

Shakespeare's Guide to Tax Policy: 'Know You of This Taxation?'

By Michael W. Evans

Michael W. Evans is a partner in the Washington office of the law firm K&L Gates. Previously, he worked in the U.S. Senate, including as chief counsel to the Senate Finance Committee and as tax counsel to Sen. Max Baucus, D-Mont. Evans would like to thank Craig Gannett, Paul Stimers, Daniel Ritter, and Maureen Evans for their comments on this article.

In this article, Evans discusses William Shakespeare's writings about tax policy. He begins by describing the tax system in Renaissance England and Shakespeare's personal experience with taxes. Then he discusses the significance of tax policy in Shakespeare's work, focusing on *Richard II* and *Henry VIII*.

Introduction

Writers commenting on tax policy sometimes have invoked the words of William Shakespeare to support their views. For example, earlier this year IRS attorneys mentioned Shakespeare in a field advice memorandum regarding the application of section 845 to offshore reinsurance transactions.¹ The use of Shakespeare has become so frequent that in 2006 *Tax Notes* editor Robert

¹FAA 20092101F (Feb. 4, 2009), *Doc 2009-11761*, 2009 *TNT* 98-25 ("as the bard said, all the world's a stage, and in this drama companies E and F are the primary players," quoting *As You Like It*). See also *McMahan v. Commissioner*, 114 F.3d 366 (2d Cir. 1997), *Doc 97-16162*, 97 *TNT* 106-16 ("the lesson to be learned in this area of the tax law is that a taxpayer should 'trust no agent,'" quoting *Much Ado About Nothing*); *Maruska v. United States*, 77 F. Supp. 1035, 1036 (D. Minn. 1999) (rejecting a challenge to the withholding system, quoting Shylock's protest, in *The Merchant of Venice*, that "you take my life when you take the means where by I live"); *Calarco v. Commissioner*, T.C. Summ. Op. 2004-94 (July 20, 2004), *Doc 2004-14877*, 2004 *TNT* 140-14 (quoting King Henry VIII's questions about taxation, discussed in this article, in a case involving a theater professor's claimed business deductions); *Brewer Quality Homes, Inc. v. Commissioner*, T.C. Memo. 2003-200, *Doc 2003-16457*, 2003 *TNT* 133-6 (criticizing a taxpayer's calculations by quoting Glendower's assertion, in *Henry IV, Part 1*, that "I can call spirits from the vasty deep," and Hotspur's response, "Why so can I, and so can any man, but will they come when you summon them?"); Bradley T. Borden, "A Win-Win Proposal for Analyzing Profits-Only Partnership Interests," *Tax Notes*, Oct. 6, 2008, p. 75, *Doc 2008-19152*, 2008 *TNT* 195-41 (using the quotation, from *Romeo and Juliet*, "that which we call a rose, by any other name would smell as sweet," to analyze the characterization of entities as partnerships); Roberta Mann, "Beyond Enforcement: Top 10 Strategies for Encouraging Tax Compliance," *Tax Notes*, May 22, 2006, p. 919, *Doc 2006-9020*, 2006 *TNT* 99-32 (using the same quote to argue that "a tax by any other name might seem considerably sweeter"); Bryan T. Camp, "The Evil That Men Do Lives After Them . . .," *Tax Notes*, July 26, 2004, p. 439, *Doc 2004-14485*, 2004 *TNT* 144-34 (using Antony's speech at Caesar's funeral, from

(Footnote continued in next column.)

Manning wrote an article explaining some of the Shakespeare lines most commonly misused in writings about tax policy.²

This led me to ask whether we can derive specific lessons about tax policy from Shakespeare's writing. After all, Shakespeare is, as Samuel Johnson wrote, "above all writers, at least above all modern writers . . . the poet that holds up to his readers a faithful mirror of manners and of life,"³ and many of Shakespeare's plays are about how a king or other leader asserts, justifies, and maintains political power. Moreover, Shakespeare's writing has been an important influence on American political thinking, relied on by, among others, John Adams, Thomas Jefferson, and Abraham Lincoln. It is worth exploring the extent to which Shakespeare addresses the use of political power to impose taxes.

To be sure, Shakespeare did not make tax policy the centerpiece of any of his plays. This is understandable. To most people (readers of *Tax Notes* excepted), tax policy does not pack the same dramatic punch as, say, murder, civil war, or tragically doomed romance. A play about valuation issues arising under the parliamentary subsidy of 1523 was as unlikely to pack the Globe Theater in Shakespeare's time as a movie about the treatment of passive losses under the Tax Reform Act of 1986 would be to pack the local multiplex today. Moreover, it was very dangerous for a late 16th century English playwright to express opinions about political matters. An official censor reviewed the text of every play proposed to be performed in London, enforcing a law prohibiting the performance of plays in which "either matters of religion or of the governance of the estate of the commonwealth shall be handled or treated."⁴ If Shakespeare violated this law, he could lose his freedom or even his head. As a result, as historian Alvin Kernan wrote, "Shakespeare took his politics . . . to his grave with him,"⁵ and the plays tell us little about his personal views regarding the political issues of his time.

That said, in two plays tax policy has a significant role, contributing to the downfall of one king in *Richard II* and to the rise of another in *Henry VIII*.

Taxation in Shakespeare's England

To put Shakespeare's thinking about tax policy in perspective, consider the situation in which he was

Julius Caesar, as a model for criticizing the Senate Finance Committee's actions in revising the IRS tax determination process).

