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## Ophelia's Crime of Felo De Se

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## OPHELIA'S CRIME OF *FELO DE SE*

To Elizabethan Englishmen, common law was almost common knowledge, for laws were comparatively few and most of them merely codified ancient custom. Even Shakespeare's clownish gravediggers in *Hamlet* knew enough law to misuse legal Latin; and the miscellaneous audience that saw the play, moreover, must have realized this misuse or the joke would have been lost. Shakespeare himself, though his legal knowledge was "neither profound nor accurate",<sup>1</sup> was not entirely ignorant of law. His father, illiterate as he was, had held in his better days the highest municipal offices in Stratford, and seems to have been notably litigious. The dramatist, as shareholder in a company of players, must have had an interest in the many legal battles of this new profession

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<sup>1</sup> 1 UNDERHILL, SHAKESPEARE'S ENGLAND (1917) 381.

as it struggled to make its way in the highly restricted organization of Elizabethan society. Shakespeare's plays, moreover, especially the comedies of manners that immediately precede *Hamlet*, whatever their supposed time or place, are generally conceived, as far as the original story allowed, in contemporary England, with contemporary ladies flirting with contemporary courtiers,<sup>2</sup> with contemporary ministers of state,<sup>3</sup> contemporary soldiers in and out of employment,<sup>4</sup> contemporary servants<sup>5</sup> and constables<sup>6</sup> and rural justices.<sup>7</sup> The setting of these plays is announced as Italy or Illyria or Navarre or where you will, but even if the dramatist had had the knowledge to give them authentic local color of their place and time, it would have been lost on most of his audience. Even the classical background of *Julius Caesar*, the foreign background that Elizabethans probably knew best, was anglicized.<sup>8</sup> Law, almost of necessity, enters into any play that seriously depicts a complex society; and in Shakespeare, as far as the original stories would allow, the legal background is regularly Elizabethan. This legal background most obviously appears in the more or less realistic trial scenes in *The Merchant of Venice* and *Henry VIII*. In *Hamlet*, although the coroner's inquest on Ophelia's death is not presented on the stage, the facts in the case, as shown before us or discussed by various characters, are evident enough.

In two scenes before her death, Ophelia appears insane upon the stage — not a dangerous maniac but obviously suffering from a derangement apparently produced by the shock of her father's murder.<sup>9</sup> Shortly after, the Queen rushes in to announce that Ophelia is dead. The unfortunate girl had climbed out upon a willow branch over a stream. The limb had broken. Her clothes, quilted with "bombast", the woolen wadding of the period, sup-

<sup>2</sup> See Nadine Page, *Beatrice: "My Lady Disdain"* (1935) 50 MOD. LANG. NOTES 494, *et seq.*; and the present author, *Orlando* (1934) 13 PHIL. QUART. 72 *et seq.*

<sup>3</sup> See Sleeth, *Shakespeare's Counsellors of State* (1935) 13 REV. ANG.-AM. 97 *et seq.*

<sup>4</sup> Boughner, *Don Armado as a Gallant* (1935) 13 REV. ANG.-AM. 18 *et seq.*; and the present author, *Captain General Othello* (1931) 43 ANGLIA 503 *et seq.*; *Sir John Falstaff* (1932) 8 REV. ENG. ST. 414 *et seq.*; and *Olivia's Household* (1934) 49 PUB. MOD. LANG. ASSOC. AM. 797 *et seq.*

<sup>5</sup> See the present author, *Shakespeare's Rustic Servants* (1933) 69 SHAK. JHRB. 87 *et seq.*

<sup>6</sup> Frasure, *Shakespeare's Constables* (1934) 46 ANGLIA 384 *et seq.*

<sup>7</sup> See a forthcoming study of Justice Shallow by the present author.

<sup>8</sup> See the present author, *The Realism of Shakespeare's Roman Plays* (1933) 30 ST. PHIL. 225 *et seq.* After 1603 Ben Johnson and Shakespeare seem to have tried for a greater accuracy of local color.

