Both Elizabeth and Gertrude are too much body and not enough politic.

III. INHERITANCE IN THE LAW AND IN THE PLAY

A. The Law

During the sixteenth-century land, which traditionally passed as part of an inherited aristocratic estate—along with status—from father to son, could also be devisable by will. This meant that land could be treated, for the purposes of inheritance, like a chattel and devised away from blood lines. The traditional land inheritance system within the English aristocracy had been a way to transmit identity from father to son. Technically the system of primogeniture would allow land to pass to a daughter if there was no surviving male heir, but as Eileen Spring has shown, aristocratic fathers managed to circumvent the letter of the law in this regard, finding ways to divert land from lineal female descendants to transversal males, whom they deemed more able to carry on family identity and responsibility.

The land in an aristocratic estate in medieval and early modern England carried a great deal of meaning for the identity of the family associated with it. More than a physical possession, it was an embodiment of the family's status, its history, its relationship to the rest of the aristocracy, and its relationship to the ruler. Land holdings determined the duties its holder owed the king—taxes, troops, etc.—and what duties others, such as his tenants, owed him. It located the family, and specifically the family's head, in the web of reciprocal obligations and honors that spanned generations and held society together.

Along with the land and its buildings, the inherited estate included family heirlooms, often with their place of storage and display specified. These heirlooms included the father's armor, which will become important when we turn to the first scene of the play. Armor was analogous to what law today designates as fixtures, i.e., "items

55. JONES & STALLYBRASS, supra note 17, at 250.
which are so attached to the property that they are considered part of it for purposes of conveyance."\textsuperscript{56} For the purposes of estate transmission in the sixteenth century, these fixtures, armor among them, were part of the passage of identity conveyed with the land.

An aristocratic father often bequeathed his armor to his son as a "marker and . . . creator of genealogy."\textsuperscript{57} Such bequests were a common feature of aristocratic wills in this period; often, in addition, the wills specified that the armor was to be attached to a particular location, part of the household and landed holdings of the gentry and an heirloom to pass with property, not as movable chattel.\textsuperscript{58} Sir Edward Coke explains the concept of heirlooms as follows:

And note that in some places chattels as heire-loomes, (as the best bed,\textsuperscript{59} table, pot, pan, cart, and other dead chattels movable) may goe to the heire, and the heire in that case may have an action so; for them at the Common Law, and shall not sue for them in the Ecclesiasticall Court, but the heire-loome is due by Custome and not by the Common Law.\textsuperscript{60}

In this context, redefining land and the accessories attached to it as movable goods that could be handed over like a horse or a cow had serious implications for land's social meaning. And with Elizabeth lacking an heir, the kingdom itself was in the position of being bequeathed to a chosen recipient rather than passed on to an heir of the ruler's body.

To be fair, Elizabeth was not the first in a position to devise the kingdom rather than having it pass to a bodily heir. Henry VIII, unwilling for a female to inherit the throne, drafted a will before the birth of his son Edward to ensure male succession.\textsuperscript{61} According to Mortimer Levine, "the question of succession in one way or another had plagued the Tudor monarchy since its birth on Bosworth field."\textsuperscript{62} But while Henry had claimed to be able to devise the kingdom if

\begin{itemize}
\item \textsuperscript{56} \textit{BLACK'S LAW DICTIONARY} 669 (8th ed. 2004).
\item \textsuperscript{57} JONES & STALLYBRASS, \textit{supra} note 17, at 250.
\item \textsuperscript{58} \textit{Id.} (quoting the will of Winston Browne in 1580, leaving to his son and heir "my armor and weapons in Weald Hall and Rookwood Hall; all which I will shall remain in such studies, galleries and such other rooms as they now be to the use of my son"; Richard Cook in 1579, leaving "to my son Anthony my armor and weapons at Gidea Hall"; Clement Sysley in 1578, bequeathing to his son "my armor and furniture of armor, my guns, daggs, pikes, bills, targets and crossbows, and they are to remain as standards and implementes of household to him and his heirs forever at Eastbury").
\item \textsuperscript{59} Hence the answer, of course, to the consternation among literature scholars over Shakespeare leaving his "second best bed" to his wife. \textit{See, e.g.,} Marjorie Garber, \textit{Second-Best Bed,} in \textit{HISTORICISM, PSYCHOANALYSIS AND EARLY MODERN CULTURE} 376 (Carla Mazzio & Douglas Trevor eds., 2000).
\item \textsuperscript{60} SIR EDWARD COKE, I \textit{THE FIRST PART OF THE INSTITUTES OF THE LAWS OF ENGLAND} 2:12 (Francis Hargrave & Charles Butler, eds., Philadelphia, Johnson & Warner 1812) (1658).
\item \textsuperscript{61} MORTIMER LEVINE, \textit{THE EARLY ELIZABETHAN SUCCESSION QUESTION} 1558-1568, at 5 (1966).
\item \textsuperscript{62} \textit{Id.}
\end{itemize}
necessary, it was clear by the 1590s that Elizabeth would have no choice. This fact, and the anxiety it produced, was inextricably tied to her gender: until Henry’s death, there was always hope that he would have another son. Hope for Elizabeth’s producing an heir died in the 1570s. Thus Elizabeth’s gender, and the reproductive biology attached to it, became associated with political instability.

The passage of the kingdom from one divinely anointed heir to the next was the most significant form inheritance of land could take. If the kingdom itself were to be devised away from the ruler’s body like a piece of chattel, what was left of the system in which land and heirlooms embodied identity and passed by law to the male heir, transmitting that identity from generation to generation? The passage of the kingdom to the king’s bodily heir was the ultimate guarantor of that system. And the body of the dying ruler was one whose perceived corruptibility undermined the very notion that there was an immortal body to pass on. As I discuss in the next section, the first act of the play offers in the Ghost’s armor a symbol of these intersecting crises.

