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ARTICLES

THE CONSCIENCE OF A KING: LAW, RELIGION, AND WAR IN SHAKESPEARE'S *KING HENRY V*

ROBERT J. DELAHUNTY[†]

INTRODUCTION

Shakespeare's *King Henry V* is an elusive, searching meditation on the relationship of law and religion to war, peace, and statecraft, "the most subtly disturbing study in religious warfare that Shakespeare ever created."¹ Although set in England and France during the period between Lent 1414 and May 1420, the play reflects the politics of Tudor England in early 1599, when it was originally produced.² But it remains of absorbing interest for later periods, including ours.³ Just

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¹ Paul A. Jorgensen, *A Formative Shakespearean Legacy: Elizabethan Views of God, Fortune, and War*, 90 PUBLICATIONS MOD. LANGUAGE ASS'N AM. 222, 231 (1975).

² Thus, the Chorus that starts Act V alludes to what was expected to be the triumphant return of Robert Devereux, the Earl of Essex, from a campaign to suppress a rebellion in Ireland. See WILLIAM SHAKESPEARE, *HENRY V*, chor., act 5, sc. 1, ll. 30–32 (Gary Taylor ed., 1982) [hereinafter SHAKESPEARE, *HENRY V*]. Essex left for Ireland in March 1599 and returned, defeated, in September 1599. See *id.* intro., at 5. It may even be that Shakespeare wrote the play to serve the cause of Essex's mobilization for the campaign. See THEODOR MERON, *BLOODY CONSTRAINT: WAR AND CHIVALRY IN SHAKESPEARE* 28 (1998). Essex's campaign in Ireland "haunts Shakespeare's play and, as much as anything else, defines what is new in [it], while also suggesting what his own preoccupations were at this time." JAMES SHAPIRO, *A YEAR IN THE LIFE OF WILLIAM SHAKESPEARE: 1599*, at 88 (2005). The "real story" of the play is "the debate about the war." *Id.* at 92.

³ For example, the confrontation between Winston Churchill and George Bell, the Bishop of Chichester, over the Royal Air Force's obliteration bombing of German population centers, raised issues of law, religion, and warfare similar to those

beneath its smooth and shining surface lie dark riddles and baffling enigmas. Although it would obviously be wrong to call Shakespeare a political *theorist*, the play reveals him to be a political *thinker* of the highest order.⁴

Law and religion are forces powerfully at work throughout the play, influencing royal statecraft and war-making, but also bending to the King's purposes.⁵ The kind of "law" at issue is primarily what we would now consider international law⁶—specifically, the international law of war or "humanitarian law," as it has come to be called. Issues concerning of the main branches of that body of law—*jus ad bellum*, or the rules concerning the initiation of war,⁷ and *jus in bello*, or the rules concerning the conduct of war,⁸ once initiated—arise at critical moments throughout the play. Indeed, much of the First Act of the play, which concerns Henry's decision to go to war with France, is taken up by a lengthy—some would say, tedious—legal

explored in Shakespeare's play. The confrontation was dramatized in Rolf Hochhuth's 1967 play, *Soldiers: An Obituary for Geneva*.

⁴ For discussions of Shakespeare as a political thinker, see TIMOTHY W. BURNS, *SHAKESPEARE'S POLITICAL WISDOM* (2013) and ALLAN BLOOM WITH HARRY V. JAFFA, *SHAKESPEARE'S POLITICS* (1964).

⁵ Legal historians and scholars have illuminated these issues in several studies, including two major book-length treatments by Theodor Meron of New York University School of Law. See MERON, *supra* note 2; THEODOR MERON, *HENRY'S WARS AND SHAKESPEARE'S LAWS: PERSPECTIVES ON THE LAW OF WAR IN THE LATER MIDDLE AGES* (1993); PAOLA PUGLIATTI, *SHAKESPEARE AND THE JUST WAR TRADITION* 209 (2010); David L. Perry, *USING SHAKESPEARE'S HENRY V TO TEACH JUST-WAR PRINCIPLES* (2003), available at <http://home.earthlink.net/~davidperry/henryv.htm>.