<sup>9</sup> *Hamlet*, IV, v, 72 *et seq.*

ported her for a few minutes as, floating upon the water she sang snatches of songs, quite heedless of her danger. Soon, however, her sodden garments "Pull'd the poor wretch from her melodious lay/ To muddy death." At this recital, her brother Laertes is overwhelmed with grief; and the King, who requires his political support against Hamlet, is fearful of the effect of this untoward accident. Ophelia, in short, seems to have killed herself and the crime of suicide, or *felo de se*, as it was called, was very serious for it involved both civil and ecclesiastical punishments. In civil law it entailed forfeiture of all one's possessions to the Crown; it was originally a type of homicide and was still so regarded in the reign of Queen Elizabeth.<sup>10</sup> In canon law it involved a sort of *post mortem* excommunication, the loss of Christian rights to bell, and requiem, and burial in consecrated ground. The coroner's court had jurisdiction over the civil aspect of such a case.

The office of coroner, which antedates the Magna Carta (1215) perhaps by as much as a century, was in mediaeval times a place of great importance and authority, as a check on the financial powers of the local sheriff.<sup>11</sup> Thus coroners came to hold inquests over suicides because their goods were forfeit to the Crown. The position, however, was ill paid; and the best candidates avoided office. In 1354 the method of choosing coroners was fixed by statute;<sup>12</sup> but the incumbents seem to have been no better; for Parliament, again and again, had to pass laws against bribery and extortion in their courts.<sup>13</sup> In the reign of Henry VII, their fee was set at 13s. 4d. to be paid by the murderer's estate; and, if one may judge by the preamble to a later statute,<sup>14</sup> coroners apparently collected the fee even when there was no murder. In 1555 another effort was made to reform the office by defining its procedure;<sup>15</sup> and by the reign of Elizabeth, its duties had shrunk to the mere holding of inquests. Elizabethan courts were notoriously

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<sup>10</sup> See *Hales v. Petit*, 1 Plowd. 253 (1563). The case is a trespass which involved the ownership of the land in question, which in turn involved a former forfeiture through *felo de se* of the plaintiff's husband. The serjeant for defense argued the *felo de se* "in a degree of murder," *i. e.*, as murder in the first degree. UNDERHILL, *op. cit. supra* n. 1, thinks that in the inquest on Ophelia, Shakespeare glances at this case; but it had taken place forty years before and was probably forgotten.

<sup>11</sup> 1 HOLDSWORTH, HISTORY OF ENGLISH LAW (1922) 82 *et seq.*

<sup>12</sup> 2 PICKERING, STATUTES AT LARGE (1762) 98, quoting the statute 28 EDW. III, c. 6 (1354).

<sup>13</sup> See statutes 34 EDW. III, c. 4 and 8 (1360); 38 EDW. III, c. 12 (1363). This notorious corruption of the court doubtless caused its decline.

<sup>14</sup> See a statute of 1 HEN. VIII, c. 7 (1509).

<sup>15</sup> See 2-3 PHIL. & MAR. c. 10 (1555).

subject to royal influence,<sup>16</sup> for most of the judges held office at the pleasure of the Crown, and Elizabethans would easily understand, if not actually take for granted, that a mere coroner's inquest would be most attentive to the needs and desires of royalty. The King, in order to placate Laertes, was most desirous that Ophelia be acquitted of *felo de se*, and given Christian burial. Laertes was already furious at the secret burial of his father, and the omission of funeral rites for his sister would certainly alienate him.<sup>17</sup>