B. The Play

The play begins with soldiers on a battlement at night, on guard against an anticipated attack by Norway.63 Through their dialogue, we learn that Old Hamlet had staked his kingdom on single combat with the King of Norway, and won, killing him. Now Young Fortinbras, the new King of Norway, is advancing with his army to get back the land his father lost, and more. The themes of inheritance and disinheritance are immediately apparent: while Norway’s new king is the son of the king who lost life and land to Old Hamlet, Claudius, the new King of Denmark, has managed to cheat Hamlet out of his throne by marrying Gertrude. We also learn of another disturbing phenomenon: for the last two nights, a ghost has appeared to the guards on the battlements, looking exactly like the dead King of Denmark, and dressed in the very armor he wore when the conflicts began.64 The guards tell Horatio, Hamlet’s friend, and he decides to tell the prince.65 The next night, Hamlet waits on the battlements with them; the Ghost appears and shares its dreadful story.66

The ghost of Hamlet’s father in the first act embodies—or disembodies—the crisis of inheritance dramatized in the play. Generations of critics, from Dover Wilson to Stephen Greenblatt, have acknowledged the unique place of Old Hamlet’s Ghost on the early

63. SHAKESPEARE, supra note 2, at act 1, sc.1.
64. Id.
65. Id.
66. Id. at act 1, sc. 4.
modern English stage: no other ghost in this period appears in armor; no other ghost in this period has returned from Purgatory, etc. The ghost’s suit of armor, in particular, is anomalous. The customary garb for ghosts in revenge drama was white linen, either a nightgown or a winding sheet. Indeed, according to Quarto 1, the ghost appears in Gertrude’s closet in Act Three restored to more conventional dress, wearing “his nightgowne.” But, as Barnardo remarks in the first scene, there is ironic logic in the ghost appearing “armed . . . so like the King / That was and is the question of these wars.” This was the very armor that the king wore when he “smote the sledded Pollacks on the ice” and staked his kingdom on a wager. The Ghost’s armor, a material reminder of Old Hamlet’s wager, reminds everyone that both land and kingdoms can be disengaged from the families they embody, and given, devised, wagered, and sold.

There is more to the ghost’s armor, however, than ironic coincidence. As noted above, armor, like land, played an important role in the transmission of aristocratic male identity in early modern England: it was a family heirloom, which passed to the eldest son as part of the family estate. Under such a regime, a suit of armor had no business walking around without a body after its owner’s death. The armor’s appearance here on the battlements, more even than that of the ghost who wears it, tells us we are witnessing profound breakdown in the system of aristocratic identity of which it was a part. A father’s ghost appearing in his armor to a son—who should have rightfully inherited that armor along with the throne—reveals a collapse in the system of inheritance of both land and identity. The play presents a world where the transmission of property and identity, once one and the same, has been fractured. But there is even more at stake.

First, armed as the king was when he first put the succession of the

67. STEPHEN GREENBLATT, HAMLET IN PURGATORY 4 (2001) (noting that “the ghost in Hamlet is like none other—not only in Shakespeare but in any literary or historical text that I have ever read”); ELEANOR PROSSER, HAMLET AND REVENGE 98 (1967) (noting that the Ghost in Hamlet is the only one in Elizabethan or Jacobean drama to have returned from Purgatory); DOVER WILSON, WHAT HAPPENS IN HAMLET 55 (1964) (calling the ghost “a revolutionary innovation in the history of dramatic literature”). Even more startling is the Ghost’s talk of Purgatory. Even under Elizabeth’s relatively moderate post-Reformation regime, talk of Purgatory, the prime doctrinal target of the reformers, was dangerous. See EAMON DUFFY, THE STRIPPING OF THE ALTARS: TRADITIONAL RELIGION IN ENGLAND 1400-1580 (1992). Recent scholarship has argued that Elizabeth’s stance toward Catholic forms of worship was less compromising than previously assumed. See DIARMUID MACCOULLOCH, THE REFORMATION: A HISTORY 288 (2004). Prosser argues that the Ghost’s references to Purgatory offer a clue as to its true nature, that of an evil spirit sent by Satan. PROSSER, supra.

68. PROSSER, supra note 67.

69. SHAKESPEARE, supra note 2, act 3, sc. 4, l. 103.

70. Id. at act 1, sc.1, ll. 113-14.

71. Id. at act 1, sc.1, l. 66.

72. JONES & STALLYBRASS, supra note 17, at 250.
kingship in doubt, the ghost's appearance harks back to the real problem of the play, the problem of which Old Hamlet's murder and Gertrude's remarriage are only the redux: is a kingdom—and, by extension, aristocratic land holdings and the identity they transmit—chattel that can be passed by whim, or is it an intangible part of masculine identity which passes inevitably from father to eldest son? If such land is only chattel, subject to passage by whim—or, in the present case, wager—what are the implications for the transmission for this identity? And if a kingdom is mere chattel, what becomes of the transmission of kingship, the apex of male aristocratic identity? As the play opens, Linda Charnes notes, "there is already a de facto divorce between the body and head of state, and it was first effected not by Claudius but by King Hamlet himself, before the play even begins."73 This breach, brought about by Old Hamlet's wager with Fortinbras, has engendered the most immediate threat to the state: now Fortinbras's son, young Fortinbras, has "shark'd up a list of lawless resolute . . . to recover of us by strong hand / And terms compulsatory those foresaid lands / So by his father lost."74

The Ghost's suit of armor, then, signifies both the immediate threat of war and a related crisis in/of inheritance. Under these wills, as discussed above, armor was not a movable possession. Though Jones and Stallybrass remark that Hamlet's father is "unusual, if not unique, in returning in his armor,"75 I want to suggest that the Ghost's armored appearance problematizes the very idea of the transmission of male aristocratic identity. The play addresses this problem in the figure of Gertrude.