⁶ The reach of the Latin Church's canon law was co-extensive with Western Christendom. That body of law dealt, in considerable part, "with many of the problems which we think of as belonging to public international law, with the definition of sovereignty, with the sanctity of treaties, with the preservation of peace, with the rights of neutrals and noncombatants, and with the mitigation of the rigours of war." GARRETT MATTINGLY, *RENAISSANCE DIPLOMACY* 19 (1955). In addition, the military caste across Western Christendom had developed a common chivalric code, influenced by but independent of canon law, that regulated such matters as "the just quarrel, the formal defiance, the good war, the treatment of heralds and prisoners and noncombatants, the summoning of towns and observation of truces and treaties." *Id.* at 20–21.

⁷ Karma Nabulsi, *Jus ad Bellum / Jus in Bello*, *CRIMES OF WAR*, <http://www.crimesofwar.org/a-z-guide/jus-ad-bellum-jus-in-bello/> (last visited June 9, 2015).

⁸ *Id.*

discourse by Henry's Archbishop of Canterbury regarding the application of the *jus ad bellum* to Henry's proposed war against France.

The fact that this speech is delivered by the Primate of the English Church is not insignificant. It indicates that the legal framework within which both the King and Archbishop are reasoning is "primitive," in the sense that it does not allow for the modern distinction between "positive law" and "morality." Instead, this type of discourse links propositions regarding peace, order, and justice together with legal doctrine, and draws on varied "non-legal" sources such as the Bible, Patristic writings, Papal decrees, church canons, classical poets, playwrights, historians, and the like.⁹

A. *The Character of Henry*

Any understanding of what the play conveys about the relationship of law and religion to war and statecraft depends on how we view its dominating figure, Henry V. Does Henry, as King, view himself as the subject or as the master of religion and law? For many, Henry's charisma and glamour are so powerful that the question simply does not arise. Even before Shakespeare wrote, and certainly ever since then, Henry has been considered "the hero-king of England."¹⁰ His personal affability and magnetism, his soaring eloquence, his incomparable achievements as a statesman and a soldier, and above all his stunning victory over a much larger French force at the battle of Agincourt on October 25, 1415,¹¹ have endeared him to the English people for centuries, and defined for their rulers the *beau idéal* of what an English king should be. Idolized in his own lifetime—as in Canterbury's dazzling description of him in the opening scene of the play—and lauded even by the biographers and playwrights who preceded Shakespeare,¹² Henry has occupied a vivid and enduring place in the English

⁹ See David Kennedy, *Primitive Legal Scholarship*, 27 HARV. INT'L L.J. 1 (1986).

¹⁰ LILY B. CAMPBELL, SHAKESPEARE'S "HISTORIES": MIRRORS OF ELIZABETHAN POLICY 255 (1963).

¹¹ *The Battle of Agincourt, 1415*, EYE WITNESS TO HISTORY, <http://www.eyewitnesstohistory.com/agincourt.htm> (last visited June 9, 2015).

¹² Thus, the early fifteenth century poet John Lydgate "described Henry as a lodestar of knighthood because he was wise, manly and successful in both peace and war, and an expert in martial discipline." Craig Taylor, *Henry V, Flower of Chivalry*, in HENRY V: NEW INTERPRETATIONS 217, 218 (Gwilym Dodd ed., 2013).

imagination. Winston Churchill described him as “the gleaming King.”¹³ Sir Laurence Olivier was mustered out of service in the Royal Navy to rally English audiences with his unforgettable 1944 film version of Shakespeare’s play.¹⁴ Kenneth Branagh’s 1989 film *Henry V* received nearly universal acclaim, despite being judged, inevitably, against the standard Olivier had laid down.¹⁵ Between them, Henry and Shakespeare seem to have imprinted monarchy indelibly on the English mind and heart.

But how does Shakespeare intend us to see this King? In approaching that question, we must remember that Shakespeare wrote to be *read* as well as to be *watched*. He meant his work, not only to have an impact on theater audiences, but also to be parsed carefully in the study. Fine details that may be unimportant to a stage production may loom large on a close reading. Contradictions may emerge where there once seemed to be a unitary vision.

How, then, should we see and read Shakespeare’s Henry? Critics have tended to divide, broadly, in two camps. In the first are those who view Henry as a pious Christian king, as modeled in writings such as those of the influential sixteenth century humanist Desiderius Erasmus (1466-1536), whose *Education of a Christian Prince* was published in 1516.¹⁶ In the other camp are

¹³ See DESMOND SEWARD, *HENRY V AS WARLORD* xviii (1987) (internal quotation marks omitted).

