

THE CARDOZO ELECTRONIC LAW BULLETIN

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IN WESTERN POLITICAL THOUGHT

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Abstract

The essay aims to demonstrate that the historical conditions and the constitutional order that characterized the reign of James I permit to institute a comparison between them and some of the events narrated in the plays Shakespeare wrote during the late Elizabethan and the Jacobean period. The Bard's historical dramas stage the gradual and tortuous passage from a «descendant» model of sovereignty to an «ascendant» model, but in every play there are multiple keys of interpretation, offering a multi – layered structure, in which multiple strands intersect to create a baroque drama - machinery. The literary research is thus combined with the political and legal definition of sovereignty and legitimacy. The first part of the work deals with the parallelism between James' accession to the throne and the plot of *Hamlet*, focusing also on the influence that the king's "historical presence" exerted on the fictional character of the Prince of Denmark. The second part, taking into account James' 'divine right of the kings theory', analyses how the ancient doctrine of "The King's Two Bodies", that it is to find also in *Richard II*, influenced the constitutional conceptualization of the royal prerogatives. The third part illustrates the (failed) attempts in building a national identity after the personal union of the Crowns of England and Scotland and the ambiguities in interpreting *King Lear*, tragedy traditionally linked with the union issue. So historical events, law and literature converge in drawing a period in which ancient and new elements are struggling, and the advent of the modern State is going to reshape the medieval order.

Keywords: Law and Literature, James I, W. Shakespeare, royal prerogatives, union of the Crowns.

1. *The enthronement of a melancholic baroque king*

O, I die, Horatio.

The potent poison quite o'er-crows my spirit.

I cannot live to hear the news from England,

But I do prophesy th' election lights

On Fortinbras. He has my dying voice.

So tell him, with the occurrents, more and less,

Which have solicited. The rest is silence.

William Shakespeare, *Hamlet*, 5.2, 338 – 344

The parallelism between the plot of *Hamlet* and the circumstances that lead to the enthronement of James I is clear. During the years 1600 - 1603, a hereditary-succession drama took place in England. Queen Elizabeth was very old, had not any direct heir and continued postponing the nomination of a successor. The Queen's entourage supported different candidates to the royal accession. Shakespeare with his company was near to the political circle of the Earl of Southampton and the Earl of Essex, that supported James VI, king of Scotland and son of Mary Stuart. This group was persecuted by Elizabeth, who ordered the Essex's capital execution and the confiscation of his assets, sentenced to death Southampton and ordered the Shakespeare's company to depart from London. In a legal perspective, the manner in which the crown passes from a dead king to a new king is one of the issues that Sir Edward Coke discussed in his report of the *Calvin's Case*¹. He argued that the king held the kingdom of England «by birth-right inherent» and that the title was connate with the royal blood, «without any essential ceremony or act to be done *ex post facto*: for coronation is but a royal ornament and solemnization

¹Edward Coke, “*Seventh Report: Calvin's Case or the Case of the Postnati*”, in *Selected Writings of Sir Edward Coke*, vol. I, Steve Sheppard ed. (Indianapolis: Liberty Fund, e – book edition, 2003), 576 ff.

of the royal descent, but no part of the title»². If the Queen died without leaving heirs, it could have represented a danger for the realm. The royal diplomacy had already been working for a long time to avoid a Catholic coup: Cecil was in correspondence with the king of Scotland and the Privy Council immediately proclaimed him king of England before a succession crisis could arise. While Hamlet was the legitimate heir to the throne and gave his *dying voice* to Fortinbras, invoking an election, James was directly designated with the Elizabeth's *dying voice*³. Asserting that succession passed by lineal hereditary right was vital for the new king⁴: the Parliament merely acknowledged the fact adopting the Act of Recognition⁵. James VI Stuart king of Scotland ascended the throne of England with the name of James I in 1603, unifying the Crowns of England and Scotland⁶. He pardoned the Earl of Southampton and returned to the Essex's widow the assets of her executed husband. Shakespeare was allowed to play in London and was

² Ernst Hartwig Kantorowicz, *The King's Two Bodies. A Study in Medieval Political Theology* (1957), (Princeton: Princeton University Press, 2016), 317. Coke was critical towards who upheld that, before the coronation ceremony, the king was «no complete and absolute king» and that anyone could commit any act of violence against the yet uncrowned king without being charged for treason

³ Carl Schmitt, *Amleto o Ecuba. L'irrompere del tempo nel gioco del dramma* (1956) (Bologna: Il Mulino, 2012), 102 ff.

⁴ Conrad Russell, "1603: The End of the English National Sovereignty", in Glenn Burgess, Jason Lawrence, Rowland Wymmer (editors), *The Accession of James I. historical and Cultural Consequences* (Houndmills: Palgrave Macmillan, 2006), 5 -6 : «In Tudor England, which at least in this had an ascending theory of power, it was a cardinal principle that the determining authority in succession was an Act of Parliament. In 1602, the governing law was 35 H.8 c.1, which gave Henry VIII authority to dispose of the crown by will. For avoidance of doubt, the Treason Act of 1571, 13 Eliz c.1, in Section 4, laid down that it was treason to deny that Parliament should have power to determine the succession [...] It is James's principle which is expressed in the 1604 Act of Recognition (1 Jac.1 c.1) The Parliament had no authority in this process whatsoever».

⁵ «Wee being bounden thereto both by the lawes of God and man doe recognize and acknowledge that immediately upon the dissolution and decease of Elizabeth late queen of England, the imperiall crowne of the realme of England – did by inherent birthright and lawfull and undoubted succession descend and come to your most excellent Majesty».

⁶ See *infra*, par. 2 - 3.

named Groom of His Majesty's Chamber, awarded the title of King's Man and allowed to wear the Lord Chamberlain's badge⁷.

In *Hamlet* there is a link between reality and representation, that cannot be defined as a mere allegory but as an «irruption». The historical events occupy the poetic text as an external force, determining a state of tension that transform a *Trauerspiel* in a *Tragödie*⁸. Literary texts and their interpretations make clear the difference subsisting between the «conservative moment» and the «distortive moment» coexisting in a national tradition, clarifying how the past can be a tool to satisfy different legitimation strategies. The «monopoly of memory» could be menaced by the «pluralization of memories» and by the «multiplication of historical perspectives»⁹. For example, the scene in which the dying Hamlet nominated Fortinbras as his successor, could have different political implications: it was an appeal before James became king, and an homage after his accession to the throne, and it is in this sense that it was interpreted at the time¹⁰.

James I was one of the main theorists of the 'divine right of kings doctrine', as emerged from his books and from his speeches in Parliament. He was a great reader and a writer of books (he wrote *Demonologiae* in 1597, *The True Law of Free Monarchies* in 1598 and *Basilikon Doron* in 1599¹¹), keen on subtle conversations and ingenious formulations, a celebrated author and debater in a century of theological controversies¹². In *Demonologiae* he posed the

⁷Schmitt, *Amleto o Ecuba*, 54 – 55.