IV. GERTRUDE AND WIDOWHOOD

The play uses Gertrude to undermine Elizabeth's claim to the King's Two Bodies. By insisting on the female body as a locus of pure corporeality and debased carnal impulses—in Hamlet's words, "baser matter"76—the play shows us a queen who could not possibly lay claim to housing a spiritual entity like the Body Politic. Gertrude, the seemingly chaste wife, drops her mask the minute her husband dies to reveal herself to be driven by lust. This lust destroys the proper passage of the kingdom to Hamlet, the natural heir. Gertrude's behavior suggests that the female body is an inimical host to the higher qualities associated with the king's corporate body and its continuity. This

73. Linda Charnes, The Hamlet Formerly Known as Prince, in SHAKESPEARE AND MODERNITY: EARLY MODERN TO MILLENNIUM 189, 197 (Hugh Grady ed. 2000).
74. SHAKESPEARE, supra note 2, at act 1, sc. 1, ll. 101-107.
75. JONES & STALLYBRASS, supra note 17, at 250.
76. SHAKESPEARE, supra note 2, at act 1, sc. 5, l. 104.
configuration, as discussed below, directly undermines Elizabethan iconography.

With her hasty remarriage, Gertrude reveals herself to be squarely in the camp of the body natural. As Hamlet repeatedly tells her, she has put her sexual desire for Claudius ahead of loyalty to her deceased husband and the state. By sixteenth-century standards, Gertrude’s behavior was shocking. Society expected widows to mourn for at least a year after their widowhood, a period in which they were to wear black, stay close to home, and surround themselves with sober, respectable women companions. One moralist of the time recommended that the widow be treated like a straying cat: “Shorten her tail, cut her ears, and singe her fur; then she will stay at home.” While views on remarriage itself were varied, all agreed that the mourning period should be long and strictly observed.

Not so Gertrude. As Hamlet accuses her: with a husband, “so excellent a king . . . but two months dead . . . to post / With such dexterity to incestuous sheets” with “A murderer and a villain / A slave that is not twentieth part the tithe / Of your precedent lord. She is all carnal desire; her duties to the kingdom and Old Hamlet have fallen by the wayside. The haste of Gertrude’s remarriage proves what moralists agreed on about women, and what the culture in general feared: that their sexual desire was voracious, insatiable and more powerful than any political or social constraint. Widows were thought especially prone to lust because they had sexual experience to waken their desires, and yet were free from a husband’s control. Burton’s Anatomy of Melancholy expresses disgust at desire in an old woman, who “doth very unseemly seek to marry; yet whilst she is so old, a crone, a beldam, she can neither see nor hear, go nor stand, a mere carcass, a witch. . . she caterwauls and must have a stallion, a champion, she must and will marry again, and betroth herself to some young man that hates to look on her but for her goods.”

Gertrude’s behavior stripped off the mask, so to speak, and proved once and for all that women were solely carnal. The revelation of this “truth” behind the mask made clear that women were completely of

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78. Hanawalt, supra note 19, at 143.
80. Hanawalt, supra note 19, at 143.
81. SHAKESPEARE, supra note 2, at act 1, sc. 2, ll. 138-157.
82. Id. at act 3, sc. 4, ll. 97-99.
83. Hanawalt, supra note 19, at 143.
84. ROBERT BURTON, ANATOMY OF MELANCHOLY (1821), quoted in Boesky, supra note 35, at 135.
the flesh, bodies which were inhospitable and even dangerous hosts for the spiritual body politic. The fact that Gertrude is a Queen, and that her remarriage threatens to supplant the kingdom’s rightful heir, adds force to this revelation. The moral is that women’s carnality destroys kingdoms and prevents the proper passage of the male body politic.

Much of Elizabeth’s iconography had worked to overcome these cultural notions which would align her body, as a female, exclusively with the flesh—with “baser matter.” To legitimize her rule, Elizabeth had to convincingly present herself as partaking both of a mortal body and an immortal body immune to physical decay, and she did this in a number of ways. First, she explicitly laid claim to a coterminous male body politic, for example, in her famous speech to the troops at Tilbury:

I know I have the body but of a weak and feeble woman, but I have the heart and stomach of a king and of a king of England too—and take foul scorn that Parma or any prince of Europe should dare to invade the borders of my realm. To the which rather than any dishonor shall grow by me, I myself will venter my royal blood; I myself will be your general, judge and rewarder of your virtue in the field.

In her own twist on the King’s Two Bodies theory, Elizabeth presented her mortal body as female and her royal, or corporate, body, as male, endowed with all the qualities associated with masculine kingship.

Second, Elizabeth’s state portraits emphasized her virginity and attendant lack of fleshly corruption, a characteristic which presumably made her able to house the body politic. The Armada Portrait commemorating the victory against Spain, for example, shows a large bow at the apex of the Queen’s stomacher, decorated with an ostentatious pearl and attached to a jeweled girdle. In the background, a panel shows the defeat of the Armada. The message, as Stephen Montrose puts it, seems to be that there is “a causal connection between her sanctified chastity and the destruction of the Catholic invaders.”

Montrose calls this “the demure iconography of Elizabeth’s virgin knot.” In other words, the kingdom’s security depended on the Queen’s presenting, through her lack of female

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85. SHAKESPEARE, supra note 2, at act 1, sc. 5, l. 104.
86. Queen Elizabeth’s Armada Speech to the Troops at Tilbury (Aug. 9, 1588), in ELIZABETH I: COLLECTED WORKS 326 (Leah S. Marcus et al. eds., 2000).
87. For a discussion of the medieval political philosophy of the king’s two bodies, see generally KANTOROWICZ, supra note 3.
89. Id.
sexuality, a claim to the body politic. Gertrude, a queen whose carnal desire opens the door of the kingdom to corruption, symbolically undermines Elizabeth’s iconographic efforts, and Hamlet is there to describe their unraveling.