¹⁴ *Henry V*, IMDB, http://www.imdb.com/title/tt0036910/?ref=nm_flmg_act_64 (last visited June 9, 2015).

¹⁵ *Henry V*, IMDB, <http://www.imdb.com/title/tt0097499/> (last visited June 9, 2015).

¹⁶ See ERASMUS, *THE EDUCATION OF A CHRISTIAN PRINCE WITH THE PANEGYRIC FOR ARCHDUKE PHILIP OF AUSTRIA* (Lisa Jardine ed., 1997) [hereinafter ERASMUS, *THE EDUCATION OF A CHRISTIAN PRINCE*]; BEN LOWE, *IMAGINING PEACE: A HISTORY OF EARLY ENGLISH PACIFIST IDEAS* 164 (1997) (“[T]he impact of Erasmus’s works in England may have been greater than those of any Englishman during this time.”); see also Robert P. Adams, *Designs by More and Erasmus for a New Social Order*, 42 *STUD. PHILOLOGY* 131, 141 (1945) (arguing Erasmus’ anti-war tract *Dulce bellum inexpertis* “had a great vogue throughout literate Europe” and must “be reckoned a main channel for the diffusion into the later Renaissance of neo-Stoic humanist ideas on war, peace, and the life of reason”); Miriam Eliav-Feldon, *Grand Designs: The Peace Plans of the Late Renaissance*, 27 *VIVARIUM* 51, 56–58 (1989) (describing the effect of Erasmus’ anti-war writings on later Renaissance thinkers). For overviews of Erasmus’ teachings on war, see LOWE, *supra* note 16, at 163–73; JAMES TURNER JOHNSON, *THE QUEST FOR PEACE: THREE MORAL TRADITIONS IN WESTERN CULTURAL HISTORY* 152–72 (1987); JOCELYNE G. RUSSELL, *PEACEMAKING IN THE RENAISSANCE* 9–13 (1986). On the “mirror for princes” genre of writing to which Erasmus’ *Christian Prince* belongs, see JOHN WATTS, *HENRY VI AND THE POLITICS*

those who regard him as a ruler of the kind delineated in Niccolò Machiavelli's *The Prince*—also published in 1516—whose outward Christianity is merely a ruse.¹⁷ The term “Machiavellian” could, of course, describe any of a broad spectrum of views; even now, the interpretation of Machiavelli's *own* views is controversial.¹⁸ Machiavelli's doctrines had a singular fascination for the Elizabethans: “He horrified them, instructed them, entertained them—in fact he affected them over the whole attraction/repulsion spectrum.”¹⁹ And whether he had

OF KINGSHIP 16–31 (1996). Whether or not Erasmus was a pacifist—in the sense of condemning all war, regardless of the circumstances—his outlook was unmistakably anti-war. Shakespeare had probably read and been influenced by Erasmus. See Stuart Gillespie, *Shakespeare's Reading of Modern European Literature*, in SHAKESPEARE AND RENAISSANCE EUROPE 107, 113 (Andrew Hadfield & Paul Hammond eds., 2004).

¹⁷ See Steven Marx, *Shakespeare's Pacifism*, 45 RENAISSANCE Q. 49, 68 (1992) (stating that the contradictions in the play's vision of war “force some to read *Henry V* as anamorphic—having two distinct and contradictory meanings depending on one's vantage”); Norman Rabkin, *Rabbits, Ducks, and Henry V*, 28 SHAKESPEARE Q. 279, 279 (1977). “[I]n *Henry V* Shakespeare creates a work whose ultimate power is precisely the fact that it points in two opposite directions, virtually daring us to choose one of the two opposed interpretations it requires of us.” *Id.* at 290–92 (illustrating contrasting critical views); JOHN WILDERS, *THE LOST GARDEN: A VIEW OF SHAKESPEARE'S ENGLISH AND ROMAN HISTORY PLAYS* 62–63 (1978) (arguing Henry might be seen as a saintly king, a Cromwellian figure who sees himself as an instrument of God, or as a hypocrite); Joanne Altieri, *Romance in Henry V*, 21 STUD. ENG. LITERATURE 223, 226–67 (1981); Karl P. Wentersdorf, *The Conspiracy of Silence in Henry V*, 27 SHAKESPEARE Q. 264, 264 (1976). For a succinct summary of the contrasting critical views, see WARREN CHERNAIK, *THE CAMBRIDGE INTRODUCTION TO SHAKESPEARE'S HISTORY PLAYS* 148–52 (2007).