⁸Schmitt, *Amleto o Ecuba*, 85 ff.; 109 ff. The A. borrowed the distinction from Walter Benjamin, but emphasized the difference between the categories of the German tragic play and the barbaric character of Shakespeare's drama.

⁹ Cristina Costantini, *Nomos e Rappresentazione. Ripensare metodi e funzioni del diritto comparato*, (Milano: Mimesis, 2018), 110 – 111.

¹⁰ Schmitt, *Amleto o Ecuba*, 63; *Hamlet*, 2.2.

¹¹ James I, *The Political Works of James I* (1616), Charles Howard McIlwain ed., (Cambridge: Harvard University Press, 1918).

¹² Schmitt, *Amleto o Ecuba*, 65 – 66. «There are more things in heaven and earth, Horatio/Than are dreamt of in your philosophy», *Hamlet*, 1.5, 166 – 167.

problem of apparitions in the same manner as Shakespeare in *Hamlet*¹³. It is a typical allegorical and baroque dialogue, aiming to demonstrate that witchcraft is a felony and so the jurisdiction over these crimes shall pass from the ecclesiastical courts to the common law courts. In a theological – political perspective, the treason against God is equated with a felony against the king. In that way the jurisdiction over devils justifies the king’s pretension to act politically like a god on earth¹⁴. James wrote *The True Law*, that circulated as an anonymous work, when he was King of Scotland. He thought of the Monarchy as a perfect form of government, the most similar to God’s *modus agendi*¹⁵, but had two main concerns: opposing to the Presbyterian theory, according to which the king is bound by an original covenant with the people and to the Catholic idea, which submit the king under the direct or indirect control of the Pope. When James became king of England, he was also the head of the Anglican Church and the divine right of the kings theory played a relevant role in strengthening caesaropapism. But the Puritans and the common lawyers continued giving him some causes for concern. The latter were the most dangerous at all, because from their definition of English law as *lex terrae* derives that it could not be the law of the king. During the Middle Ages the principle *non est enim potestas nisi a deo* (St. Paul) was not intended to exclude any control or participation of the people in the exercise or acquisition of civil power. God did not need to attribute authority directly to the kings: he has endowed men with reason, so it was up to them to give

¹³ Schmitt, *Amleto o Ecuba*, 66. Hamlet is doubtful and reduced to *inaction* also because of the question whether his father's ghost was a devil from hell or not. For further references on the theological disputes linked to the nature of ghosts, see Costantini, *Nomos e Rappresentazione*, 103, nt. 19.

¹⁴ Pier Giuseppe Monateri, *Dominus Mundi. Political Sublime and the World Order* (Oxford: Hart, 2018), 103 ff.

¹⁵ James I, “*The True Law of Free Monarchies*”, in *The Political Works of James I*, 54: «[Monarchy] as resembling Diuinitie, approacheth nearest to perfection, as all the learned and wise men from beginning haue agreed; Unitie being the perfection of all things».

themselves a government. The temporal power could therefore have both divine and popular origins. According to James' interpretation, the king's power could not be limited and rested on three pillars: divine revelation, historical tradition and law of nature¹⁶. The first pillar is based on the Bible, which, according to his interpretation, provided that kings are enthroned by God himself, so they are divine and do not have to respond for their actions to "mortals". Then the king is empowered to administer justice and give laws to his people, realising the good of the kingdom. So no one has jurisdiction over the sovereign: he connects the heavenly and the earthly dimensions and people have only to obey, coherently with the idea of the world order as a hierarchy of jurisdictions and obedience provided by God¹⁷. The second argument deals with the principle of "the king precedes the law", that comes from the legal and historical origins of the Scottish monarchy¹⁸. In that way the king must try to remain faithful to his laws, but they cannot limit the sovereign power. The third pillar rests on the law of nature, that James explained in a metaphoric language¹⁹. James' ideas can be considered as constituting an alternative system to other contemporary political and constitutional theories, challenging the Parliament and the common law tradition which described the *rex* as *sub lege*, supporting a divine right of kings theory that was rooted in the middle age but raised to a «baroque paroxysm» of theological-political self-celebration²⁰. The divine right of kings was the

¹⁶ Monateri, *Dominus Mundi*, 87.

¹⁷ Monateri, *Dominus Mundi*, 89.

¹⁸ Monateri, *Dominus Mundi*, 88. Fergus, first king of Scotland, left Ireland to conquer the Scottish land, where lived barbarians to whom he gave laws.

¹⁹ James I, "A Speech As It Was Delivered In The Vpper House Of The Parliament to the Lords Spirituall and Temporall, and to the Knights, Citizens and Burgesses There Assembled, On Munday the XIX Day of March 1603, being The First Day of The First Parliament", in *The Political Works of James I*, 269 ff.: «I am the Husband, and all the whole Isle is my lawfull Wife; I am the Head and it is my Body; I am the Shepherd and it is my Flocke».

²⁰ Mauro Balestrieri, *La legge e l'arcaico. Genealogia comparata dell'ordine moderno* (Milano: Mimesis, 2017), 297.

issue that James argued during all his life. It represented a right made sacred by blood, which was the privilege of kings elevated to the crown by way of legitimate succession, a privilege denied to usurpers²¹.

The ghost - king in *Hamlet* commands the Prince to re-establish the legitimate succession line avenging his killing. In this way vengeance became «memory continued by other means» and the revenger is transformed in a «remembrancer», intended as «an agent of memory and one whose task is to exact payments for the debts of the past²²». Memory, as Law, needs a “body of mediation” that enunciates it and keeps it alive, constituting the object of a tradition. Hamlet, responding to the invocation of the specter, makes the time flowing again, from a point of the past that represented an interruption: he re-establishes a line of succession that had been violated and broken²³. Shakespeare did not deal with the theme of the guilt or innocence of Gertrude, thus concealing, but revealing in negative, the overlap between the mother of Hamlet and the Queen of Scots²⁴. The tragedy shows that tradition can be founded on an act of betrayal, that narrative can be disconnected from facts and private memory separated from public national past²⁵. James revered Mary Stuart’s memory and did not permit anybody to

²¹ Schmitt, *Amleto o Ecuba*, 66; Pier Giuseppe Monateri, *Sovereign Ambiguity - From Hamlet to Benjamin via Eliot and Schmitt* (January 21, 2009), Available at SSRN: <https://ssrn.com/abstract=1293724>, 8 - 11: «According to Schmitt [...] this possession of the State was legitimate insofar as filiation was legitimate. After the Revolution, this legitimacy is lost and the acquisition of power becomes in itself the source of its legitimacy. Hence, a situation – which is typical of the state of exception – of progressive indeterminacy of both facts and of the law sets in. Indeed, the state of exception becomes somehow permanent, as it becomes the very paradigm of the foundation/suspension of the law [...] Hamlet’s revenge is actually the realization of the political situation according to the dynastic legitimacy, this revenge takes place in the ambiguity in which politics and law have fallen after the breakdown of classical sovereignty. Hamlet’s political action is, in fact, hidden and revealed at the same time through the mask of irrationality (madness), instead of manifesting itself as the reasonableness of a good legislation».