²Robert F. Manning, "Ding Dong, Bard of Avon Calling, or, Don't Quote Me Like That," *Tax Notes*, Mar. 6, 2006, p. 1075, *Doc 2006-3416*, 2006 *TNT* 45-41 (discussing the derivation and misuse, in tax cases and articles, of such popular phrases as "gilding the lily," "honored in the breach," "sea-change," and "short-shrift").

³Samuel Johnson, "The Writings of William Shakespeare," reprinted in *Samuel Johnson: The Major Works*, p. 421 (Donald Greene, ed.).

⁴Quoted in Stephen Greenblatt, *Will in the World: How Shakespeare Became Shakespeare*, p. 339 (2004).

⁵Alvin Kernan, *Shakespeare, The King's Playwright: Theater in the Stuart Court, 1603-1613*, p. xxi (1997).

writing. In the late Elizabethan period, an age of exploration and religious reformation, England, a small island nation of four million, was emerging from the Middle Ages into the Renaissance and stepping onto the world stage. As it did so, it faced many problems, including the risk of renewed civil war over rival claims to the crown, the sharp religious conflict between Protestants and Catholics, and the danger of invasion from much more powerful Spain. As England faced these problems, its system of government was evolving. The old feudal system depended on maintaining a balance among powerful landowning families contending for influence in the royal court. Now, power was becoming centralized, and Parliament was becoming increasingly important.

England's growth and centralization had implications for tax policy. Under the old feudal system, monarchs relied largely on "demesne" revenues, such as fees for the use of the king's land or fees paid in lieu of feudal service. As the feudal system was replaced by the administrative structure of an emerging nation-state, and as wars became more frequent and costly, the need for revenue rose, and demesne revenues alone proved insufficient. This led to the development and implementation of a system of direct taxes.

These taxes had to be approved by Parliament. In 1215 the English barons forced King John to sign the Magna Carta, by which he agreed to be bound by a series of limitations, including that "no scutage or aid is to be levied in our realm except by the common counsel of our realm."⁶ Thereafter, although monarchs continued to have discretion to increase demesne revenues unilaterally, direct taxes could not be imposed without the consent of Parliament, which would insist that such taxes be temporary and limited to the amount necessary to defray extraordinary national expenses, such as for a war. Parliament periodically convened to consider direct taxes, and the feudal fiscal system was gradually replaced by a more modern system, with the percentage of revenue raised from direct taxes rising from 40 percent in 1540 to 80 percent by 1630.⁷ During this time, economic historian Michael J. Braddick wrote, "the English state extracted much larger sums of money [than previously], and this extractive capacity grew faster than the economy."⁸

There were two principal forms of direct taxes (in addition to customs revenue, primarily from tariffs on wool exports). First, the "fifteenth" and the "tenth" were taxes imposed on geographical areas, such as villages or urban wards. An assessment was established for an entire area (that is, either one-fifteenth or one-tenth its value), and local officials translated the assessment into specific taxes on individuals, based on the value of goods and land.⁹ Second, the "subsidy" was a tax established on a national scale and imposed directly on individuals, with-

out a local intermediary. Although subsidies were considered fairer and more efficient and hence were preferred by national revenue authorities, they generally were an unpopular innovation, and Parliament was reluctant to approve them. However, as time went on and revenue needs grew, subsidies were more frequently approved. Economic historian Roger Schofield writes that the history of parliamentary taxation during the first half of the 16th century (shortly before Shakespeare wrote) was "the history of a successful attempt to replace the fifteenth and tenth as the main form of taxation by a more viable directly assessed subsidy."¹⁰ Queen Elizabeth, ever cautious, partly reversed the trend toward higher taxes, keeping her own household expenses relatively low and generating significant revenue by selling crown lands. Nevertheless, the threat posed by Spain beginning in 1588 required Elizabeth to seek several subsidies for greater military preparedness, and Parliament consented.¹¹

The first English subsidy was a flat poll tax. The system gradually evolved and became complex, featuring several progressive rates applying to both income and the value of property, detailed collection procedures, exemptions and other forms of relief, and a separate method for collecting taxes from the nobility.¹² Not surprisingly, the system resulted in frequent controversies. For example, in 1523 Parliament balked at new taxes proposed by Cardinal Wolsey, the great modernizer of the English tax system, and in 1525 a further proposal from Wolsey caused widespread public anger and had to be revoked. The valuation of property was particularly controversial, with a character in a 1585 play ruefully declaring, "He that had a cup of red wine to his oysters was hoisted in the Queen's subsidy book."¹³

It also should be noted that these national taxes were in addition to local taxes, such as those in Shakespeare's hometown of Stratford-upon-Avon, where municipal endeavors such as a school, an almshouse, and a system of paved roads were supported by taxes on, among other things, the number of elm trees growing on a person's property.¹⁴

By the late 16th century taxation was an important part of England's political economy and everyday life. It was a matter of both significant political controversy and frequent practical dispute. In that sense, Shakespeare's world was perhaps not so different from ours.

Shakespeare and Taxes

Young William Shakespeare went from Stratford to London in about 1590 to make his fortune. His occupation was new for the time — he was a playwright, producer, and actor, providing popular entertainment to members of an emerging middle class who had some leisure time and disposable income. Over the next 25 years, he wrote between 36 and 39 plays (as well as

⁶Magna Carta, para. 12.

⁷Michael J. Braddick, *The Nerves of State: Taxation and the Financing of the English State, 1558-1714*, p. 9 (1996).

⁸*Id.*

⁹Roger Schofield, *Taxation Under the Early Tudors, 1485-1587*, pp. 36-44. (2004)

¹⁰*Id.*, p. 2.