¹⁸ The writings of Machiavelli (1469–1527), including *The Prince*, had been received in England, and in some cases translated into English or French, well before *Henry V* was composed. See FELIX RAAB, *THE ENGLISH FACE OF MACHIAVELLI: A CHANGING INTERPRETATION 1500–1700*, at 52–53 (1964).

¹⁹ *Id.* at 67. To be sure, there are Machiavellians and then there are Machiavellians in Shakespeare. Some are blatant, others refined. Richard III's speech before the Battle of Bosworth Field, in which he appeals to raw power rather than religion or law to drive his men on, shows him to be a practitioner of a crude and unapologetic Machiavellianism: “Conscience is but a word that cowards use / Devis'd at first to keep the strong in awe: / Our strong arms be our conscience, swords our law. / March on, join bravely, let us to't pell-mell; / If not to heaven, then hand in hand to hell.” WILLIAM SHAKESPEARE, *RICHARD III* act. 5, sc. 3. Henry's speech to his men before the Battle of Agincourt, by contrast, unforgettably appeals to fellowship, patriotism, and Saint Crispian: His war cry is “God for Harry, England and St George.” SHAKESPEARE, *HENRY V*, *supra* note 2, at act III, sc. i, l. 34. If Henry is a Machiavellian, he is one of a far higher order of subtlety and finesse than is Richard.

read Machiavelli or not, Shakespeare was familiar with his doctrines: “*The Prince* reads repeatedly like a manual of instruction studied by Shakespeare’s politicians.”²⁰

Both understandings of King Henry are well rooted in the play and, indeed, in Henry’s presentation of himself within it.²¹ In his interview with the French Ambassador, Henry calls himself “no tyrant, but a Christian king.”²² The Chorus introducing the Second Act praises him as “the mirror of all Christian kings.”²³ Before the triumphal procession of his army after its victory at Agincourt, he gives the self-effacing order: “[B]e it death proclaimed through our host / To boast of this, or take that praise from God / Which is his only.”²⁴ Even his

²⁰ WILDERS, *supra* note 17, at 48. Although it remains uncertain whether Shakespeare had read Machiavelli, he explicitly refers to his teaching—or at least to a popular conception of it. Thus in *The Third Part of Henry VI*, the overtly villainous Gloucester declares that he can “set the murderous Machiavel to school.” WILLIAM SHAKESPEARE, *THE THIRD PART OF HENRY THE VI* act 3, sc. 2, 193. But the influence of Machiavelli on Shakespeare’s work is not confined to grotesque figures or obvious references; rather, it is perceptible and pervasive throughout his work, including *Henry V*. See generally JOHN ROE, *SHAKESPEARE AND MACHIAVELLI* (2002). Thus, Jorgensen found that Machiavelli’s *Art of War* (1521) exerted a direct and detailed influence on the scene in *Henry V* in which the traitors are arrested and sentenced. See JORGENSEN, *supra* note 1, at 230–31.

²¹ The historical Henry was not, of course, a Machiavellian, nor was a Machiavellian theory of statecraft even conceptually possible in Henry’s thought-world. The medieval historian Jeremy Catto has demonstrated that although prudential advice from English royal advisers began to supersede reliance on general moral precepts around the beginning of the fourteenth century, this is not to be understood as an expression of *Realpolitik*. Jeremy Catto, *The Burden and Conscience of Government in the Fifteenth Century*, 17 *TRANSACTIONS OF THE ROYAL SOCIETY* 83, 84 (2007). Both kings and councilors remained careful of their consciences, and “the conscience of the prince was at the centre of fifteenth-century political decision-making.” *Id.* Indeed “[i]t was a duty of ministers to reconcile princely misgivings with the dictates of prudence,” for fifteenth century princes, including Henry V, lived “under constant moral pressure.” *Id.* at 98. The development of a recognizably “Machiavellian” approach to statecraft grew out of the subsequent practice of sending reports, based on detached observation and analysis devoid of moralistic sentiments, by diplomatic agents at foreign courts to their home government—before writing *The Prince*, Machiavelli himself had been such a diplomat. Self-conscious Machiavellianism only became possible well into the “age of the political memorandum,” which was only beginning in Henry V’s time. *Id.* at 95.