²² Michael Neill, *Issues of Death: Mortality and Identity in English Renaissance Tragedy* (Oxford: Clarendon Press, 1997), 247; Costantini, *Nomos e Rappresentazione*, 104 – 105.

²³ Costantini, *Nomos e Rappresentazione*, 106 - 108.

²⁴ Carlo Galli, *Il trauma dell’indecisione*, in Schmitt, *Amleto o Ecuba*, 10.

²⁵ Costantini, *Nomos e Rappresentazione*, 99 – 100.

cast suspicion on her for his father's murder. In his book *Basilikon Doron*, James binds his son always to honour the memory of that queen, but the audience of *Hamlet* was sure of her guilt. In these circumstances, the writer prudently avoided the issue of guilt²⁶. As Monateri says, «Horatio can tell Fortinbras just what it happened, and the rest is silence. All the folly of Hamlet, all that is passed in his mind, all the secrets of Ophelia's despised love, all the mysteries of the court, and the intricacies of Hamlet's mother involvement or not in his father's murder, all this is silence. Horatio, as we, cannot speak about it and it must pass over in silence²⁷». The transformation of the typical figure of the revenge-seeker could well be linked with the historical "presence" of the King, intended as a cross-reference structure²⁸. It is a clear example of the principle according to which reality is stronger than any aesthetics. James was the living product of the dismemberment of his era²⁹.

The reign of James I has been crossed by tensions that represented a forecast of the dissolution of the medieval order. James – Hamlet, stuck on an historical – political rift, embodies the impossibility of the traditional power to face at new emerging problems. Inaction, and so the choice of not to

²⁶ Schmitt, *Amleto o Ecuba*, 56.

²⁷ Pier Giuseppe Monateri, "The rest is silence...Hamlet's death, Wittgenstein and the working of "too-muchness". Toward a revised model of text-reading", in *The Cardozo Law Electronic Bulletin*, vol. XXII, 2016 (1), 2 -3. In this essay the A. studies the parallel between the end of *Hamlet* and the end of the *Tractatus* through the "close reading" approach, investigating texts without any external reference to the context or the classification into varying academic fields.

²⁸ Costantini, *Nomos e Rappresentazione*, 22; Peter Goodrich, *Languages of Law: From Logics of Memory to Nomadic Masks* (London: Weidenfeld & Nicholson, 1990), 61: «presence is indexical, it is prae – sens, in advance of the senses, in excess of the immediate, imminent, the bearer of a history, a predefined alchemical being».

²⁹ Schmitt, *Amleto o Ecuba*, 67. Contra Thomas Sterne Eliot, "Hamlet and his Problems", in Id., *The Sacred Wood. Essays on Poetry and Criticism* (New York: Alfred A. Knopf, 1921), 87 ff.: «Hamlet (the man) is dominated by an emotion which is inexpressible, because it is in excess of the facts as they appear», 101; he is «an experience which [...] exceeded the facts», 103 and «So far from being Shakespeare's masterpiece, the play is most certainly an artistic failure», 98 and «We must simply admit that here Shakespeare tackled a problem which proved too much for him», 102.

decide, is the real tragedy and the characteristic of his reign³⁰. Differently from others Shakespearean characters, Hamlet's melancholic lassitude is purely intellectual³¹. He feels apathetic and indifferent towards everything that once inspired him³², he is disillusioned and cynic³³. In theological terms, our "hero³⁴" is under the influence of the "Noonday Demon". The Church Fathers named as *acedia*, *tristitia*, *taedium vitae* and *desidia* a mortal illness that causes the withdrawal from divine good, the most lethal of the vices and the only one for which no pardon was possible. The slothful does not lack salvation, but the way that leads to it³⁵. There is not an eclipse of will, but its object is made unobtainable. Kafka will write «there exists a point of arrival, but no path», and so the slothful king rests, condemned to immobility. Melancholy is not only a «serious play» in which, as Freud writes in his work *Creative Writers and Day-Dreaming*, man succeeds in «enjoying [his] own day-dreams without self-reproach or shame», but also a gnoseological device³⁶.

³⁰ Galli, *Il trauma dell'indecisione*, 20.

³¹ Lawrence Babb, *The Elizabethan Malady. A Study of Melancholia in English Literature from 1580 to 1642*, (East Lansing: Michigan State College Press, 1951), 106. As Claudius observes in *Hamlet*, 3.1, 163 – 168: « There's something in his soul/O'er which his melancholy sits on brood/And I do doubt the hatch and the disclose/Will be some danger, which for to prevent/I have in quick determination/Thus set it down».

³² *Hamlet*, 2.2, 291 – 297: «I have of late – but wherefore I know/not – lost my mirth, foregone all custom of exercise, and/indeed it goes so heavily with my disposition that/this goodly frame, 133 the earth, seems to me a sterile/ promontory, this most excellent canopy, the air, look/you, this brave o'erhanging firmament, this majestic roof/fretted with golden fire, why, it appears no other thing to/me than a foul and pestilent congregation of vapors».

³³ *Hamlet*, 1.2, 129 – 130: « O, that this too too solid flesh would melt/Thaw and resolve itself into a dew!»; Id., 3.1, 55 ff.:«To be, or not to be: that is the question».

³⁴ Babb, *The Elizabethan Malady*, 109: «To Elizabethan playgoers Hamlet's melancholy would seem quite sufficient explanation for his procrastination. To them the play would be no mystery. In their eyes Hamlet would be a tragic character because he had become passion's slave, because he had failed to master his grief. This failure in self-mastery, they would perceive, had resulted in the atrophy of powers which were urgently necessary to the solution of his problem».

³⁵ Giorgio Agamben, "The Noonday Demon", in *Stanzas. Word and Phantasm in Western Culture* (Minneapolis: Minnesota Press, 1993), 3 – 10. On the Devil's practice of victimizing melancholy men, see Babb, *The Elizabethan Malady*, 106. *Hamlet*, 2.2, 585 - 589: «The spirit that I have seen/May be a devil, and the devil hath power/ T' assume a pleasing shape – yea, and perhaps/Out of my weakness and my melancholy/As he is very potent with such spirits».

³⁶ Giorgio Agamben, "The Phantasms of Eros", in *Stanzas*, 25 – 26: «If the external world is in fact narcissistically denied to the melancholic as an object of love, the phantasm yet receives from this

According to Aristotle, melancholy is a symptom of genius and prudence, and during the Renaissance, sometimes it was linked with Machiavellism, arguing that constant mental industry increases the inclination to do evil³⁷. The melancholy type is then «a person who reflects rather than acts, who is painfully circumspect and very much inclined to thinking too precisely on the event³⁸».

But these times are not still favourable to the spread of the so called «Elizabethan malady». The relationship between ancient and new elements imposes changes and where someone could see new disorders coming, there is a new *nomos* fighting to reshape reality³⁹.