¹¹See A.L. Rowse, *The England of Elizabeth*, pp. 376-382 (2003).

¹²See Schofield, *supra* note 9, pp. 93-137.

¹³John Lyly, *Mother Bombie*, Act II, Scene V.

¹⁴Rene Weis, *Shakespeare Unbound: Decoding a Hidden Life*, p. 43 (2007).

sonnets and several long poems), most of which were performed publicly shortly after they were written.¹⁵ He became a prominent and successful playwright and impresario, making a modest fortune and rising into the English upper middle class.

While working in London, Shakespeare had some difficulty with taxes and with the tax collecting authorities. The documentary record of Shakespeare's life is sparse, telling us little, and, because of its paucity, contributing to the theory that Shakespeare was not the author of the plays that bear his name; nonetheless, it includes some tax records.¹⁶ Specifically, it records two tax delinquencies. The London tax records for 1597, when Shakespeare was at the height of his career, list him as having failed to pay a tax assessment of five shillings (a relatively small amount) on his goods. Given that the persons listed, including Shakespeare, were considered to be either "dead, departed . . . or their goods . . . in private and covert manner kept" such that the tax could not be collected from them, Shakespeare scholar Charles Nicholl wrote that the "conclusion seems to be that he was evading payment."¹⁷ The records for 1598 again list Shakespeare as having failed to pay an assessment, this time of 13 shillings. The records for 1599 repeat the notation of this second delinquency and include Shakespeare on a list of persons who appear to be unreachable because they have no goods, chattels, lands, or tenements within London, perhaps because by this time he had moved his theater across the Thames River and hence outside London's city limits. The records for 1600 continue to note the delinquency and also contain a marginal note that seems to indicate that the debt had been referred for collection to a bishop in the district where Shakespeare was then thought to reside. There the trail ends — with Shakespeare two years delinquent paying his taxes for 1598 and with the English tax authorities in slow but diligent pursuit. One assumes that Shakespeare paid the debt and thereby got himself off the tax delin-

quency list, and there is no evidence, in the records of either the London area or Stratford, to indicate that Shakespeare had further trouble with the tax authorities.

At about the same time, Shakespeare appears to have become involved with taxes in another way. Stratford, which recently had been devastated by fires, was seeking legislation to reduce its taxes. A longtime neighbor and friend of Shakespeare's from Stratford, Richard Quiney, who had held various positions in the Stratford local government, was deputized by the Stratford Corporation "to ride to London about the suit . . . for discharging of the tax and subsidy."¹⁸ After Quiney had been in London for several months lobbying government councils for relief from the tax, he was in danger of running out of money. Another Stratford resident, Abraham Sturley, suggested that Quiney ask Shakespeare for a loan. This made some sense because by this point in his career, Shakespeare had become prominent in London and was financially successful — so much so that, despite his failure to promptly pay his London taxes, Shakespeare recently had purchased the second largest house in Stratford; he might well be willing to assist his Stratford neighbors with their work in London. Quiney wrote Shakespeare a letter requesting a loan of 30 pounds (this was a lot of money — Shakespeare's new home in Stratford cost 60 pounds), saying, "You shall friend me much in helping me out of all the debts I owe in London."¹⁹ It appears Shakespeare agreed, with Sturley writing, "our countryman Master Wm. Shakes. would procure us money."²⁰ Quiney's lobbying effort eventually succeeded, with Parliament passing legislation that not only reduced Stratford's taxes but also reimbursed Quiney for his expenses in London.²¹ Thus, Shakespeare seems to have had a short but successful career underwriting Stratford's London tax lobbyist.

As a student of English history and a keen observer of English politics, Shakespeare understood the importance of tax policy to the nation's political discourse. Perhaps more important, as a thriving entrepreneur who sometimes struggled to pay his own taxes, he understood the practical burdens that taxes impose. With that background, let us turn to how Shakespeare addressed tax policy in his plays.

Richard II

The first play in which tax policy becomes an issue is *Richard II*. This play is particularly important because it sets in motion the events that unfold in the main series of Shakespeare's English histories, which tell of English politics during the subsequent reigns of Henry IV, Henry

¹⁵There is broad agreement that Shakespeare wrote most or all of 36 plays included in the *First Folio*, which was published in 1623 and formally titled "Mr. William Shakespeare's Comedies, Histories, and Tragedies"; there is disagreement about his contribution to several other plays. There also is, of course, a separate debate about whether it really was William Shakespeare of Stratford and London who wrote the plays, or instead someone else, such as Francis Bacon or the Earl of Oxford, who used Shakespeare as a "front." To my mind, the *First Folio* itself, published by contemporaries seven years after Shakespeare's death, with William Shakespeare as the stated author of its 36 plays, is itself very powerful evidence that Shakespeare did indeed write the plays. The *First Folio* was a prominent book sold in London, and there is no evidence that anyone questioned the legitimacy of Shakespeare's authorship at the time.

¹⁶The various records of Shakespeare's London taxes are in the Public Record Office of the Exchequer and are available at <http://home.hiwaay.net/~paul/shakspere/evidence1.html>. They are summarized well in Charles Nicholl, *The Lodger Shakespeare*, pp. 40-41 (2007). For a humorous treatment of Shakespeare's difficulty paying his London taxes, see Bill Pechel, "Much Ado About Shakespeare's Taxes," available at <http://www.planetpeschel.com> (Nov. 15, 2008).

¹⁷Nicholl, *supra* note 16, at 41.

¹⁸Quoted in Weis, *supra* note 14, at 268.