²² SHAKESPEARE, *HENRY V*, *supra* note 2, at act I, sc. ii, l. 241.

²³ *Id.* at act 2, chor. 6.

²⁴ *Id.* at act 4, sc. 8, ll. 112–14.

defeated adversary, the King of France, urges him at the peace conference to “[p]lant neighbourhood and Christian-like accord” between the two nations.²⁵

But it is also central to Henry’s self-presentation that he be considered a man of war. In besieging the French town of Harfleur, Henry characterizes himself as “a soldier / A name that in my thoughts becomes me best.”²⁶ In wooing the French King’s daughter Catherine Valois, he repeatedly describes himself as a “plain soldier,”²⁷ asking her “to teach a soldier terms / Such as will enter at a lady’s ear.”²⁸ “[T]ake me, take a / soldier; take a soldier, take a king,” he begs her.²⁹ Violence was implanted in his nature even before his birth: He tells Catherine that he was born “with an aspect of iron” because his father “was thinking of civil wars when / he got me.”³⁰ And the Chorus that precedes the first scene of the play portrays the King as “warlike Harry . . . / at [whose] heels, / Leashed in like hounds, should famine, sword, and fire / Crouch for employment.”³¹

To be sure, a king could be a soldier and yet be considered a Christian, even canonized as a saint. The concept of a “Crusade” fused together the figures of ruler and soldier in the ideal of the saintly king. Saint Louis IX of France, canonized in 1297, fought in the Seventh Crusade, died while fighting in the Eighth, and epitomized the Crusader ideal.³² Shakespeare has Henry’s father, King Henry IV, invoke the same Crusader ideal by

²⁵ *Id.* at act 5, sc. 2, l. 338. “The whole play is a mirror of right rule, featuring an idealized sovereign, ‘the mirror of all Christian kings,’ for whom ‘worthie governance’ holds no secrets.” Anny Crunelle-Vanrigh, *Henry V as Royal Entry*, 47 *STUD. ENG. LITERATURE: 1500–1900*, at 355, 362 (2007). Another critic, acknowledging that Henry “refers to God oftener than any other Shakespearean character,” challenges the “modern commentators[] who refuse to take Henry’s virtue at face value,” contending that “never, in any of its dramatic contexts, does the trait smack in the least of personal righteousness. Instead, it functions as a socio-ethical motif, connoting the alliance with Providence that rewards champions of the general welfare.” Brownell Salomon, *Thematic Contraries and the Dramaturgy of Henry V*, 21 *SHAKESPEARE Q.* 343, 353 (1980).

²⁶ SHAKESPEARE, HENRY V, *supra* note 2, at act 3, sc. 3, ll. 85–86.

²⁷ *Id.* at act 5, sc. 2, l. 148.

²⁸ *Id.* at act 5, sc. 2, ll. 99–100.

²⁹ *Id.* at act 5, sc. 2, ll. 163–64.

³⁰ *Id.* at act 5, sc. 2, ll. 217–19.

³¹ *Id.* at act 1, chor. 5–8.

³² See M. CECILIA GAPOSCHKIN, *THE MAKING OF SAINT LOUIS: KINGSHIP, SANCTITY, AND CRUSADE IN THE LATER MIDDLE AGES* 21–47 (2008).

pledging to lead an army “[a]s far as to the sepulchre of Christ— / Whose soldier now, under whose blessed cross / We are impressèd and engaged to fight—.”³³ Henry V also alludes to the Crusades in telling Catherine that she must “prove a good soldier-breeder” so that she and he may “com- / pound a boy, half-French, half-English, that shall go to / Constantinople and take the Turk by the beard?”³⁴ Nonetheless, Henry V’s insistent self-description of himself as a “soldier” may also remind us of Machiavelli’s *Prince*, and especially of its counsel that a ruler “should have no other objective and no other concern, nor occupy himself with anything else except war and its methods.”³⁵

In what follows, I first set out the evidence for taking Shakespeare’s Henry to be, as the Chorus styles him, a “mirror of all Christian kings.”³⁶ Is the Chorus right, or should we instead heed its later advice to “sit and see, / Minding true things by what their mock’ries be.”³⁷ Then, I turn to the arguments for seeing him as a Machiavellian ruler.³⁸ Finally, I consider a third

³³ WILLIAM SHAKESPEARE, *THE FIRST PART OF KING HENRY IV* act 1, sc. 1, ll. 19–21.