Unquestionably this intervention of the King, referred to rather clearly as the "great command",<sup>18</sup> was necessary to secure Ophelia's acquittal. Perhaps because life among the lower classes was too miserable to be attractive, the law looked upon *felo de se* as "an heinous offense" for, "as the public have a right to every man's assistance, he who voluntarily kills himself is with respect to the public as criminal as one who kills another", and the punishment prescribed was "as severe . . . as the nature of the case will admit of, namely, an ignominious burial in the highway with a stake driven through the body; and a forfeiture of all the offender's goods and chattels to the king."<sup>19</sup> The crime was defined as "where a man of age of discretion, and *compos mentis*, voluntarily kills himself by stabbing, poison, or any other way."<sup>20</sup> The heirs of Ophelia, if she had property, might have defended her and claimed their inheritance on the basis of insanity; but this defense was too liable to abuse to be readily admitted; and, according to Hale, "not every melancholy or hypochondriacal distemper" makes a man *non compos*, but only "an alienation of the mind", such as renders the subject "frantic."<sup>21</sup> Ophelia, as she appeared upon the stage and as the Queen describes her at her death, is hardly "frantic", and so could scarcely be defended on this score. The only other usual defense, common in all cases of homicide, was that she died *per infortunium*, *i. e.*, by accident, or so-called "chance-medley."<sup>22</sup> The prosecution for the Crown, however, might respond that she had deliberately placed herself in danger above the

<sup>16</sup> 4 HOLDSWORTH, *op. cit. supra* n. 1, at 79; PERCY, PRIVY COUNCIL UNDER THE TUDORS (1907).

<sup>17</sup> On the ceremonious funerals of the age, see the present author, THE FUNERAL ELEGY (1929) ch. 4.

<sup>18</sup> *Hamlet*, V, i, 222. See also 3 COKE, INSTITUTES (1809) 54.

<sup>19</sup> 1 EAST, PLEAS OF THE CROWN (1803) 219.

<sup>20</sup> 1 HALE, PLEAS OF THE CROWN (1778) 411 *et seq.*

<sup>21</sup> *Ibid* at 414.

<sup>22</sup> 5 BACON, NEW ABRIDGEMENT (1811) 116.

stream, as the gravedigger remarked, and so was a sort of accomplice before the fact of her own death. In this case, however, the prosecution was doubtless intentionally weak, and one or both of these excuses was obviously allowed. The gravedigger apparently knew little of either the politics or the pleading that decided the case, since he says that she was acquitted because she was a "gentlewoman". At all events, the "great command" dominated the coroner's inquest,<sup>23</sup> as it was wont to do — usually on the side of severity to gain as many forfeitures as possible for the Crown, but this time, for political reasons, on the side of mercy.

The matter, however, came under not only civil, but also canon, law. Ordinarily the clergy would accept the coroner's verdict in such a case, or the local vicar or rector would pass judgment and grant or withhold the final rites; but the case of Ophelia, as we gather from the gravediggers, had become a *cause célèbre*. Her father had been a great noble and prime minister, and she had been almost betrothed to the Crown Prince. Public opinion was aroused; and the clergy must either vindicate canon law or stultify themselves. Certainly the Rev. Fr. S. A. Blackmore, S. J., is hardly justified in saying that Shakespeare portrays the Church as weak and powerless.<sup>24</sup> The conflict between King and clergy must have been rather keen. The clergyman who officiates at the scant and "maimèd rites" of her burial service refers to an "order"; he says that he has gone as far as his "warranty" will allow; and he does not hesitate even to tell Laertes that her death was "doubtful". The importance of the case and the "order" that he mentions clearly suggest that the matter had been referred to the diocesan or to the metropolitan chancellor, or perhaps to some ecclesiastical court; for the speaker — commentators to the contrary notwithstanding — is clearly not judging the case merely upon his own authority. He roundly declares that, had it not been for royal intercession, "She should in ground unsanctified have lodged/ Till the last trumpet" and, instead of Christian prayers, "Shards, flints and pebbles should be thrown on her." In short, the conflict had resulted in a compromise; the clergy, fearful lest they "profane the service of the dead",<sup>25</sup> had refused to say or sing a requiem; but they had permitted the tolling of the funeral bell,

<sup>23</sup> *Hamlet*, V, i, 222. Apparently the King had been quite able to manipulate the earlier inquest on Polonius so as to hush up the cause of his death.