¹⁹Letter From Richard Quiney to William Shakespeare, October 25, 1598, reproduced in S. Schoenbaum, *William Shakespeare, A Compact Documentary Life* (1987), at 238-239 (spelling modernized). It appears that that the letter was not actually delivered to Shakespeare, with Quiney's message to Shakespeare probably being conveyed some other way (such as in person by Quiney himself). *Id.* The record does not indicate whether Quiney ever repaid Shakespeare.

²⁰Kate Emery Pogue, *Shakespeare's Friends*, p. 15 (2006).

²¹*Id.* See also Schoenbaum, *supra* note 19, at 239-240.

V, Henry VI, and Richard III. It also is one of the most politically charged of all of Shakespeare's plays — so much so that when the Earl of Essex undertook a rebellion against Queen Elizabeth, he commissioned Shakespeare's theater company to perform *Richard II*, which can be read as justifying the removal of an incompetent or unjust monarch, the night before the rebellion was scheduled to occur. Essex hoped to inspire a popular revolt.²²

Shakespeare wrote *Richard II* in 1595. He already had written four plays (*Richard III* and the three parts of *Henry VI*) that depicted England's system of government disintegrating into civil war, in significant part because of the disruption caused by competing claims to the crown. Now, a few years later and near the height of his popularity and literary power, Shakespeare was going back to the genesis of the story: the break in the line of succession, which would haunt England for a century, caused by the overthrow of the legitimate king, Richard II, by Henry Bolingbroke, a usurper.

As a historical matter, Richard II had been dealt a bad hand. His grandfather, Edward III, was by most accounts a very capable king, who unified the English state, subdued rebellions, defeated foreign rivals, and began to address the concerns of the increasingly powerful Parliament. Edward III also possessed, as Shakespeare scholar Peter Saccio wrote, "an extraordinary capacity for begetting offspring."²³ He had seven sons, the eldest of whom, also named Edward, showed all the signs of being a worthy successor. However, Prince Edward died young, predeceasing the king, making the prince's own young son, Richard, the heir apparent. When Edward III himself died soon thereafter, his four surviving sons were all in their prime, yet they found themselves legally subservient to their much younger nephew, who became the king of England at age 10. Richard's youth required a period of regency, in which his four uncles governed as an oligarchy. When Richard came of age and tried to assert himself as monarch, it rankled his uncles and cousins, who had become accustomed during the regency to a great degree of autonomy. Moreover, Richard simply wasn't a very capable king. Historians recognize that, unlike his grandfather and father, Richard lacked any special ability as a warrior, and that he was vain, arrogant, and stubborn. "While utterly enjoying to the full the privileges of kingship," historian John Julius Norwich wrote, Richard "appeared utterly oblivious of its responsibilities, continuing to spend money like water and resorting to tantrums at the first breath of criticism."²⁴

Not surprisingly, Richard had considerable problems with tax policy. Shortly before he became king, Parliament approved two consecutive poll taxes, on top of the

ordinary tenth and fifteenth, to finance the maintenance of large garrisons in France. In 1381, four years into Richard's reign, his ministers asked Parliament to approve a third and much heavier poll tax. When Parliament agreed, significant unrest followed. Raphael Holinshed, the English historian whose *Chronicles of England, Scotland, and Ireland* was published in 1577, and which Shakespeare used as the principal source for his English histories, wrote, "Great grudging and many a bitter curse followed about the levying of this money, and which much mischief arose thereof."²⁵ Riots began, quickly growing into a revolt by a coalition of peasants and middle-class business owners under the leadership of the charismatic Wat Tyler. The rebels marched on London, where the young king was forced to take refuge in the Tower of London. Eventually, Tyler was killed and a compromise was negotiated that ended the rebellion. It was, as historian Nigel Saul wrote, "the largest and most serious outbreak of popular unrest in England in the middle ages."²⁶

There were further tax controversies, particularly when in 1398, after several years of uneasy compromise, Richard, needing additional money to finance a war against Irish rebels, proposed heavy new taxes, including the innovative requirement that large landowners sign blank forms agreeing to pay taxes, with the amounts to be filled in later.²⁷ This generated renewed unrest. As Nigel Saul wrote, Richard "had promised an easing of the burden of taxation on his subjects. So far from easing, however, that burden had stayed virtually unchanged. . . . To his subjects it appeared that Richard was indulging personal pleasures at public expense."²⁸

With rising popular unrest in the background, Richard exacerbated the situation by causing an open conflict with his cousin, Henry Bolingbroke, the Duke of Lancaster and son of Richard's uncle and nemesis, John of Gaunt. Richard exiled Bolingbroke to France and then illegally confiscated his lands. When Bolingbroke, claiming that he had been treated unjustly, returned from France to reclaim his lands, many other nobles, as well as many of the common people, rallied to his side, and the rebellion took on a life of its own. Once the rebels realized they had the power to defeat Richard militarily, they began to consider whether to go further than simply returning Bolingbroke's wrongly confiscated land and actually dethrone the king. This would create a serious problem of legitimacy because Richard, although a weak

²⁵Raphael Holinshed, *Chronicles of England, Scotland, and Ireland*, vol. iii, p. 428 (1587) (spelling modernized).

²⁶Nigel Saul, *Richard II*, p. 56 (1997).

²⁷Holinshed wrote, "Many blank charters were devised, and brought into the city, which many of the substantial and wealthy citizens were fain to seal, to their great charge, as in the end appeared. And the like charters were sent abroad into all shires within the realm, whereby great grudge and murmuring arose among the people: for, when they were so sealed, the king's officers wrote in the same what liked them, as well for charging the parties with payment of money, as otherwise." *Supra* note 25, at 496 (spelling modernized).