2. *The King's Two Bodies and the King's Two Potestates*

... For within the hollow crown
 That rounds the mortal temples of a king
 Keeps death his court, and there the antic sits,
 Scoffing his state and grinning at his pomp,
 Allowing him a breath, a little scene
 To monarchize, be feared and kill with looks,
 Infusing him with self and vain conceit,

negation a reality principle and emerges from the mute interior crypt in order to enter into a new and fundamental dimension. No longer a phantasm and not yet a sign, the unreal object of melancholy introjection opens a space that is neither the hallucinated oneiric scene of the phantasms nor the indifferent world of natural objects. In this intermediate epiphanic place, located in the no-man's-land between narcissistic self-love and external object-choice, the creations of human culture will be situated one day, the interweaving of symbolic forms and textual practices through which man enters in contact with a world that is nearer to him than any other and from which depend, more directly than from physical nature, his happiness and his misfortune».

³⁷ Babb, *The Elizabethan Malady*, 58.

³⁸ Babb, *The Elizabethan Malady*, 108.

³⁹ Carl Schmitt, *Land and Sea* (1942) (Washington, Plutarch Press, 1997), 59.

As if this flesh which walls about our life
Were brass impregnable, and humoured thus
Comes at the last and with a little pin
Bores through his castle wall—and farewell king.
William Shakespeare, *Richard II*, 3.2, 160-170

During James' reign, the ancient metaphor of the King's Two Bodies had still a relevant role in the legal culture. During the Elizabethan period, this theory was the instrument to settle the notorious claim concerning the Duchy of Lancaster, which the kings of that dynasty had owned as a private property and that Edward VI had rented although he was a minor. From the Plowden's report emerges that, according to the common law, no act that the king has performed as a king could be annulled because of his age defect, because the king has in himself two bodies: the body natural and the body politic⁴⁰. The model of the king's body politic is so ancient to be traced back to Sir John Fortescue⁴¹ but in 1603 is still alive: Francis Bacon suggested for the crowns of England and Scotland, now united, the name of "Great Britain" as an expression of the "perfect union of bodies, politic as well as natural"⁴². In 1608, the King's Bench decided the *Calvin's Case*, also known as the Case of the Postnati, according to the King's Two Bodies doctrine, establishing that a child born in Scotland, after the Union of the Crowns, was considered under the common law to be an English subject. Under the feudal system, the absolute loyalty owed by a subject to the King, made illegal the

⁴⁰ Kantorowicz, *The King Two Bodies*, 7 ff.: «Three Kings [Henry IV, V, VI] held the Duchy of Lancaster in their Body natural, which is not so ample and large as the other, and the fourth [Edward IV] held it in his Body politic, which is more ample and large than the Body natural».

⁴¹ John Fortescue, *The Governace of England*, Charles Plummer ed. (Oxford: Clarendon Press 1885), 121. Frederic William Maitland, in the introduction to his translation of Otto Gierke *Political Theories of the Middle Age* (Cambridge: Cambridge University Press, 1927) XI, refers to Plowden's quotations as «a late instance of this old concept».

⁴² Kantorowicz, *The King's Two Bodies*, 24.

ownership of land by one person in two different kingdoms. The Court held that Calvin was not a foreigner and he could hold land in England. It was necessary to establish whether the subject's loyalty was linked to the body natural or to the body politic of the king. In the first case, considering the two distinct Crowns, Calvin belonged to the Scottish Crown, while in the second case it was under the protection of James and he had the same title as an English subject to hold properties. So body politic contained the Office, Government, and Majesty but the body natural was equally important for the safety of the realm, because, as Sir Edward Coke reported, every subject loyal to the king is loyal to his natural person, just as the king is loyal to his people in his natural person and treason is «to intend or compass *mortem et destructionem domini Regis*, must needs be understood of his natural body, for his politic body is immortal, and not subject to death⁴³».

The clearest example of how the treason of the body natural of the king leads to a painful split from his body politic is Shakespeare's *Richard II*. The tragedy is linked with the James' accession to the English throne. In fact, the conflict between Richard and Bolingbroke was compared with the conflict between Elizabeth and Essex. In 1601, on the eve of his unsuccessful rebellion against the Queen, Essex ordered to play *Richard II* in the Globe Theatre. It has been told that at the time of Essex' execution, Elizabeth exclaimed: "I am Richard II, know ye not that?"⁴⁴. The tragedy represents a *summa* of the principles of the divine right of the king doctrine, even if it is not dependent from any constitutional support. The king does not exactly correspond to the model of virtuous monarchs presented in the various examples of contemporary *Specula principum*, but coherently with the theocratic conception of monarchy,

⁴³ Kantorowicz, *The King's Two Bodies*, 14 – 15.

⁴⁴ Kantorowicz, *The King's Two Bodies*, 40 – 41.

staining the King's own land with the King's blood⁴⁵ is the most despicable crime (and sin)⁴⁶. Richard is defined as a «wasteful King⁴⁷», blamed for having not took care of England, as considerate gardeners do with their plants, and for having leased out «this royal throne of kings, this sceptered isle, this earth of majesty, this seat of Mars, this other Eden, demi-paradise, this fortress built by Nature for herself [...] Like a tenement or pelting farm⁴⁸». The king is sacrificed and this act assumes a particular value: sacrifice constitutes a species of body and of presence as it happens in the breaking of the bread⁴⁹, that is indicative of the destruction of a body so as to cleanse or remit or simply to make a new body⁵⁰. But the King's body politic is teared apart from the body natural before the killing. When Richard is facing at his faults, he seems not to recognize himself as a King⁵¹, emphasising his human frailties⁵² and no longer impersonating the mystic body of the nation. During what Walter Pater defined as an «inverted rite» in which

⁴⁵ «That hand shall burn in never-quenching fire/That staggers thus my person. Exton, thy fierce hand/Hath with the King's blood stained the King's own land/Mount, mount, my soul, thy seat is up on high/Whilst my gross flesh sinks downward here to die», *Richard II*, 5.5, 108 – 112.

⁴⁶ Bolingbroke is in a paradoxical position; he is an ambiguous character. By one side, he frees the kingdom from a bad sovereign that risked to take England toward a situation of chaos, by the other, as a regicide, he subverts the divine order. In a soliloquy, King Henry V will remember his father's sin: «Not to-day, O Lord!/O! not to-day, think not upon the fault/My father made in encompassing the crown/I Richard's body have interr'd anew/And on it have bestow'd more contrite tears/Than from it issu'd forced drops of blood», *Henry V*, 4.1, 312 ff.

⁴⁷ *Richard II*, 3.4, 55.

⁴⁸ *Richard II*, 2.1, 40 ff.

⁴⁹ *Hamlet*, 4.3, 16 – 19: «Now, Hamlet, where's Polonius?/At supper./At supper? Where?/ Not where he eats, but where 'a is eaten».

⁵⁰ Goodrich, *Languages of Law*, 58: « It is an act of betrayal that establishes an order of belief; it is the destruction of a body that founds the social body and translates a visible presence into the immanent presence, the intimacy of the divine or the *corpus mysticum* of the state [...] That sacrifice is necessary is a matter of ensuring obedience to the gods, but then also to knowledge, to an inaugural legitimacy or space of foundation».