Hamlet’s first soliloquy begins the process of aligning “base matter” with the female body—in the form of his mother. He begins by raging at his own “sullied flesh” and lamenting God’s injunction “gainst self-slaughter,” and then identifies the cause of his despair and self disgust as his mother’s hasty remarriage, and that to a man so inferior to his father. The structure of the verse makes clear that in Hamlet’s mind the two issues—the comparison of his “Hyperion”-like father to his satyr-like brother, and the widow’s remarriage—are one and the same. His thoughts fold together the remarriage, the superiority of his father, and female duplicity:

That it should come to this!
But two months dead—nay, not so much, not two—
So excellent a king, that was to this
Hyperion to a satyr, so loving to my mother
That he might not beteem the winds of heaven
Visit her face too roughly. Heaven and earth
Must I remember? Why, she would hang on him
As if increase of appetite had grown
By what it fed on; and yet within a month—
Let me not think on’t—Fraiilty, thy name is woman—
A little month, or ere those shoes were old
With which she follow’d my poor father’s body,
Like Niobe, all tears—why, she—
Oh God, a beast that wants discourse of reason
Would have mourn’d longer-married with my uncle,
My father’s brother—but no more like my father
Than I to Hercules. Within a month,
Ere yet the salt of most unrighteous tears
Had left the flushing of her galled eyes,
She married—O most wicked speed! To post
With such dexterity to incestuous sheets!
It is not, nor it cannot, come to good.91

The Prince’s thoughts on these three topics—remarriage, Claudius’ inferiority, and female frailty—weave seamlessly into one another:

90. The principle of lege difficilior, and other considerations, make “sullied” the preferred reading of this word, although “solid” and “sallied” have been suggested. See, e.g., SHAKESPEARE, supra note 2 at 436-438 (commenting on act 1, sc. 2, l. 129).

91. SHAKESPEARE, supra note 2, act 1, sc. 2, ll. 137-158.
"But two months dead" seems to begin a train of thought about the haste of the wedding, but shifts to the Hyperion/Satyr comparison, which quickly degenerates into misogyny. He then returns to disparaging thoughts about Claudius, calling him "no more like my father / Than I to Hercules," before ending with a reference about the wedding taking place "within a month." These intertwining themes underlie Hamlet's self-disgust and repudiation of his fleshly being.

The Ghost's message of female treachery and murder awakes in Hamlet distrust of his mother and of women in general—he terrifies Ophelia by appearing in her closet, his clothes undone, "pale as his shirt, his knees knocking each other / And with a look so piteous in purport / As if he had been loosed out of hell / To speak of horrors." He gazes intently at Ophelia's face "as a would draw it," sighs piteously, and retreats backwards, his gaze remaining fixed on her. Ophelia's description ("loosed out of hell / To speak of horrors") echoes the appearance of the ghost, who comes from purgatory but only alludes to torments which would harrow up mortal souls and freeze their blood. Thus, the Ghost's effort to plumb Hamlet's depths in order to draw him into its revenge narrative leads Hamlet, in a kind of displacement, to plumb Ophelia's depths in an apparently futile attempt to assuage his doubts about the female sex. Is she, seemingly innocent, really like Gertrude underneath? Without her mask, would she indulge her lust in the face of all social convention and even political security? In his interrogation, Hamlet, like the Ghost, draws Ophelia into his narrative about women, a narrative in which they are mendacious whores.

Hamlet's apparent ravings also reiterate the different roles that male and female bodies will play in the representation of aging and decay. When Polonius asks him what he is reading, he answers that the book is full of "slanders," insisting as it does that "old men have grey beards, that their faces are wrinkled, their eyes purging thick amber and plumtree gum." Though he "most powerfully and potently" believes all this, Hamlet argues it should not be "thus set down." In other words, the aging of the male body should not be represented. In the realm of representation, the female body will serve as the depiction of aging.

It may not appear obvious, but the closet scene, in which Hamlet confronts his mother, also undermines the idea that women can wield
political power. To understand how the scene achieves this goal, it is necessary to appreciate contemporary legal norms concerning women's status in marriage and the popular prescriptions concerning their use of mirrors, prescriptions which served as a metaphors for women's legal status.

The closet scene takes place immediately after Claudius has stormed out of the performance of the play Hamlet has staged to confirm his stepfather's guilt. Gertrude has summoned Hamlet to her chamber to scold him for offending Claudius by presenting the play. He turns the tables on her, however, telling her that, to the contrary, it is she who has offended King Hamlet, his father. He forces her to look at herself in a mirror and see herself as he sees her—corrupt, immoral, lascivious. The scene ends with Gertrude, shaken by what she sees in the mirror, repentant, promising to do her best to deny Claudius affection and sex. Hamlet's success in forcing Gertrude to see herself as he sees her is central to the scene's reworking of Elizabeth's image. In the language of the conduct manuals of the day, in this scene, Hamlet has taught Gertrude to use male eyes as her mirrors, to model her self-awareness on what they see in her, not what she sees in herself.

With respect to women and mirrors, the contemporary prescription was simple: a husband was to be a wife's "looking glass."[^97] The woman was to mirror the man. He is to be "her daily looking glass . . . whereto she must always frame her own countenance."[^98] Women were taught to use themselves as mirrors in a way specific to their sex: sixteenth-century marriage manuals decreed that a husband's face "must be hir daylie looking glasse, wherin she ought to be alwaies prying, to see when he is merie, when sad when content, and when discontent, where to she must alwayes frame hir own countenance."[^99]

Or, as Robert Greene put it,

As a looking glass in Christall though most curiously set in Ebonie, serveth to small purpose, if it doth not lively represent the proportion and lineaments of the face inspicient, so a woman,

[^97]: EDMUND TILNEY, A BRIEF AND PLEASAUNT DISCOURSE OF DUTIES IN MARIAGE, CALLED THE FLOWER OF FRIENDSHIPPE (unpaginated) (Henrie Denham, London 1568).