²⁸Saul, *supra* note 26, at 439.

²²Essex's rebellion failed and Essex himself was executed. Many of the actors who had been involved in the performance of *Richard II* (but not including Shakespeare) were arrested and questioned, but they were soon released after explaining that they simply had been performing what they were paid to perform.

²³Peter Saccio, *Shakespeare's English Kings*, p. 7 (2000).

²⁴John Julius Norwich, *Shakespeare's Kings*, p. 78 (1999).

ruler who had treated Bolingbroke unjustly, was indisputably the legitimate king under the settled rules of succession. If he were overthrown, the whole system of succession, and the related system of legal rights to property, would be called into question. Bolingbroke went ahead, seizing the crown, and Richard was imprisoned and killed.

In *Richard II*, Shakespeare recounts the overthrow. In doing so, Shakespeare uses tax policy, both to set the stage and as an example of Richard's poor leadership. He does so even though Shakespeare's principal historical source regarding Richard's reign, Holinshed's *Chronicles*, devotes only a few paragraphs to the tax controversies. Moreover, Shakespeare uses some dramatic license, conflating Holinshed's descriptions of the reaction to both the 1381 and 1398 taxes and perhaps even drawing from Holinshed's description of a completely separate tax controversy, occurring almost a century later, involving King Edward IV.²⁹ In condensing into a tight dramatic narrative Richard's many mistakes over two decades as king, Shakespeare apparently decided that Richard's tax policies merited specific attention.

Shakespeare's play begins with Richard's banishment of Bolingbroke. Richard then turns his attention to the issue of Ireland, where a rebellion has begun. Richard needs to raise a large army to suppress the rebellion, but he lacks the revenue necessary to pay the army. He considers his options, saying:

We will ourself in person to this war;
And for our coffers, with too great a court
And liberal largess, are grown somewhat light,
We are inforc'd to farm our royal realm,
The revenue whereof shall furnish us
For our affairs in hand. If that come short,
Our substitutes at home shall have blank charters,
Whereto, when they shall know what men are rich,
They shall subscribe them for large sums of gold,
And send them after to supply our wants;
For we will make for Ireland presently.

(1.4.42-52)

Neither farming the realm with taxes on the common people nor subscribing the rich for large sums of gold were particularly good options because Richard already had imposed such high taxes that he had become deeply unpopular; a further increase could cause another rebellion. Apparently realizing this, Richard comes up with another option. Learning that Bolingbroke's father, John of Gaunt, is on his death bed, Richard decides that, if Gaunt dies, he will declare Bolingbroke disinherited because of his exile and therefore confiscate the extensive Lancastrian lands. He says:

Now put it, God, in the physician's mind
To help him to his grave immediately!
The lining of his coffers shall make coats
To deck our soldiers for these Irish wars.

²⁹W.G. Boswell-Stone, *Shakespeare's Holinshed: The Chronicle and the Historical Plays Compared*, pp. 90-94 (2005).

Come, gentlemen, let's all go visit him:

Pray God we may make haste and come too late!

(1.4.59-64)

Richard goes to Gaunt's bedside. When Gaunt dies, Richard says:

So much for that. Now for our Irish wars:

...

Towards our assistance we do seize to us
The plate, corn, revenues, and moveables,
Whereof our uncle Gaunt did stand possess'd.

(2.1.155-162)

Richard's decision to confiscate the Lancastrian lands is seen as grossly unjust and as showing weakness and bad judgment, compounding concerns about his fiscal recklessness. This is evident in a scene occurring just after Richard has announced his decision to confiscate the lands. Richard exits the stage, leaving behind three prominent nobles — the Earl of Northumberland, Lord Willoughby, and Lord Ross. As the three discuss the situation, they are sharply critical of Richard. Ross says, "The commons hath he pill'd with grievous taxes, and quite lost their hearts." Willoughby adds that "daily new exactions are devised." Northumberland scoffs, "More hath he spent in peace than they [Richard's predecessors] in wars." Then Ross sums the situation up:

He hath not money for these Irish wars,
His burdensome taxations notwithstanding,
But by the robbing of the banished Duke.

(2.1.246-261)

All three decide to support Bolingbroke. So do many of the common people, in part because, as one of Richard's advisers says:

That's the wavering commons, for their love
Lies in their purses, and who empties them,
By so much fills their hearts with deadly hate.

(2.2.128-130)

The remainder of the play tells of Bolingbroke's return from France, of his dethroning of Richard and emergence as King Henry IV, and of Richard's fall as he is imprisoned and, eventually, murdered (in Shakespeare's telling, with Bolingbroke/Henry IV's implicit assent). As he falls, Richard becomes much greater a poet than he had been a king. In one striking passage, shortly before abdicating to Bolingbroke, he laments:

For God's sake let us sit upon the ground
And tell sad stories of the death of kings:
How some have been depos'd, some slain in war,
Some haunted by the ghosts they have deposed,
Some poisoned by their wives, some sleeping kill'd.
All murdered — 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 fear'd, and kill with looks;
Infusing him with self and vain conceit,
As if this flesh which walls about our life
Were brass impregnable; and humour'd thus,

Comes at the last, and with a little pin
Bores through his castle wall, and — farewell, king!
(3.2.155-170)

Farewell, indeed. It is too simplistic to say that Shakespeare's Richard II is undone by bad tax policy. He has bigger problems, including indecisiveness, self-absorption, and a fundamental failure to understand that a king must not merely assert his authority but instead maintain it through the vigorous exercise of skilled political leadership. But tax policy is part of Richard's undoing, in two ways.