³⁴ SHAKESPEARE, *HENRY V*, *supra* note 2, at act 5, sc. 2, ll. 199–202.

³⁵ NICCOLO MACHIAVELLI, *THE PRINCE* 51–52 (Quentin Skinner & Russell Price eds., 1988) [hereinafter *MACHIAVELLI, THE PRINCE*]. The Duke of Burgundy’s speech in Act V, reflecting on the ruin and misery that Henry’s war has brought to France, reads as if it were a commentary on Machiavelli’s thought: The Duke speaks of “soldiers. . . . That nothing do but meditate on blood” as “savages.” SHAKESPEARE, *HENRY V*, *supra* note 2, at act 5, sc. 2, ll. 59–60.

³⁶ SHAKESPEARE, *HENRY V*, *supra* note 2, at act 2, chor. 6.

³⁷ *Id.* at act 4, chor. 52–53. See Janet M. Spencer, *Princes, Pirates, and Pigs: Criminalizing Wars of Conquest in Henry V*, 47 SHAKESPEARE Q. 160, 167 (1996).

³⁸ According to one common and traditional interpretation, for Machiavelli, the Christian religion is “a weapon of illusion, for the use of politics in the state’s fight for survival.” GIUSEPPE PREZZOLINI, *MACHIAVELLI* 41 (1967). In a similar vein, the great Anglican theologian Richard Hooker (1554–1600) described a “Machiavellian” as one who believes “that religion itself is a mere politic device, forged purposely to serve for that use.” Quoted in RAAB, *supra* note 18, at 63. Our question is whether Shakespeare would have us consider his Henry V to be a Machiavellian in that sense.

Some recent scholarship has contested this traditional conception of Machiavellianism, and in particular the idea that Machiavellianism teaches a purely instrumentalist view of Christianity. See MAURIZIO VIROLI, *MACHIAVELLI’S GOD* 5–6 (Antony Shugaar trans., 2010). On this approach, Machiavelli should be read to be prescribing the *reform* of Christianity—into a faith that supports and sustains republican citizenship—not as negating its truth but emphasizing its utility. That scholarly debate over Machiavelli’s intentions is not of concern here. I shall unpolemically assume the older view.

interpretative approach based on St. Augustine's portrayal of pagan and Christian Roman Emperors in Book V of *The City of God*.

I conclude that Shakespeare's Henry is intended to be neither a mirror of Christian kings along Erasmian lines, nor a Machiavellian prince. Shakespeare does indeed mean us to see Henry as a Christian, but as one enmeshed in sins that are inseparable from his claim to the Crown and that he does not seek to purge. Shakespeare may even have gone further, contradicting both Erasmus and Augustine by denying the very possibility of a "Christian king" because war, and with it, sin, were the inescapable consequences of rulership, entailed by the existence of the State in a world of States. At the same time, Shakespeare may be saying that no ruler, at least not one in a Christian culture, can be publicly seen to engage in the immoral practices that Machiavelli advises will be needed in cases of State necessity. Thus, neither Erasmus, nor Machiavelli, nor Augustine provides us with a fully satisfying understanding of Shakespeare's Henry: Henry seems to us enigmatic and self-contradictory because Shakespeare sees more deeply into the nature of rulership than any of these three great predecessors, and his play reveals in various ways the limitations in each of their accounts of government.

I. HENRY AS A MIRROR OF CHRISTIAN PRINCES

We first see Henry gathered in council with his nobles, awaiting the arrival of the Archbishop of Canterbury, whom Henry desires to consult on "some things of weight / That task our thoughts, concerning us and France."³⁹ As a great-great-grandchild of Isabel, the daughter of King Philip IV of France,⁴⁰ Henry holds a claim to the throne of France. But because his claim derives from the female line, it may be barred by the "Salic Law," which had been understood to bar succession from a female.⁴¹ Henry wishes to be "resolved" on the question, not only

³⁹ SHAKESPEARE, HENRY V, *supra* note 2, at act 1, sc. 2, ll. 5–6.

⁴⁰ For explanation of the genealogical basis of Henry's claim, see MERON, HENRY'S WARS AND SHAKESPEARE'S LAWS, *supra* note 5, at 26–27.