⁵¹ «I had forgot myself, am I not king?/Awake thou coward majesty! Thou sleepest», *Richard II*, 3.2 83 – 84. Kantorowicz, *The King's Two Bodies*, 27: «This state of half-reality, of royal oblivion and slumber, adumbrates the royal "Fool"».

⁵² «mock not flesh and blood/With solemn reverence, throw away respect/Tradition, form, and ceremonious duty/ For you have but mistook me all this while/I live with bread like you, feel want/Taste grief, need friends—subjected thus/ How can you say to me, I am a king?», *Richard II*, 3.2, 171-179.

Richard «undoes himself with hierophantic solemnity⁵³», he renounces to all the royal symbolic attributes⁵⁴, remaining a bare creature with no name⁵⁵. Kantorowicz affirms that the King «is no less a traitor than the others, or is even worse than they are: he is a traitor to his own immortal body politic and to kingship [...] the king body natural becomes a traitor to the king body politic, to the “pompous body of a king.” It is as though Richard’s self-indictment of treason anticipated the charge of 1649, charge of high treason committed by the *king* against the *King*⁵⁶». And Goodrich adds that «in secularised legal terms, the sacrifice founds the authority of law; it establishes the state as the social body, the invisible or mystic continuance that was the Crown and became the sovereignty of Parliament⁵⁷». So it is to say that *Richard II* can be considered as a Shakespearean *Götterdämmerung*, prefiguring the tragic end of the age of the despotic figure of *rex gratia dei*.

Beside the ‘divine right of kings theory’, to make an overview of the Jacobean theological-political system, it is still to be analysed the issue concerning the constitutional role of royal prerogatives. It is related to the disputes on the powers of the king in a state of emergency. The core of the Bate’s Case (1606), one of the most discussed judicial case of the Stuart period, relies on the difference between *potestas absoluta* and *potestas ordinata*⁵⁸. The former is expression of the absolute power of the king and it is applied for the people’s sake; the latter is encompassed in the common law area and it is expression of traditional principles of justice, that cannot be changed without a

⁵³ Kantorowicz, *The King’s Two Bodies*, 36.

⁵⁴ «Now mark me how I will undo myself/I give this heavy weight from off my head/And this unwieldy sceptre from my hand/The pride of kingly sway from out my heart/With mine own tears I wash away my balm/With mine own hands I give away my crown/With mine own tongue deny my sacred state/With mine own breath release all duteous oaths/All pomp and majesty do I foreswear», Richard II, 4.1, 203 ff.

⁵⁵ «I have no name [...] And know not now what name to call myself», Richard II, 4.1, 254-255.

⁵⁶ Kantorowicz, *The King’s Two Bodies*, 38 - 39.

⁵⁷ Goodrich, *Languages of Law*, 59.

⁵⁸ Monateri, *Dominus Mundi*, 90.

parliamentary vote. Bate was a member of the Levant Company which imported raisins from Turkey and presented a complaint to the Court of Exchequer, alleging that he refused to pay the import duties on its matches because they were imposed without the Parliament's assent. The Court stated that the king could take any preventive action to counter an imminent danger (*defense in advance*)⁵⁹. Sir Edward Coke, in his *Twelfth Report*, shared the point of view taken by Chief Baron Fleming⁶⁰ in Bate's case decision, invoking the role of *salus populi* to justify the king's impositions, adopted without the Parliament's assent⁶¹.

So *potestas absoluta* represents an «indefinite reserve of power [...] a sublime political power⁶²» relied on the prerogatives of the king. The exert of royal prerogative can be linked with the assumption that God created a general law of nature, but he did not regulate miracles⁶³. Three years after the Bate's case, in a speech to the Parliament, James himself argued that «Kings are not only God's Lieutenants upon earth, and sit upon God's throne, but even by God himself they are called Gods [...] Kings are justly called Gods, for that

⁵⁹ *Bate's Case or Case of Impositions* (1606) 2 St. Tr. 371 ff.: «All commerce and affairs with forrainers, all wars and peace, all acceptance and admitting for current forrain coyn, all parties and treaties whatsoever are made by the absolute power of the King [...] and whereas it was objected, that if it were in the time of war, it is sufferable, but in peace not, this seems no reason; for the king cannot be furnished to make defence in war, if he provides not in peace, and the provision is too late made, when it ought to be used».

⁶⁰ John William Allen, *English Political Thought: 1603 – 1660*, vol. I (London; Methuen & co., 1938), 17: «perhaps Fleming came nearer than any other lawyer to a definition of the nature of absolute prerogative».

⁶¹ Edward Coke, “*Twelfth Report: Customs, Subsidies and Impositions (Bate's Case)*”, in *Selected Writings of Sir Edward Coke*, vol. I, 1276 ff.: «The King may charge his people of this Realm without speciall assent of the Commons, to a thing which may be of profit to the common people, but not to their charge [...] the King cannot at his pleasure put any Imposition upon any Merchandize to be imported into this Kingdom, or exported, unlesse it be for advancement of Trade and Traffic, which is the life of every Island, *Pro bono publico* [...] the end of all such restraints is *Salus populi*».

⁶² Monateri, *Dominus Mundi*, 91; Id., *The rest is silence*, 6: «the “sublime dimension”, or, as we prefer to call it, the “too-muchness device” operates as a *remainder*».

⁶³ Monateri, *Dominus Mundi*, 93. It is not an unquestionable concept. Even if Carl Schmitt related miracles and exception, Marc Bloch differently asserted the magic of the king, implying the distinction between magic and theology.

they exercise a manner or resemblance of Divine power upon earth [...] putting so a difference between the generall power of a King in Divinity and the settled and established State of this Crowne and Kingdome⁶⁴».

It is an «heterodox⁶⁵» perspective, summarizing the parallelism between the absolute and ordinary powers of God and *potestas absoluta* and *potestas ordinata* of the king. The former is unquestionable and mysterious⁶⁶; the latter can be an object for discussion. This is because one power is expression of the hidden will of the Monarch – God and the other is visible and revealed⁶⁷. James explained the difference between the prerogative of the sovereign as a person and the prerogative of the Crown during a speech at the Star Chamber, in which he also remarked that «the mysteries of the Kings power is not lawfully to be disputed [...] the Absolute Prerogative of the Crown is no Subject for the tongue of a lawyer, nor is lawful to be disputed⁶⁸».

Differently from the Elizabethan age, during which jurists, according to Roman Law suggestions, were defined “Priests of Justice” and developed not only a “Theology of Kingship” but theorized a new “Royal Christology”⁶⁹,

⁶⁴ James I, “*A Speech to the Lords and Commons of the Parliament at White-Hall*” (1609), in *The Political Works of James I*, 307 ff. Monateri, *Dominus Mundi*, 94: «Not even Frederick I could admit to sitting on the Throne of God». And the same Richard II is “only” «God’s substitute/His deputy anointed in his sight», *Richard II*, 1.2, 37 – 38.