First, Richard mismanaged fiscal affairs. He could have, like Queen Elizabeth during Shakespeare's own time, reduced domestic spending and kept taxes low, so that when an emergency arose (under Elizabeth, the Spanish Armada), the people would be willing to support a new tax to meet the emergency; failing that, he could have reconsidered the wisdom of invading Ireland. Second, Richard paid insufficient attention to the political implications of his decisions about tax policy. This was part of a larger problem. Richard believed in the divine right of kings, according to which, as he says at one point in the play, "not all the water in the rough rude sea can wash the balm off from an anointed king" (3.2.54-55). This made it unnecessary, Richard believed, to secure strong public support for his policies, including his tax policies. As a result, Richard lurched from one unpopular policy to another, paying little attention to the fact that, for the common citizens, "their love lies in their purses, and who empties them . . . fills their hearts with deadly hate."

Henry VIII

Tax policy occasionally plays a minor role in several of the other English histories that Shakespeare wrote during the early and middle periods of his career. For example, in *Henry V*, King Henry invades France in part because his treasury lacks revenue and Henry hopes to seize the French crown and the wealth that it carries. In *Henry VI, Part 2*, the spectacular demagogue Jack Cade is implicitly attacking King Henry VI's economic policies, if not his tax policies, when he exhorts his followers by declaring that, if the king is overthrown and Cade takes power, "There shall be in England seven half-penny loaves sold for a penny; the three-hooped pot shall have ten hoops, and I will make it a felony to drink small beer. All the realm shall be in common" (to which Cade's henchman, Dick the Butcher, famously replies, "First thing we do, let's kill all the lawyers") (4.3.61-64).

Tax policy again becomes a significant issue in *Henry VIII*. The play, perhaps the last that Shakespeare wrote and one of the few that he may have written with a collaborator,³⁰ is the weakest of Shakespeare's English histories. Shakespeare wrote it in 1613, at age 49, when, having left London and returned to Stratford to take up life as a semiretired landowner, he may not have been

throwing himself into his work the way he had during his London heyday. The play also is hampered by the fact that Shakespeare was writing in the shadow of the too-recent past. Henry VIII was Queen Elizabeth's father; he had died less than 70 years before the play was written, and he still was revered. As Peter Saccio wrote, "A searching or ironic portrayal of [Henry VIII] would have been unwelcome, probably dangerous."³¹ Henry's life and reign created more than enough material for a great, dark history, including the stories of Henry's many marriages, of the occasional execution of his wives, and of his break with the Catholic Church; but Shakespeare did not write such a play. Although *Henry VIII* contains scenes in which characters speak in strikingly beautiful poetry, it has little of the irony, ambiguity, or darkness of the other English histories. Shakespeare's King Henry VIII is a one-dimensional character — benevolent, distant, and without any of the flaws that usually enliven the characters of Shakespeare's kings. Saccio wrote that Shakespeare "omits or blurs Henry's most appalling acts,"³² and Harold Bloom wrote that Shakespeare's treatment of Henry VIII has no "conflicting perspectives."³³

There is, however, one relationship that makes the play interesting from the perspective of Shakespeare's view of political leadership: the relationship between Henry VIII and his principal adviser, Cardinal Thomas Wolsey. As a historical matter, Wolsey, the son of a butcher, had risen through the bureaucratic and ecclesiastical ranks during the early years of Henry VIII's reign. While young Henry was diverted by hunting, jousting, and wooing, Wolsey ran the government. Wolsey was a master bureaucrat, skilled at both administration and the manipulation of political allegiances. He was, historian Allison Weir wrote, "willing to implement the royal policies, to work while Henry played, and to shoulder the many administrative tasks of government. He had flattered and praised his way into favour, and hastened to carry out the King's every whim."³⁴ Wolsey was considered by some to have become more powerful than the king himself.

King Henry and Cardinal Wolsey were involved in two major tax controversies. In 1523 Henry needed revenue for wars against France and Spain, and Wolsey asked Parliament to approve a new subsidy. Parliament was sharply opposed, with one contemporary commentator observing that "the Commons stiffly affirmed that the [proponents] of this demand were enemies to the realm."³⁵ After weeks of debate, the House of Commons passed a bill, but it provided much less revenue than Wolsey wanted. Wolsey would not relent, arrogantly telling a deputation from the House of Commons that he "would rather have his tongue plucked out of his head

³¹Saccio, *supra* note 23, at 210.

³²*Id.*, at 228.

³³Harold Bloom, *Shakespeare: The Invention of the Human*, p. 686.

³⁴Allison Weir, *Henry VIII*, p. 157 (2008).

³⁵Quoted in Schofield, *supra* note 9, p. 17.

³⁰Shakespeare wrote *Henry VIII* in collaboration with John Fletcher. It is generally thought that Shakespeare, rather than Fletcher, was the principal author of Act I, Scene 2, the scene discussed here.