⁴¹ *Salic Law of Succession*, ENCYCLOPAEDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/519155/Salic-Law-of-Succession> (last visited June 14, 2015).

of the consistency of his claim with the Salic Law, but also on the justice of waging war in France to vindicate that claim.⁴² The two questions were intertwined. Just war doctrine held that the recovery of property was a legitimate cause for war⁴³—though it was more doubtful whether it also held that a dynastic claim to title over territory could be pursued by war.⁴⁴ So, only if his claim to the title were valid would the war Henry planned to wage be just.⁴⁵ Accordingly, Henry asks the Archbishop to “justly and religiously unfold / Why the law Salic that they have in France / Or should or should not bar us in our claim.”⁴⁶

⁴² SHAKESPEARE, HENRY V, *supra* note 2, at act 1, sc. 2, l. 13.

⁴³ See MERON, HENRY'S WARS AND SHAKESPEARE'S LAWS, *supra* note 5, at 37. Thus, Augustine had taught that war could be justly fought when the targeted State had neglected “to return something that was wrongfully taken.” GREGORY M. REICHBERG, HENRIK SYSE & ENDRE BEGBY, THE ETHICS OF WAR: CLASSIC AND CONTEMPORARY READINGS 82 (2006) (quoting Augustine, *Questions on the Heptateuch*, VI, x.). Francisco de Vitoria followed Augustine, citing him for the proposition that a State may wage war justly in order to recover property. FRANCISCO DE VITORIA, POLITICAL WRITINGS 297–98 (Anthony Pagden & Jeremy Lawrance eds., 1991). Christine de Pisan stated that just causes for war included the recovery of “lands, seignories, or other thynge[s], by other taken & usurped by unjuste cause, whyche to the prince or to the jurisdiction of the countree or of the subgettes ought to apperteyne.” MERON, HENRY'S WARS AND SHAKESPEARE'S LAWS, *supra* note 5, at 39. Likewise, Sir Francis Bacon advised Prince Charles in 1624 that he might justly wage war against Spain for the recovery of the Palatinate, even assuming that the Palatinate had been lost in an unjust war. See SIR FRANCIS BACON, *Considerations Touching a War With Spain*, in 2 THE WORKS OF FRANCIS BACON, LORD CHANCELLOR OF ENGLAND 201, 202 (Basil Montagu ed., 1841); see also Howard B. White, *Bacon's Imperialism*, 52 AMER. POLI. SCI. REV. 470, 487–88 (1958). And, although it may be a special case, Innocent IV (ca. 1180-1254), a noted Canon lawyer, opined that the Pope, as successor to the Roman Empire, could compel the return of the Holy Land to his jurisdiction, “since it was unjustly expropriated and despoiled by [the Moslems] who have no right to it.” GREGORY M. REICHBERG, HENRIK SYSE & ENDRE BEGBY, THE ETHICS OF WAR: CLASSIC AND CONTEMPORARY READINGS 153 (2006) (quoting Innocent IV, *On Vows and the Fulfilling of Vows*, Decretal *Quod super his*). If the Pope's claim was not accepted, Innocent continued, then “[a]t the very least the emperor can do it in the capacity of King of Jerusalem.” *Id.*

⁴⁴ According to one recent authority, just war theory “never mentions matters of dynastic claims as just causes for waging war.” PUGLIATTI, *supra* note 5, at 209. However, Vitoria wrote that “the French held Burgundy in the mistaken but colorable belief that it belongs to them. Now our emperor Charles V has a certain right to that province and may seek to recover it by war.” DE VITORIA, *supra* note 43, at 282.

⁴⁵ See Spencer, *supra* note 37, at 162.

⁴⁶ SHAKESPEARE, HENRY V, *supra* note 2, at act 1, sc. 2, ll. 10–12.