⁶⁵ Monateri, *Dominus Mundi*, 102: «We think that the birth of the political represented a major fracture in the history of the West, and that its origins were much more heterodox than expected. Our main claim is that the origin of modernity had a *demonological* quality, which also lies at the heart of the romantic aesthetics of the sublime».

⁶⁶ Monateri, *Dominus Mundi*, 107 - 108: «In James’ theories, the mysterious royal prerogatives are there to protect the subjects first of all against the Devil’s powers. Our own suspicion is, thus, that there is more of a *demonological* than a pure *theological* origin to modern sovereignty; or, to better state it, that the political – theological device is in its own turn the by – product of a deeper political – demonological complex».

⁶⁷ Francis Oakley, “*The ‘Hidden’ and ‘Revealed’ Wills of James I: More Political Theology*” (1972) 15 *Studia Gratiana*, 367 ff.

⁶⁸ James I, “*Speech of the Star Chamber*” (1616), in *The Political Works of James I*, 333 ff. Kantorowicz, *The King’s Two Bodies*, 28, nt. 15 reports that one of the most famous of Richard’s “tyrannies” with which he was charged in 1399 was the affirmation according to which «Laws are in the King’s mouth, or sometimes in his breast».

⁶⁹ Kantorowicz, *The King’s Two Bodies*, 16.

now, disputing on what is within the powers of the monarch constitutes a crime of sedition⁷⁰. Trying to give a definition of royal prerogative is blasphemous and neither a lawyer can do it: absolute power is ineffable. Lawyers and kings are «oracles of the Law», entitled with a «metaphorical *sacerdotium*⁷¹». These two kinds of *sacerdotium* are separated. By one side lawyers cannot discuss on *potestas absoluta*, by the other king is denied in court. In fact, Coke asserted the king was not initiated into the mysteries of the temple⁷². The definition of the terms absolute and ordinary give the chance to characterize differently absolute monarchy. Absolute is the contrary of ordinary, with the significance of exceptional. So power is beyond law and language, showing itself in the state of exception. Power cannot belong to the “ordinary” man, and it is referred to the sovereign⁷³. The king is «*Lex loquens*⁷⁴», he embodies the spirit of law⁷⁵, then materialized by his decisions. It means that the will of the king, *lex animata*, living source of the law, prevails on *lex locuta*, the traditional law came into force from immemorial time⁷⁶. On the contrary, common lawyers argue that «*Judex est lex loquens*⁷⁷», recalling the ciceronian description of the magistrate in a passage of *De Legibus*⁷⁸. The category of *potestas absoluta* is suspended between a political – theological and a legal perspective. In fact, it is the basis of the royal prerogative but also the basis of the Equity Jurisdiction, a different legal system from the common law

⁷⁰ For an overview of the philo-monarchical political literature concerning this theme see Balestrieri, *La legge e l'arcaico*, 300, nt. 255.

⁷¹ Costantini, *La Legge e il Tempio*, 11 ff; Id., *Nomos e Rappresentazione*, 24; Goodrich, *Languages of Law*, 108 – 109.

⁷² William Holdsworth, “*Sir Edward Coke*”(1935) 5 *The Cambridge Law Journal* 332.

⁷³ Monateri, *Dominus Mundi*, 95.

⁷⁴ James I, “*A Speech to the Lords and Commons of the Parliament at White-Hall*” (1609), 310.

⁷⁵ Goodrich, *Languages of Law*, 54: «The conceptual apparatus of the Church, the theology of presence in the Eucharist, becomes in Law the question of the “spirit of law”, of the “living voice of law”».

⁷⁶ Balestrieri, *La legge e l'arcaico*, 302.

⁷⁷ Edward Coke, “*Seventh Report: Calvin’s Case or the Case of the Postnati*”, in *Selected Writings of Sir Edward Coke*, vol. I, 576 ff.

⁷⁸ Balestrieri, *La legge e l'arcaico*, 303, nt.261.

developed since the XIV century, thanks to the jurisprudence of the Court of Chancery. The common law courts are entitled with “ordinary” powers, while the Court of Chancery exerts “extraordinary” powers «in some few or singular cases», avoiding a conflict of jurisdiction⁷⁹. Costantini defines Equity as «the way to institutionalize the exception in the blissful act of rendering effective justice. Equity was theologically – politically substantiated into the King’s absolute power, into his extraordinary pre-eminence of jurisdiction⁸⁰». Holdsworth⁸¹ highlights that the terms “ordinary” and “absolute” referred to the king’s powers represented an application of legal categories to politics. In that way English absolutism borrowed these terms and concepts as legal tools for political legitimation⁸².

3. *The unaccomplished search for an icon of national identity*

Let it be so, thy truth then be thy dower.
 For by the sacred radiance of the sun,
 The mysteries of Hecate and the night,
 By all the operation of the orbs
 From whom we do exist and cease to be,
 Here I disclaim all my paternal care,
 Propinquity and property of blood,
 And as a stranger to my heart and me
 Hold thee from this forever.

⁷⁹ William Lambarde, *Archeion, or a Discourse upon the High Courts of Justice in England* (1591), Charles Howard McIlwain ed. (Cambridge (MA): Harvard University Press, 1957), 44.

⁸⁰ Costantini, *Millenaristic Equity. Theological Order and Legal Faith*, in *Pólemos*, 10 (2), 2016, 352. See also Daniela Carpi (editor), *The Concept of Equity. An Interdisciplinary Assessment* (Heidelberg: Winter, 2007).

⁸¹ William Holdsworth, *A History of English Law*, vol. II, (London: Methuen & co., 1932), 596

⁸² Balestrieri, *La legge e l'arcaico*, 304 – 305.

William Shakespeare, *King Lear*, 102 – 108.

The James' attempt to transform Scotland and England into the unitary realm of Great Britain is premature. In his first speech in Parliament, the King speaks about the union of the English and the Scottish kingdoms in these terms: «I hope therefore no man will so be vnreasonable as to thinke that I that am a Christian King vnder the Gospel, should be a Polygamist and husband to two wives; that I begin the Head, should have a divided and monstrous Body; or that being the Shepherd to so faire Flocke [...] should have my Flocke divided in two⁸³». The King claimed that union would made Britain «a little World [...] intrenched and fortified' by the sea, but also garrisoned by the armies of England and Scotland⁸⁴». This idea will find the opposition of patriotic parliamentarians on both sides. Another century is yet to pass before these nationalist tendencies had softened sufficiently to unify the nation. But after 1603, the literary, the political and the legal elements melt themselves in a process that aims to build a new national identity, relying on a certain cultural memory⁸⁵. The royalists define the Union of the Crowns of England and Scotland as a return to a glorious past, as a re – composition of a perfect Reign, as a political *remembrance*⁸⁶. According to them, union was not an innovation, but a restoration of Britain's ancient and

⁸³ James I, “*A Speech As It Was Delivered In The Vpper House Of The Parliament to the Lords Spirituall and Temporall, and to the Knights, Citizens and Burgesses There Assembled, On Munday the XIX Day of March 1603, being The First Day of The First Parliament*”, in *The Political Works of James I*, 269 ff.: «[...] and since the successe was happie of the Saxons Kingdome being conquered by the speare of Bellona; How much greater reason haue wee to expect a happie issue of this greater Vnion, which is only fastened and bound up by the Wedding Ring of Astrea? And as God hath made Scotland the one halfe of my life, and you here to enjoy the perfect and the last halfe thereof; so can I not thinke that any would be so iniurious to me, no not in their thoughts and wishes, as to cut asunder the one halfe of me from the other».