... than to move the king to take any less sum."³⁶ Eventually, the Speaker of the House of Commons, Thomas More, intervened, negotiating a compromise — with Parliament passing a bill providing the king with revenue, albeit still much less than Wolsey had originally demanded. In 1525 tax controversy recurred and escalated. Henry and Wolsey sought an additional tax to provide revenue for an invasion of France, calling the tax "the Amicable Grant" (foreshadowing the modern practice of giving positive names to difficult legislation). The English people, however, viewed it as neither amicable nor a grant, and, Holinshed wrote, "Hereof followed such cursing, weeping, and exclamation against both king and cardinal, that pity it was to hear."³⁷ Protests threatened to erupt into open rebellion, with a crowd of 4,000 protesting against one of the tax collectors, their spokesman saying that "the King asketh so much that they be not able to do as they have done before this time."³⁸ Henry, an adept politician, decided to cut his losses, revoking the tax and implying that the tax had been Wolsey's idea rather than his own. After this incident, Wolsey continued to serve as Henry's principal adviser, but his power began to decline. A few years later, he made a fatal error. Henry sought a papal annulment of his marriage to Queen Katherine (so that Henry could marry Katherine's lady-in-waiting, Anne Boleyn), and Wolsey, siding with the papacy, refused to support the annulment. Henry ordered Wolsey arrested for treason, and he was sentenced to be executed, although the cardinal died of natural causes before the execution occurred.

In *Henry VIII*, Shakespeare recounts the middle part of Henry's reign, from 1520-1533, culminating in the christening of Henry's daughter, the future queen, Elizabeth. In Shakespeare's telling, Wolsey is deeply duplicitous, with his rival the Duke of Buckingham calling him a "holy fox, or wolf, or both, for he is equal rav'nous as he is subtle" (1.1.158-161), and Henry's recognition of Wolsey's duplicity, and Henry's decision to cast off from Wolsey and make his own independent decisions, marks Henry's maturation into a great leader.

Tax policy plays a prominent role, as Shakespeare combines elements of the 1523 and 1525 tax controversies, elevating them to the precipitating event of Henry's break with Wolsey. In the play's second scene, King Henry enters, with the stage directions noting that the king is "leaning on the Cardinal's shoulder." Queen Katherine demands an audience with the king, reporting, in Wolsey's presence, that a rebellion is brewing because of overly burdensome taxes.

One of the king's other advisers, Lord Norfolk, confirms this, reporting:

[U]pon these taxations,
The clothiers all, not able to maintain
The many to them longing, have put off
The spinsters, carders, fullers, weavers, who,

³⁶*Id.*, at 17-18.

³⁷Holinshed, *supra* note 25, p. 891 (spelling modernized).

³⁸Quoted in Derek Wilson, *Henry VIII, Reformer and Tyrant*, p. 144.

Unfit for other life, compelled by hunger
And lack of other means, in desperate manner
Daring th' event to th' teeth, are all in uproar,
And danger serves among them.

(1.2.30-37)

The king is shocked to hear this. He appears to have been completely unaware of the new tax, responding:

Taxation?
Wherein, and what taxation? My lord Cardinal,
You that are blamed for it alike with us,
Know you of this taxation?

(1.2.37-40)

When Wolsey denies any knowledge of the taxes, the Queen contradicts him, saying:

These exactions
Whereof my sovereign would have note, they are
Most pestilent to th' hearing; and, to bear 'em,
The back is sacrifice to th' load. They say
They are devised by you; or else you suffer
Too hard an exclamation.

(1.2.47-52)

Henry, astonished, asks the queen to describe the taxes to him. She explains:

The subjects' grief
Comes through commissions which compels from each
The sixth part of his substance, to be levied
Without delay; and the pretence for this
Is named, your wars in France. This makes bold mouths:
Tongues spit their duties out, and cold hearts freeze
Allegiance in them. Their curses now
Live where their prayers did, and it's come to pass,
This tractable obedience is a slave
To each incensed will. I would your highness
Would give it quick consideration, for
There is no primer business.

(1.2.56-67)

King Henry appears to be appalled by this, saying, "By my life, this is against our pleasure" (1.2.68-69). After a brief exchange with Wolsey, he says:

Sixth part of each?
A trembling contribution! Why, we take
From every tree lop, bark, and part o' th' timber;
And, though we leave it with a root, thus hacked,
The air will drink the sap.

(1.2.94-98)

Henry orders Wolsey to notify every county that the tax is revoked and that those who had failed to pay it are excused. (The canny Wolsey not only acquiesces to the king's revocation of the tax but also takes personal credit for it, instructing his secretary to "let it be noised / That through our intercession this revokement and pardon comes" (1.2.105-107).)

As the play unfolds, Wolsey is discredited, imprisoned for betraying the king over the annulment, and dies, becoming, like Richard II, an eloquent poet during his fall from power, while Henry himself ascends to greatness.

Several points emerge in the play's treatment of tax policy. Henry VIII is much more politically aware and

adept than Richard II. When Richard confronted popular resistance to tax increases, he only considered alternative methods of raising revenue, lurching from “farming the realm” to subscribing the wealthy for gold to, finally and disastrously, confiscating Bolingbroke’s land. He never considered the alternative of acknowledging popular opposition and changing course. Henry, in contrast, is flexible. Facing intense popular opposition to the Amicable Grant, he retreats.

As noted earlier, Shakespeare generally kept his political views to himself, making those views, like much in Shakespeare, endlessly debatable, with Shakespeare being invoked in favor of political programs ranging from bedrock conservatism to communism. (Shakespeare scholar Jack Lynch recently wrote that “everyone wants to believe that the Bard is on their side.”³⁹) There are several instances in his plays when Shakespeare seems to take the position of an Edmund Burke-style conservative,⁴⁰ but there also are times when he seems to take a position more consistent with what we would today consider economic liberalism, most notably the scene on the heath in *King Lear*, in which Lear, having been abandoned by his faithless daughters and cast out into a storm, declares that as a king you must “Expose thyself to feel what wretches feel / That thou mayst shake the superflux to them, / And show the heavens more just” (3.4.34-37). That said, in the tax scene in *Henry VIII*, Shakespeare, perhaps reflecting the economic perspective of an affluent middle-aged Stratford property owner, takes a conservative position. He seems to agree with Queen Katherine’s concern that, if taxes are too high, “the back is sacrifice to th’ load,” with the result that, as Norfolk said, “the clothiers . . . put off the spinsters, carders, fullers, [and] weavers.” It’s a medieval version of supply-side economics.