[^98]: Id.; see also ROBERT SNAWSEL, A LOOKING GLASSE FOR MARIED FOLKES (unpaginated) (London, Henry Bell 1610) (noting that "even as a looking glasse ... doth shew the countenance of him that glasses himself in it: it beseems an honest wife to frame herself to her husbands; affection and not to be merry when he is melancholy, or jocund, when he is sad, much lesse fire when he is angry").

though rich and beautiful, deserveth smal prayse or favour if the course of her life be not directed after her husbands compasse. And as ye Mathemticall lines which Geoemetricians doe figure in their carecters, have no motion of themselves, but the bodies wherein they are placed, so ought a wife to have no proper or peculiar passion or affection, unless framed after the special disposition of her husband: For, to crosse him with contraries as to frowne when he setteth him selfe to mirth, or amidst his melancholie to shewe her selfe passing merrie, discovereth either a fond or forward will, opposite to that honorable vertue of Obedience.\textsuperscript{100}

This use of the male gaze as a mirror serves as an apt metaphor for women’s legal status in marriage. “The Lawes Resolution of Womens Rights” of 1632 explains that the legal term for a married woman is “femme covert”; while before marriage she was a “femme sole.”\textsuperscript{101} A married woman entered the legal realm of “couverte” when she married, becoming metaphorically “covered,” her face hidden by submersion in her husband’s identity.\textsuperscript{102} The manual offers a related metaphor by describing married women as rivers which, when they flow into the ocean, mix with its vaster waters and lose their separate identity.\textsuperscript{103} What unites the law and conduct manuals here is the sense that a woman in marriage relinquishes not only her separate legal existence, but even her separate subjectivity to that of the husband. She is to mirror his face and moods, both as an aesthetic and a legal matter.

This prescription is in direct contradiction to the way Elizabeth presented herself. Her subjects and courtiers were to fashion their tastes and appearances to please her.\textsuperscript{104} They were to model their behavior on her moods and whims.\textsuperscript{105} This strategy upended contemporary norms that women were to model themselves after what they saw in the male countenance. Mirrors and portraits were thus potent images of this gendered conflict over reflection, both at court and in the play’s closet scene.

Portrait painting could embody the same tension: two court painters, the story goes, engaged in a wager as to who could paint the more accurate picture of Elizabeth: one presented her with a painting, while

\textsuperscript{100} ROBERT GREENE, Penelope’s Web, in THE LIFE AND COMPLETE WORKS IN PROSE AND VERSE OF ROBERT GREENE 139, 163-64 (A.B. Grosart ed., 1964).
\textsuperscript{102} Id.
\textsuperscript{103} Id.
\textsuperscript{104} For a contemporary discussion of this aspect of court life, and the anxiety it caused, see BALDASSAR CASTIGLIONE, THE BOOK OF THE COURTIER (Virginia Cox ed., Thomas Hoby trans., J.M. Dent 1994) (1528).
\textsuperscript{105} Id.
the other simply handed her a mirror. The implication was that the sovereign would see in the mirror what she wished to see—herself, as she saw herself. No reciprocal gaze emanating from the glass could distort her self-presentation. As Philippa Berry puts it, “the queen’s ‘virginity’ . . . was not in fact an empty space upon which might be inscribed the fruits of a search for the powers of masculine resemblance, but the sign instead of her own mysterious powerfulness, of a body and an identity which had somehow eluded successful appropriation by the masculine.” Berry goes on to invoke Irigaray’s notion of patriarchy’s use of women as mirrors for the masculine ego, and suggests that Elizabeth’s self-presentation constituted a moment of crisis in this process, when “an ‘other’ image of woman intervenes in and disrupts this process of masculine specularization.” Hamlet’s “mirroring” of Gertrude constitutes a moment of recuperation from exactly this crisis, as it displaces the image in the glass from the Queen as she defines herself to her image as she is defined by the male gaze. A queen is forced back into legally defined womanhood, into coverture, into the mirror.

In the closet scene, Hamlet’s demand that Gertrude see herself as he does, corrupt, obscene, and debased, directly challenges Elizabeth’s self-presentation with contemporary notions of wifehood. He achieves his goal: before he leaves, he has forced the Queen to see the “black and grained spots” on her soul, and received her promise to decline sex with Claudius. This process of moving Gertrude from expressing her own desires to seeing herself as she is reflected in Hamlet’s (male) eyes undoes the self-referential economy Elizabeth had established at her court.

Hamlet forces Gertrude to see pure corporeality in herself. He begins by comparing the two pictures, the dead king “the front of Jove himself” and Claudius, “a mildew’d ear / Blasting his wholesome brother.” Having descended from the “fair mountain” of his father’s majesty to his mother’s “battening on this moor,” Hamlet embarks on a rant about Gertrude’s “rebellious hell” and “compulsive ardour” which inappropriately “mutine in a matron’s bones.” The progression of this speech aligns Gertrude and her rampant sexuality with the debased version of kingship, the corrupt mortal body of the king. It is the identification of herself with the body and the “rebellious hell” of

106. FRYE, supra note 31, at 101.
108. Id. at 8.
109.
110. SHAKESPEARE, supra note 2, at act 3, sc. 4, ll. 56, 64-65.
111. Id. at act 3, sc. 4, ll. 83-86.
sexuality which Gertrude finally accedes to, succumbing to the image in the mirror which is Hamlet's, not her own. This capitulation on her part rewrites Elizabeth's relationship to the mirror's reflection by equating the female body with the mortal body of the king and excluding it from access to the corporate body.

V. OPHELIA'S SUICIDE AND THE BODY POLITIC

Having used cultural conventions and the law of widowhood to revise the female monarch's relation to her reflection and identify the female body with pure corporeality, the play goes on to drive that body, in the figure of Ophelia, out of the political realm. Ophelia, in her madness, obligingly complies with Hamlet's disparagement of the female sex: she sings obscene ditties and makes off-color jokes, both at odds with her formerly virginal persona. But she is obliging in more than her vocabulary. Ophelia confirms the ultimate corporeality of the female body: she is pregnant.\(^\text{112}\) Having confirmed this female infirmity, she meets her death in a way that arouses suspicions of suicide, an act that was deemed a felony because it deprived the king of a subject.\(^\text{113}\) In other words, suicide removed the actor from the body politic: a felon's lands were forfeit to the king, and his heirs disinherited and attainted.\(^\text{114}\)

In light of Ophelia's words and behavior, a premarital pregnancy seems highly plausible. Behind the scenes and between the lines of the play it seems reasonable to infer that Ophelia, relying on marriage to Hamlet, engaged in premarital sex, an indulgence fairly common and, within the bounds of communally recognized betrothal, generally tolerated.\(^\text{115}\) However, Hamlet's sudden revelations about his father's death and the nature of women caused him to reconsider his relationship with her, and she is suddenly alone. In this light, Ophelia's seemingly inane ditties about sexual betrayal and loss of innocence make perfect sense:

Tomorrow is St Valentines Day,  
All in the morning betime,  
And I a maid at your window,  
To be your Valentine.  
Then up he rose and donn'd his clo'es,  
And dupp'd the chamber door,

\(^{112}\) This insight is not original to me, but I find it completely credible. See JOHN M. RIDDLE, EVE'S HERBS: A HISTORY OF CONTRACEPTION AND ABORTION IN THE WEST (1997).