⁸⁴ Id., 296.

⁸⁵ Costantini, *Nomos e Rappresentazione*, 111.

⁸⁶ Costantini, *Nomos e Rappresentazione*, 130.

true condition, dating back at the time of its foundation by Brutus and to the era of King Arthur. In fact, James was defined by some writers as a ‘second Brute’. Much of the unionist campaign did not insist in presenting the union as a political fact, but encouraged people to start thinking of themselves as Britons⁸⁷.

Departing from a reflection on the Schmitt’s essay *Hamlet or Hecuba*, Costantini frames the Shakespearean revenge - drama in a more complex plot, whose elements consist in many poetical writings directed to create a national tradition, linking the present to a mythological past⁸⁸. During the Jacobean period, a «tired and tiresome Tudor genre, the spectral complaint⁸⁹», become the privileged tool for political propaganda. For example, the ghost - king in *Hamlet* commands the Prince to re-establish the legitimate succession line avenging his killing⁹⁰, but there are other less famous specters in contemporary literature, asking for the “resurrection” of a forgotten national past⁹¹. The most remarkable example of ghost in the unionist literature is the spirit of Britain in William Harbert of Glamorgan’s central poem of *Englands Sorrowe*, ‘The Lamentation of Britaine’, written three

⁸⁷ Philip Schwyzer, “*The Jacobean Union Controversy and King Lear*”, in Glenn Burgess, Jason Lawrence, Rowland Wymer (editors), *The Accession of James I. historical and Cultural Consequences* (Houndmills: Palgrave Macmillan, 2006), 35: «Some writers went so far as to suggest that the terms ‘Scottish’ and ‘English’ should be forgotten – if the peoples were to be distinguished at all, it must be as ‘North Britons’ and ‘South Britons’».

⁸⁸ Costantini, *Nomos e Rappresentazione*, 116 ff.

⁸⁹ Schwyzer, “*The Jacobean Union Controversy and King Lear*”, 37.

⁹⁰ Costantini, *Nomos e Rappresentazione*, 105. Revenge is accompanied by the acts of remembering and writing: «Ay, thou poor ghost, while memory holds a seat/In this distracted globe. Remember thee?/Yea, from the table of my memory/I’ll wipe away all trivial fond records/All saws of books, all forms, all pressures past/That youth and observation copied there/And thy commandment all alone shall live/Within the book and volume of my brain/Unmixed with baser matter. Yes, by heaven» *Hamlet*, 1.5, 95 – 104. According to the Jacques Derrida’s conception of “spectre”, Costantini argues that written texts live of a “spectral breath”, that the materiality of the page cannot stifle nor solve. For a further inquiry see Id., 27 ff.

⁹¹ Costantini, *Nomos e Rappresentazione*, 117 – 128. The A. analyses Edmund Spenser’s *The Ruines of Time* (1591), Thomas Lodge’s *The Complaint of Elstred* (1593) and William Herbert of Glamorgan’s *England sorrowe, or a farewell to Essex* (1606).

years after the accession of James I. In the opening, Harbert encounters Britain's ghost adrift on the Severn, in a boat with broken oars. The shipwreck and the storm are at the same time real and metaphorical: both the woman and the political body of which she is poetic metonymy are in danger⁹².

Britain is a «mournful Queen» who talks about the contrast between her past glories and present problems. Formerly, Britain had been ruined because of the ambition of Mordred for King Arthur's crown. After the James' accession, England can re-build Britain's ancient glory through union with Scotland. In this poem Wales takes a significant role in the union through the fact that the apparition takes place on the banks of the Severn⁹³. Differently from Hamlet's father ghost, Britain does not ask for remembrance or revenge, but for resurrection, made possible by James himself⁹⁴. «British history is a family drama⁹⁵», that Harbert transferred to a geographical dimension⁹⁶.

⁹² Costantini, *Nomos e Rappresentazione*, 125.

⁹³ Stewart Mottram, "William Browne and the Writing of Early Stuart Wales", in Stewart Mottram, Sarah Prescott (editors), *Writing Wales, from the Renaissance to Romanticism* (Farnham: Ashgate, 2012), 101: «When Harbert's Britain returns to the island she once called home, it is to the Severn that 'Englands king', King James, repairs, to bid Britain 'welcome with the full consent/ Of countries twaine heroicke Parliament'. James may speak for the 'twaine' parliaments of England and Scotland, but he stands here on the erstwhile border of Britain's other nation, Wales. Harbert's poem is a paean to Anglo-Scottish union, but in its glance towards Wales, it is also a plea that the new Britain under James remember the Britons of old. Sailing up the Severn, Harbert's 'Britain' invites readers to reconsider the role of Wales in the union debates».

⁹⁴«And James high Steward to the silver sphere/Which doth this lower kingdome canopies/Servant to him who in his hand doth beare/The thunder stone, vouchaft with gracious eis/To entertaine this Queenes calamities/And her proclaimed through all his emperie/Cleaping himselfe, Monarch of Brittainie», William Harbert of Glamorgan, *The Lamentation of Britanie*.

⁹⁵ Schwyzer, *The Jacobean Union Controversy and King Lear*, 38.

⁹⁶ For further references concerning the ideological and political usage of geography and maps during the Renaissance period, see Costantini, *Nomos e Rappresentazione*, 122, nt. 68.

The union issue is so linked with generational themes: unionist writers⁹⁷ invoked the story of Brutus and Shakespeare's *King Lear* too can be considered as a contribution to the unionist movement, although its atmosphere appears pessimistic⁹⁸. *King Lear* is interpreted as a work favourable to Union because of the parallelism between Lear's «division of the kingdom⁹⁹» between his three daughters and Brutus's division between his three sons: according to the unionists, Brutus and Lear made the same mistake dividing the realm. But in the Shakespearean drama there is no point in which division is considered as the origin of the tragedy. Lear's political error can also be identified in his will of retaining his title, «the royal name¹⁰⁰», and paternal prerogatives after having assigned the realms to his daughters¹⁰¹. The ambiguity of the text on the union question then opens to contradictory readings. It is remarkable that this drama, that the King's Men brought to court for the Christmas season of 1606, did not openly endorse the royalist propaganda as many contemporary literary texts. There is neither any trace of anti – Scottish tendencies. *King Lear* is a purely antiquarian exercise, there is no connection between past and present. It is pervaded by a sense of eternal condition of loss, that assumes the different forms of rejection, severance, denial, blindness and death, summarized in the verse «now she's gone forever¹⁰²». The total disconnection¹⁰² between past and present is also provided by the extinction of the royal bloodline at the end of the tragedy.

