I am happy to contribute this essay to a Festschrift in honor of Yoram Dinstein, a brilliant lawyer and a close friend. In addition to his exceptional erudition and scholarship in many fields of international law, Dinstein has an unusual interest and command of history and literature, and his knowledge of the works of Shakespeare is truly amazing. In this essay, I address some issues of professional and ethical responsibility through the focus of Shakespeare’s plays. Instead of discussing technical questions of command responsibility in the modern law of war, I draw on the writings of the greatest English poet, whose sophistication and wisdom provide guidance to those in the corridors of power to this very day.¹

Ben Jonson said that Shakespeare was a man “not of an age, but for all time.” This essay will suggest some ways in which that is certainly true of Shakespeare’s penetrating depictions of leaders who commit crimes. We see in his work the intellectual and moral compromises made by legal advisors faced with a national leader’s determination to undertake acts of dubious legality. Shakespeare bears open the fragility of the principle under stress. I will try to connect these themes to contemporary currents in the international jurisprudence of the law of war – from Nuremberg to the International Criminal Tribunal for the former Yugoslavia.

Drawing parallels from Shakespeare’s plays, I will discuss some of the overreaching themes that have long arisen in considerations of leaders’ responsibility for crimes and of the subtle synergy between the leader and the soldier. One such theme I wish to explore in some detail: the tendency of leaders bent on violating the law, throughout history, to create barriers of deniability between themselves and the executioners, claiming, for example, that they did not order, did not approve, did not know. This relationship between superiors and their supporting officers or rank-and-file executioners – the subtle dance of blame shifting, compulsion, and influence – has proved vexing since time immemorial.

But first, briefly, a bit on the role of the adviser and his efforts to justify the leader’s resort to hostilities, or to prove the justness of the resulting war, or to advance a particular application or interpretation of the rules. In the 15th Century Book of Fayttes of Armes and of Chyvalrye, Christine de Pisan, one of the first feminist writers, urged that a prince consult impartial advisers before deciding whether the war under consideration was just. Humanists, especially Thomas More, bared open the adviser’s dilemma. The temptation to enter into a prince’s service was great then as it is now – the humanists aspired to reform the political system by educating rulers and thus could justify their actions by what they perceived to be an obligation of service. But the danger, as one of More’s protagonists, Raphael, warns in Utopia, is that the independent expert is bound to lose his independence; that the advancement-oriented counsellor is bound to tell the prince what he wants to hear; that he is likely to sink into sycophancy; and that tampering with truth is the very condition of service in the councils of the mighty.

We certainly see it in Shakespeare’s Archbishop of Canterbury, whose desire to please King Henry V and thereby protect the interests of the Church led him to make categorical, though patently dubious, advice to Henry that his claim to the crown of France was just and was not barred by the Salic law, which disqualified women and the female line. He tells Henry that his jus ad bellum claim is unimpeachable. And as is well-known, many legal academics in Nazi Germany were only too eager to develop tortured arguments justifying Hitler’s actions under international law. Indeed, throughout history, and all the way to the present-day, the responsibility of advisers for unprincipled advice on the law governing resort to war and the conduct of war has been a heavy one.

Of course, the leader often needs little prompting. Lady Macbeth reminds her husband that his superior forces offer ample protection from accountability: “What need we fear who knows it when none can call our power to account?” And King Lear’s Goneril makes the ultimate claim of the absolute ruler: “The laws are mine, not thine. Who can arraign me for it?”

But in Shakespeare, competing with such considerations of realpolitik is the awareness of monarchs that they bear a special responsibility for what occurs on their watch. In the great poem the Rape of Lucrece, Lucrece pleads in vain with Tarquinus, invoking his special responsibility as a leader. “For princes are the glass, the school, the book / where subjects’ eyes do learn, do read, do look… Wilt thou be glass wherein it shall discern / authority for sin, warrant for blame?” Responsibility is a major theme elsewhere in Shakespeare as well; both Cleopatra and especially Henry V (in his famous soliloquy “Upon the King”) engage in royal self-pity, railing against their special responsibility. And the soldier, Williams, warns Henry on the eve of Agincourt that, when leading his men to battle, “if the cause be not good,” the King himself will have a heavy spiritual reckoning to make. So the remedy for the violation of jus ad bellum here lies in the spiritual, not temporal responsibility of the leaders.