\(^{113}\) MACDONALD & MURPHY, supra note 20, at 134.

\(^{114}\) Id.

\(^{115}\) MARTIN INGRAM, CHURCH COURTS, SEX AND MARRIAGE IN ENGLAND, 1570-1640, at 162 (1987).
Let in the maid that out a maid
Never departed more.

By Gis [Jesus] and by Saint Charity,
Alack and fie for shame,
Young men will do’t if they come to’t —
By Cock, they are to blame.
Quoth she, “Before you tumbled me
You promis’d me to wed.”

“So would I a done, by yonder sun,
And thou hadst not come to my bed.”

The idea of Ophelia’s pregnancy garners further support from her ditties about herbs. She mentions rosemary, fennel and rue, all either known or believed at the time to be abortifacients. Rue is recognized today as a powerful abortifacient, and is mentioned repeatedly in midwife manuals of the time as a way to “bring down the courses [i.e., bring on menstruation and, in cases of pregnancy, cause miscarriage].”

Unmarried and pregnant, Ophelia would have become a symbol of social disorder in late Elizabethan and Jacobean society. Laws in these years increasingly focused on unwed mothers and their illegitimate—and unsupported—children as sources of financial instability, moral decay, and social malaise. Like Gertrude’s body, Ophelia’s threatens the social order. On the literal level, then, her death helps restore that order by removing the disruptive female body from the political realm. On the metaphorical level, the imagery used to describe that death dismantles Elizabeth’s self-representation.

First, the imagery of Ophelia’s death revises Elizabeth’s depiction of herself as hidden from view, secret, and self-sufficient. Here is Gertrude’s report:

There is a willow grows aslant a brook,
That shows his hoar leaves in the glassy stream;

There with fantastic garlands did she come

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116. SHAKESPEARE, supra note 2, at act 4, sc. 5, ll. 48-66.
117. Id. at act 4, sc. 5, ll. 177-80.
121. Id.
Of crow-flowers, nettles, daisies, and long purples
That liberal shepherds give a grosser name,
But our cold maids do dead men’s fingers call them:

There, on the pendent boughs her coronet weeds
Clambering to hang, an envious sliver broke;
When down her weedy trophies and herself
Fell in the weeping brook. Her clothes spread wide;

And, mermaid-like, awhile they bore her up:
Which time she chanted snatches of old tunes;
As one incapable of her own distress,
Or like a creature native and indued
Unto that element: but long it could not be
Till that her garments, heavy with their drink,
Pull’d the poor wretch from her melodious lay
To muddy death.’

These lines offer a critique of self-sufficiency, which they redefine as lethal self-absorption. Critics have noted that the willow by the “glassy stream” is a tree whose leaves symbolize sorrow, but have failed to comment on the image of the glassy stream itself. As Gertrude describes the scene, what is important is the mutual reflection between the willow leaves and the water; the willow “shows his hoary leaves in the glassy stream,” and the “hoary” (silver-grey) leaves, whose surface resembles the cloudy silver surfaces of early modern mirrors, may very well allow the stream to “show” itself back. It is thus a scene of mutual reflection, since the “hoary” leaves not only “show” themselves reflected in the water, but suggest the surface of mirrors sending reflections. There are echoes of the myth of Narcissus here: as the youth, so entranced by his reflection in the water fell in and drowned, so Ophelia, oblivious in her distracted grief, “fell in the weeping brook.” In short, Ophelia’s death takes place in the space between two mirrors.

In the closet scene, mirrors were a potent image either of female self-sufficiency or of female dependence. In Gertrude’s report of Ophelia’s death, mirroring again functions as a critique of female self-sufficiency, showing that the space between mutual reflections is a space which offers only death. As Hamlet proved to Gertrude in her closet, a woman’s countenance must reflect male expectations, not simply mirror back her own autonomous desires. Here, the willow leaves in the glassy stream show us an image of mutual self-reflection which is a scene of suffocation and death.

122. SHAKESPEARE, supra note 2, at act 4, sc. 7, ll.165-82.
123. See, e.g., Id. at 544.
The second significant aspect of this scene with respect to Elizabethan imagery involves what I will call Ophelia's unfolding. Even after falling into the water, "incapable of her own distress," Ophelia continues singing as her clothes "spread wide / And mermaid-like, awhile they bore her up" until they finally drag her down. What interests me here is the image of the oblivious, self-absorbed Ophelia with her clothes spread wide bearing her "mermaid-like" on the water. To understand the importance of this image, we must return to Elizabethan self-fashioning.

Folds and folding formed a central part of Elizabeth's iconography and self-image. In a 1586 speech, she said, "[a]nd yet must I needs confess that the benefits of God to me have been and are so manifold, so folded and embroidered one upon another, so doubled and redoubled towards me, as that no creature living hath more cause to thank God for all things than I have." The 1602 Rainbow Portrait brings the imagery of the enfolded ruler to full fruition. More than one commentator has noticed the multiple and overlapping folds in the Queen's robe. But the folds and knots of the Rainbow Portrait depict more than the Queen's chastity. They also present "a highly sexualized yet curiously self-referential body." Elizabeth's robe in the Rainbow Portrait contains "multiple knots, fastenings and multiple foldings... hymen-like boundaries which emblematize her refusal of any phallic attempt at the unraveling and uncoding of her body [as well as a] many faceted eroticism whereby the female body is 'close enwrapped' within itself." By contrast, Ophelia's robes, unfolded, spread out, undo Elizabeth's folds and complete the process of identifying the female body with death and sex—indeed, with nothing. Ophelia's opened robes expose her sexualized body, and contemporary slang for that sexualized body, i.e., for female genitals was "nothing." Hamlet puns on this double meaning in Act Three, Scene Two, when he tells Ophelia that what lies between her legs is "nothing." Where Elizabeth laid claim to the hidden places of the ruler's secret thoughts in her "virgin knot," Ophelia's robes, 'spread wide,' show us, there is nothing.