⁹⁷ Schwyzer, *The Jacobean Union Controversy and King Lear*, 47, nt. 14: «in Munday's *Triumphes of Re-united Britania*, in which Brutus is described as wedded to the 'imperial lady' Britain, and his three sons are accompanied by female representations of England, Scotland, and Wales».

⁹⁸ Schwyzer, *The Jacobean Union Controversy and King Lear*, 39; Christopher Wortham, 'Shakespeare, James I and the Matter of Britain', in *English: The Journal of the English Association*, 45 (1996), 97–122.

⁹⁹ *King Lear*, 1.1, 3 – 4.

¹⁰⁰ *King Lear*, 1.1, 134.

¹⁰¹ Schwyzer, *The Jacobean Union Controversy and King Lear*, 39: «Lear's retention of the 'name' of Britain seems designed to keep the daughter-kingdoms in cannibalistic confinement, incorporated and digested within the paternal body. No wonder their feelings for him are less than filial».

¹⁰² *King Lear*, 5.3, 244.

The traditional centrality of the royal blood as device for dynastic continuity is banished: blood here is not able to sustain a bond between generations. On the contrary, every time that blood is evocated, it is the signal of the break of a bond¹⁰³. And there is neither the possibility that past could come back as a ghost. When Cordelia is alive, Lear speaks to her as she is dead¹⁰⁴ and when she really dies, he hopes in a resurrection that doesn't happen¹⁰⁵. In this tragedy, ghosts don't want to return¹⁰⁶. The reunion with the dead will be accomplished only after another death. The real object of the drama is not the question of union, «but something at once older and more enduring, the nostalgic spirit of nationalism¹⁰⁷». It is a very different drama from a patriotically oriented play as *Henry V*. While in the former there is not any community, neither memory, nor future, in the latter the audience is involved in founding events of national history, as it happens in the St. Crispin's Day Speech¹⁰⁸. Henry V is the captain of a new type of monarchs, which includes, among the others, Henry IV and Fortinbras. Henry V appears since the beginning as a skilled strategist, a sovereign attentive to the management of his own image and to the reactions it engenders in his people. He is a king who, while still showing himself as an icon of divine majesty on

¹⁰³ *King Lear*, 1.1.111–12: «Here I disclaim all my paternal care, / Propinquity and property of blood»; Id., 2.2.386–90: «thou art my flesh, my blood, my daughter/ Or rather [...]A plague-sore or embossed carbuncle, / In my corrupted blood»; Id., 3.4.149–50: «I had a son /Now outlawed from my blood». For further details on this issue, see Schwyzer, *The Jacobean Union Controversy and King Lear*, 40.

¹⁰⁴ *King Lear*, 4.7, 47: «You are a spirit, I know. Where did you die?».

¹⁰⁵ *King Lear*, 5.3.309–10: « Look on her. Look, her lips. / Look there, look there».

¹⁰⁶ *King Lear*, 5.3, 288 – 290: «Vex not his ghost. O, let him pass. He hates him/That would upon the rack of this tough world/Stretch him out longer».

¹⁰⁷ Schwyzer, *The Jacobean Union Controversy and King Lear*, 45.

¹⁰⁸ *Henry V*, 4.3, 18 – 67 in part. 60 – 67: «We few, we happy few, we band of brothers/For he today that sheds his blood with me/ Shall be my brother; be he ne'er so vile/ This day shall gentle his condition/ And gentlemen in England now a-bed/ Shall think themselves accurs'd they were not here/ And hold their manhoods cheap whiles any speaks/ That fought with us upon Saint Crispin's day».

earth, of the sun that universally bestows his gifts¹⁰⁹, then seeks the solidarity of its soldiers, appealing to the sense of brotherhood that wants to warn against their sovereign and thus favoring the horizontal relational line, although a hierarchical relationship subsists between them. Nothing more distant from *Richard II* and the theory of the divine right of kings embodied by James I.

4. *Some final remarks*

The Bard's historical dramas stage the gradual and tortuous passage from a «descendant» model of sovereignty to an «ascendant¹¹⁰» model. Studying at the historical and constitutional events through the Law and Literature approach gives to legal scholars the opportunity to regain the complexity of the world in which they operate¹¹¹. According to William Holdsworth's lesson, literary texts «gives us information to which we look in vain in the regular authorities¹¹²».

In every play there are multiple keys of interpretation, offering a multi – layered structure, in which different strands intersect to create a baroque drama - machinery. Analyzing the most relevant vicissitudes of the reign of James I and the system of underlying values and historical sources in *Hamlet*, *Richard II* and *King Lear*, a series of issues that shed the light on undervalued or “heterodox” aspects emerges. Putting together pieces that, taken individually, are also endowed with autonomous meaning, it is to obtain a

¹⁰⁹ *Henry V*, 4. Chorus, 29 – 47.

¹¹⁰ According to the terminology introduced by Walter Ullmann, *Principles of Government and Politics in the Middle Ages* (London: Methuen & co., 1961).

¹¹¹ Cristina Costantini, *Diritto e Letteratura*, in Rodolfo Sacco (editor) *Digesto delle Discipline Privatistiche. Sezione Civile* (Torino: UTET, 2012), 346.

¹¹² William Holdsworth, *Charles Dickens as a Legal Historian* (New Haven: New York University Press, 1928), 148.

result comparable to an Arcimboldo's painting. In particular, literary research and political and legal definition of sovereignty and legitimacy that characterize a certain era are taken to create such an experiment of *Ars combinatoria*. The parallelism between James' accession to the throne and the plot of *Hamlet*, permits to focus on the problem concerning the manner in which the crown passes from a dead king to a new king. The drama is a clear example of "irruption" of reality in the poetic dimension, while at the same time Sir Edward Coke discussed the matter in his report of the *Calvin's Case*. Then, the 'divine right of the kings' theory represents the foundation on which James built his theological – political constitutional system. This doctrine is deeply linked with the ancient elaboration of the idea of "The King's Two Bodies", whose acme and crisis is summarized in the tragedy of *Richard II*. It is remarkable that such ancient theory represents the legal basis of the conceptualization of the royal prerogatives as emerged from the distinction between *potestas absoluta* and *potestas ordinata* that is the main point of the *Bate's Case*. Another issue deals with the (failed) attempts in building a national identity after the personal union of the Crowns of England and Scotland. The support of the royalists is not enough to realize a project that appears premature because of the strong opposition of English and Scottish nationalists. Beside some literary texts that celebrate King James as a "second Brutus", *King Lear*, the Shakespearean tragedy traditionally linked with the union issue, presents some ambiguous aspects and can be interpreted in opposite manners.

The reign of king James represents the descending parable of an idea of Monarchy rooted in the Middle Ages that, beside theoretical and political efforts, is irreversibly fading. Historical events, law and literature converge in drawing a period in which ancient and new elements are struggling, and the advent of the modern State is going to reshape the medieval order.