Finally, there is the strangeness of Henry’s apparent surprise when he is told about the tax. As a historical matter, the mature Henry VIII was the epitome of a hands-on king, and he probably was involved in the development of the various tax proposals Wolsey presented to Parliament. At the very least, he wanted the revenue. Shakespeare — who was a close student of Machiavelli and who was deeply cynical about political leaders, portraying even the greatest of English kings, like Henry V, as ruthless and manipulative — must have known this. Yet at least on the surface, Shakespeare’s Henry VIII is utterly unaware of, and opposed to, the tax that had been imposed in his name. One interpretation of this scene is that Shakespeare, writing late in life, was simply going through the motions and endorsing the

official view that Henry was benevolent and Wolsey duplicitous. A better interpretation, recognizing Shakespeare’s irrepressible knack for double meaning, is that Shakespeare was wise to Henry’s cynical ploy and expects us to be wise to it, too. In other words, Shakespeare’s Henry supports the tax and wants the revenue it will raise, until it backfires and the king must face the political consequences. At that point, the king steps away, feigning surprise, professing ignorance, and blaming his advisers.

Conclusion

Tax policy mattered to Shakespeare. In writing his English history plays, he was working with a vast amount of material, from Holinshed and other sources, which he condensed into a series of sharp historical narratives that are in large part about political leadership. In doing so, he selected, and embellished, the details of two tax controversies, showing how Richard II diminished his authority by handling tax policy badly and how Henry VIII enhanced his authority by handling tax policy well. It may seem unremarkable, today, to say that it is important for a political leader to handle tax policy well, but the situation was quite different in Shakespeare’s time, an age when people believed in the divine right of kings, with the official homily of the Anglican Church declaring that “Kings and Princes, as well the evil as the good, do reign by God’s ordinance, and that subjects are bounden to obey them.”⁴¹ In contrast to this official doctrine, Shakespeare presents a complex and modern view, in which political authority depends not on titles and trappings but on the constant and vigorous exercise of practical political leadership. In *Richard II* and *Henry VIII*, Shakespeare shows that the effective management of tax policy is one of the core aspects of wise political leadership.

Shakespeare’s principal view about tax policy is pragmatic. He does not argue that taxes are morally unjust or that high taxes are particularly so; nor does he argue in favor of anything that we might today call progressivity. Shakespeare’s principal view is like that of Jean Baptiste Colbert, a French Treasury minister during the 17th century, who reportedly said, “The art of taxation consists in so plucking the geese to obtain the maximum number of feathers with the minimum amount of hissing.”⁴² As part of that pragmatism, Shakespeare shows some sympathy for the view expressed in *Henry VIII* that, if taxes on wealthier business people — the clothiers — are too high, people on lower economic rungs — the spinsters, carders, fullers, and weavers — also will suffer.

For Shakespeare, the most important characteristic of a good tax policy was that it raised sufficient revenue with sufficient popular support. In *Richard II*, he shows us a leader who paints himself into a corner by imposing such high taxes that, when an emergency arises, he does

³⁹Jack Lynch, *Becoming Shakespeare*, p. 170 (2007).

⁴⁰Examples are the scenes of mob rule in *Julius Caesar* and *Henry VI, Part 2*; the royal gardener’s praise of maintaining “law and form and due proportion” in *Richard II* (Act 3, Scene 4); Ulysses’s speech in *Troilus and Cressida*, explaining that “when degree is shaken, / Which is the ladder to all high designs, / Then enterprise is sick” (Act 1, Scene 3); and the scene in *The Tragedy of Coriolanus* in which a senator uses a metaphor about the human body to argue that the hierarchical political and economic system, which seems on its face to benefit only the upper class, benefits common citizens as well (Act 1, Scene 1).

⁴¹“An Homily Against Disobedience and Wilful Rebellion,” reprinted in *The Elizabethan Homilies 1623* (Mary Ellen Rickey and Thomas B. Stroup, eds.), available at <http://www.anglicanlibrary.org/homilies/bk2intro.htm> (spelling modernized).

⁴²This quotation commonly is attributed to Minister Colbert, although its original source is uncertain.

not have good options and charges ahead without considering the political implications. In *Henry VIII*, in contrast, he shows us a leader who recognizes the political problems that his taxes are creating and adeptly adjusts. The difference is critical.

Finally, although Henry VIII's perhaps feigned surprise at hearing about Wolsey's tax is subject to interpre-

tation, Shakespeare seems to have considered it a wise exercise of leadership for a leader to take a somewhat cynical approach to tax increases. It was prudent to let the advisers take the political heat, reserving some room to reconsider in the face of opposition, and, if necessary, to indignantly ask, like King Henry VIII, "Know you of this taxation?"

SUBMISSIONS TO TAX NOTES

Tax Notes welcomes submissions of commentary and analysis pieces on federal tax matters that may be of interest to the nation's tax policymakers, academics, and practitioners. To be considered for publication,

articles should be sent to the editor's attention at taxnotes@tax.org. A complete list of submission guidelines is available on Tax Analysts' Web site, <http://www.taxanalysts.com/>.