Finally, Ophelia's "muddy death" presents a sinking of the flesh both literal and metaphorical, away from the spiritual and into the carnal. Mud had political resonance: it represented the fleshly corruption which threatened to spread from the ruler's body natural and infect the body politic. A 1606 political pamphlet about the king's two bodies explains:

soueraigns, through their natural frailties, are subject as well to the

124. ELIZABETH I: COLLECTED WORKS 188 (Leah S. Marcus et al. eds., 2000).
125. BERRY, supra note 107, at 160.
126. Id.
Ophelia’s “muddy death” completes the work Hamlet began when he identified Gertrude with “baser matter.” It shows the female body sunk into its true element, the flesh, at the opposite end of the cosmos from the spirit that was the body politic.

In the graveyard scene, we witness Ophelia’s contested burial. Suspicious that her death was suicide, the Church has decreed that, though she will lie in sacred ground, the ceremony will be limited to what Laertes disparages as “maimed rites.” Before her casket is brought in, however, Hamlet, unbeknownst to the funeral party, is in the graveyard himself, and jumps into the grave after Laertes, incensed at her brother’s show of grief.

The service and ensuing confrontation between Hamlet and Laertes consigns the female body to earth and liberates Hamlet to take up his father’s narrative of kingship. Land plays a crucial role in this transmission of identity. First, Ophelia’s burial aligns the female body once and for all with earth, mud, and flesh. Second, as the references to property law in the scene show, her burial constitutes a metaphorical conveyance of land to Hamlet, a transaction that restores his royal identity. This consignment of the female body to earth and the conveyance of land to Hamlet together result in the Prince’s resurrection. He famously reclaims his royal identity by leaping into Ophelia’s grave shouting, “This is I, Hamlet the Dane!”

Sixteenth-century death and burial effect the final separation of flesh from spirit. The words of the Anglican burial service express the Reformed Church’s relegation of the body and soul to eternally different realms, the body to the earth and the soul to heaven:

We therefore commit his body to the ground, earth to earth, ashes to ashes, dust to dust; in sure and certain hope of resurrection to eternal life.

Shakespeare’s will, typically, expresses the same sentiment:

I commend my soule into the hands of God my Creator, hoping and assuredly believing, through thonelie merits of Jesus Christ my

128. SHAKESPEARE, supra note 2, at act 1, sc. 5, l. 104.
129. Id. at act 5, sc. 1, l. 212.
130. Id. at act 5, sc. 1, ll. 250-51.

http://digitalcommons.law.yale.edu/yjlh/vol20/iss1/2
Savior, to be made partaker of lyfe evelastinge, and my body to
the earth whereof yt ys made.\textsuperscript{132}

In the graveyard, it is literally over Ophelia’s dead body that Hamlet
undergoes the transformation that allows him to accept his fate and
public role, to assume his “true” identity as “Hamlet the Dane,” and to
proceed with the murder of Claudius.

Scholars have recognized that Hamlet’s speech in this scene contains
many legal references,\textsuperscript{133} specifically, language used in the litigation of
property ownership: \textit{fines} were amicable agreements regarding land
ownership which put an end to further disputes, a \textit{recovery} was the
restoration of a former right to land, and the \textit{voucher} was the oath or
oaths taken by a witness to the land’s rightful ownership.\textsuperscript{134} This
language suggests the themes of land ownership and of legal
technicalities that legally but inequitably “trick” rightful owners out of
their rightful holdings. Hamlet’s use of these terms conveys the idea
that he has been “legally tricked” out of his rightful inheritance.

I made an analogy at the beginning of this Article between Hamlet
and Henry VIII, both deprived of their feudal land rights. In language
similar to Hamlet’s, the section of Henry’s draft Statute of Uses
addressing contracts, bargains or agreements about uses in land provides
that the use of lands will not pass by “any recoveries, fines, 
feoffments, gifts, grants, covenants, contracts, bargains agreements or
otherwise” unless under seal and as provided by the act.\textsuperscript{135} Henry’s bill
and Hamlet’s speech are similar because of what they had in common.
Both were lawful rulers deprived of feudal rights—in Henry’s case,
taxes, in Hamlet’s the kingdom itself—by the legal but underhanded
conveyance of land. Henry’s knights conveyed their land through uses,
while Gertrude the widow married Claudius. Neither was technically
illegal, but both subverted the feudal order. Hamlet’s dispossession
arises from the corruption of the female body—Gertrude’s lust-driven
marriage to Claudius. Ophelia’s burial serves to undo this injustice by
consigning to earth the corrupt female body.

As I have shown, the passage of land was integrally tied to the
transmission of aristocratic identity, and Hamlet’s bitter language here
also reflects this connection: land embodies not only the literal
kingdom, but the very identity he has temporarily lost. In a sense, part
of Hamlet’s quest throughout the play—at least, that part assigned to

\textsuperscript{132} WILLIAM LOWES RUSHTON, SHAKESPEARE’S TESTAMENTARY LANGUAGE 4 (London,
Longmans Green and Co. 1869).

\textsuperscript{133} See, e.g., Alexander, \textit{supra} note 1, at 82; Burton, \textit{supra} note 1, at 71; Regnier, \textit{supra} note 1,
at 378.

\textsuperscript{134} WILLIAM L. RUSHTON, SHAKESPEARE A LAWYER 8-10 (London, Longman Brown & Co.
1858).