<sup>24</sup> BLACKMORE, *THE RIDDLE OF HAMLET* (1917) 46.

<sup>25</sup> *Hamlet*, V, i, 230.

the procession to the grave and the "maiden strewments". They had been rather liberal; but still Laertes was furious, and outrageously insults the officiant by literally damning him to hell.

Whether this officiant, described in the folio edition as "Priest" and in the quartos as "Doct." — Doctor of Divinity, or Doctor of Canon Law, or possibly even Doctor of Civil Law<sup>26</sup> — is Anglican or Roman Catholic, has been somewhat debated; and the last word on the subject would seem to make him of the Church of England.<sup>27</sup> The question, however, is of secondary import; for, in either case, the mediaeval canon law, which had been reenacted *in toto* at the accession of Elizabeth,<sup>28</sup> would decide the matter, at least so far as the clergy were concerned. The Reformation, however, by degrees was limiting the powers of the Church, especially those powers that impinged on the civil law: benefit of clergy was more and more restricted as a plea in criminal cases, and wills and testaments and usury<sup>29</sup> became subject to civil statutes. These important branches of the law were in transition for a century or more and the result was some strange compromises between the clergy and the Crown. Ophelia's crime of *felô de se*, which fell under both these jurisdictions, illustrates one such compromise; and the conflicting verdicts and the devious ways by which both were reached — one to satisfy the King, the other to support clerical prestige — are all too characteristic of justice in Tudor times.

Ophelia's funeral then is sheer contemporary realism but it is more than realism for its own mere sake. Dr. Dearmer suggests that her "maimed rites" are due merely to Shakespeare's inability to put on the stage the full pomp of a state funeral;<sup>30</sup> but Shakespeare, and other Elizabethan dramatists, did not hesitate to attempt equally grandiose ceremonies, especially in their chronicle

<sup>26</sup> By a statute of 37 HEN. VIII, c. 17 (1545) (5 PICKERING, *op. cit. supra* n. 12, at 234-235), a doctor of civil law, even though married, might exercise ecclesiastical jurisdiction.

<sup>27</sup> See WILSON, WHAT HAPPENS IN HAMLET (1935) 295.

<sup>28</sup> Henry VIII had appointed a commission to revise canon law (35 HEN. VIII, c. 16 (1543) but apparently nothing came of it and Elizabeth reenacted the old code [1 ELIZ. c. 1, § 2 (1558)]. However, the growing scope and severity of the statutes against *praemunire* (BACON, *op. cit. supra* n. 22, at 481 *et seq.*) must have tended to discountenance the use of ecclesiastical courts in cases of conflicting jurisdiction.

<sup>29</sup> See the present author, *Usury in "The Merchant of Venice"* (1935) 33 MOD. PHIL. 37 *et seq.*; *The Theme of "Timon of Athens"* (1934) 29 MOD. LANG. REV. 20 *et seq.*

<sup>30</sup> WILSON, *op. cit. supra* n. 27, at 295-6.

history plays. Moreover, the pathos of Ophelia's scanted funeral has an important place in the plot for it throws her brother into a state of exasperation and helps to bring about the unseemly quarrel with Hamlet that immediately follows the funeral, and this quarrel between Laertes and the Prince brings on the final catastrophe. Ophelia is a sad, rather passive figure in the play;<sup>31</sup> her story is a fitting background to the dynastic tragedy of the reigning House of Denmark; and nowhere does she arouse a compassion keener and more poignant than in her madness and her death and the "maimèd rites" of her burial.

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<sup>31</sup> Cf. the present author, *Lord Chamberlain Polonius* (1935) 81 SHAK. JHRB. 78 *et seq.*; *Ophelia and Laertes* (1935) 14 PHIL. QUART. 38 *et seq.*; and *Political Themes in Shakespeare's Later Plays* (1936) 35 JOUR. ENG. GER. PHIL. 61 *et seq.*