\textsuperscript{135} Holdsworth, \textit{supra} note 14, at 117.
him by his father—has been to quiet title to the kingdom tricked from him. Why is the graveyard the setting for this reassertion of title, and why is it the place where Hamlet’s title—to his kingdom and his identity—are finally put to rest? An important part of the answer lies in Ophelia’s grave. To explain this, I turn to the case of *Hales v. Pettit.*

*Hales v. Pettit* involved the question of whether a suicide’s lands were forfeit to the crown, or whether they could pass to his widow. In 1554, Sir James Hales “feloniously and willfully drowned himself in Canterbury,” upon which deed, because it was a felony, his lands were deemed forfeit to the Queen, who in turn granted them to the defendant, Cyriack Pettit. When Pettit took possession of the premises, “with force and arms [her] close he broke and her grass to the value of £40 there lately growing with certain cattle, eat up, trod down, and consumed, and other wrongs to her did.” Margaret Hales then brought an action for trespass, arguing that the lands had not reverted to the Queen, but, rather, had passed to her before her husband’s death. She reasoned that there were two parts to the act of suicide: the willful act (throwing himself into the water) and its result (the death), and that the felony which triggered the forfeiture was not completed until the actual death, but that the land had passed at the moment of the willful act. Thus, she argued, the land had passed to her before the completion of the felony, and was not subject to forfeiture.

The court ruled, however, that the felony was committed at the “time of the original offense . . . which was the cause of death and that was the throwing himself into the water.” Thus, both the widow’s claim and the Queen’s claim arose at the same instant. In such a case, the court observed, “the King shall have preeminence” because of the doctrine of the Two Bodies “quia nullum tempus occurrit Regi (time does not run against the King).” The case stands for the proposition that “the queen’s title shall be preferred, since it is the older, and by reason of prerogative, which is public, whereas the subject’s title is particular [private].”

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137. *Id.*
138. DYER, *supra* note 22, at 46. Hales’s suicide was generally ascribed to persecution under Queen Mary, and found its way into John Foxe’s *Book of Martyrs.*
139. Hales, 1 Plowden at 253.
140. *Id.*
141. *Id.* at 258.
142. *Id.* at 258.
143. *Id.* at 262.
144. *Id.* at 263.
145. DYER, *supra* note 22, at 75.
The graveyard scene metaphorically inverts Hales. In Hales, a male suicide forfeited land to a female ruler by virtue of her sovereignty, i.e., her partaking of the Body Politic. In the graveyard scene, we witness the burial of a female suicide who, if she had been legally deemed such, would have forfeited land to a male sovereign, rightfully Prince Hamlet. In a further inversion of Hales, the female body laid to rest in this scene has discredited, through its excessive corporeality, the female body’s claim to house the Body Politic. It is therefore no coincidence, that it is in Ophelia’s grave that Hamlet reclaims his royal identity. The grave is the symbolical birthplace of the reborn Prince, Hamlet the Dane. The Prince’s rebirth has been made possible by the removal of the female body—in the figures of Gertrude and Ophelia—from the political sphere. He is now one with his public identity and purpose.

Moreover, by committing suicide, Ophelia would have offended against not only God and nature, but against the King, for her suicide would have wilfully deprived the Head of the body politic of “one of his mystical members.” Thus the act would have excluded her from both the spiritual and temporal orders, from membership in the Church and the body politic—which, after Henry’s break with Rome, were the same order. Indeed, she barely escapes burial in unconsecrated ground, outside of the churchyard, and the Church.

Hamlet’s remark that the lawyer’s grave is a box is also telling in this regard. As Rushton points out, Hamlet’s comparison of the lawyer’s grave to a box makes sense because “conveyancers and attorneys keep their deeds in wood or tin boxes.” It follows that Ophelia’s grave is also a box, with the same possible double entendre. It contains the deed to Hamlet’s stolen patrimony—his kingdom. One more possible meaning completes the circle: in contemporary slang, the word “box” could also refer to female genitals. Ophelia’s grave and her sexuality are a deed box containing Hamlet’s inheritance—a world of political power without women in which the body politic is transmitted from father to son without the interruption of the mother’s body natural.

Thus the graveyard setting holds significance both because it is the

146. Duchy of Lancaster, 1 Plowden 215 (1561).
147. See Frederic William Maitland, The Crown as Corporation, in SELECTED ESSAYS 104, 108 (H.D. Hazeltine et al. eds., 1936) (noting that “the medieval dualism of Church and State is at length transcended by the majestic lord who broke the bonds of Rome”). This notion of the royal head of the body politic is alive and well: in 1961, Charles de Gaulle told Queen Elizabeth II “[i]n the place where God has put you, be who you are Madam. Be the person in relation to whom, by virtue of your legitimacy, all things in your kingdom are ordered; the person in whom your people receive their own nationhood; the person by whose presence and dignity the national unity is sustained.” TOM NAIRN, THE ENCHANTED GLASS: BRITAIN AND ITS MONARCHY 9 (1988).
148. RUSHTON, supra note 134, at 10.
149. JONATHON GREEN, CASSELL’S DICTIONARY OF SLANG 170 (2d ed. 2006).
place of death and burial, and also because it is the place of resurrection. 150 Hamlet’s rising from the grave is a disguised vision of apocalyptic rebirth, the day of resurrection when the body will be reunited with the spirit. Now that the female body has been excluded from both temporal and spiritual realms of power, the ruler can once again have both a body natural and a body politic. The fragmentation of the first act, brought on by the corrupt body of the female ruler, has been healed.

VI. CONCLUSION

The female body, in its inexorable slide toward corruption and decay, has been driven out of the body politic. Throughout the play, legal discourse has worked with literary imagery to express and add momentum to a backlash against female rule. It is this complex interaction of forces in the backlash that make it such a powerful phenomenon. The idea of the King’s Two Bodies has appeared in the play as a way of discrediting the female body; the laws of marriage and widowhood have discredited female political power, and suicide law has removed the female body from the stage. The ultimate effect is to make the “corrupt” nature of the female body, and thus its exclusion from political power, seem natural, always already present.