Henry emphasizes at length that he is demanding absolute honesty and objectivity from the Archbishop—because so much blood will be spilt if war ensues—and he pledges to abide by the Archbishop’s opinion, whatever it may be:

And God forbid, my dear and faithful lord,
 That you should fashion, wrest, or bow your reading,
 Or nicely charge your understanding soul
 With opening titles miscreate, whose right
 Suits not in native colours with the truth;
 For God doth know how many now in health
 Shall drop their blood in approbation
 Of what your reverence shall incite us to.
 Therefore take heed how you impawn our person,
 How you awake our sleeping sword of war; . . .
 Under this conjuration speak, my lord,
 For we will hear, note, and believe in heart
 That what you speak is in your conscience washed
 As pure as sin with baptism.⁴⁷

A. *Consilia*

By inviting the Archbishop to provide him with an opinion concerning a war with France, Henry is behaving as a model Christian king would. He is following a tradition in which medieval Christian rulers sought *consilia* or legal advice from a learned jurist.⁴⁸ According to the legal historian R.M. Helmholz, “[i]n its essential features, a *consilium* was the answer given by a learned jurist to a question, usually from a current case, put by the judge or requested by a party.”⁴⁹ Writers in the just war tradition expected Christian rulers to seek such expert advice before embarking on war.⁵⁰

⁴⁷ *Id.* at act 1, sc. 2, ll. 13–32.

⁴⁸ The earliest known medieval *consilia* are from the mid-twelfth century. See Susan Reynolds, *The Emergence of Professional Law in the Long Twelfth Century*, 21 *LAW & HIST. REV.* 347, 358 (2003).

⁴⁹ R.M. HELMHOLZ, *THE SPIRIT OF CLASSICAL CANON LAW* 30 (1996).

⁵⁰ Non-Christians had a similar custom. Consider the deliberations over the question of the justice of a war that Shakespeare depicts in *Troilus and Cressida*, Act II, scene 2. The nobility of Troy are gathered before King Priam—as those of England were before Henry V—to discuss the continuation of the Trojan War, which of course arose from Paris’s wrongful abduction of Helen from her husband, King Menelaos. WILLIAM SHAKESPEARE, *TROILUS AND CRESSIDA* act 2, sc. 2, ll. 116, 170–71. The Trojan hero Hector, who maintains that the Trojans are warring in a “bad cause,” believes that the gathering has been called to make “a free determination / Twixt right and wrong.” *Id.* Hector’s “discourse of reason” is opposed

Thus, according to the Spanish Dominican Francisco De Vitoria (1483-1546), a near-contemporary of Shakespeare's, "for the just war it is necessary to examine the justice and causes of war with great care, and also to [discern] the arguments of the opponents, if they are prepared to negotiate genuinely and fairly."⁵¹ In Henry's own time, the French writer Christine de Pizan (c. 1364-c. 1431), upholding chivalric ideals of combat, affirmed:

In order . . . [to] go about this matter [of war] justly, [a prince] will follow this course: he will gather together a great council of wise men in his parliament, . . . he will also call upon . . . elder statesmen as well as legal advisors and others; he will propose . . . the whole matter in full without holding anything back, for God cannot be deceived, everything according to what may be right or wrong, and he will conclude by saying that he wishes to recount everything and hold to the determination of doing right. . . . [H]e will summon his adversary to demand of him restitution and amends for his injuries and the wrong done him. . . . If these things are duly carried out, as the law requires, then the just prince may surely undertake war . . .⁵²

The III Consideracions Right Necessarye to the Good Governauce of a Prince, a mid-fifteenth century English translation of a 1347 French tract of uncertain authorship—apparently intended for John, Duke of Normandy and eventual successor to Philip VI of France—advised the prince to consult "good clerkes, that beth well named and famed and endued with kunnyng" before beginning war:

In tyme of werre, a Prince shulde souvereynly have in regarde and considre the causes, the qualitees and alle the circumstaunces and alle the meevinges unto the werres. And he shulde considre well, and se by his good counseill yf he have cause resonable and right to make werre and wherefore the werre is meevid. And if it can ben avised and considred by his good and true counseill that he hath right and may noon othir

by the "madly hot" Troilus, who denies the priority of justice in deciding the question of war. *Id.* at act 2, sc. 2, l. 115. For Troilus, the "justness of each act" is "such and no other than event doth form it." *Id.* at act 2, sc. 2, ll. 119–20. Troilus' counsel prevails.

⁵¹ DE VITORIA, *supra* note 43, at 307 (emphasis omitted).

⁵² CHRISTINE DE PIZAN, *THE BOOK OF DEEDS OF ARMS AND CHIVALRY* 17–18 (Charity Cannon Willard ed., Sumner Willard trans., 2003).

wyse atteigne to his right than by force of werre, than most he knyghtly and corageously undirtake and susteyne his werres⁵³

These expectations did not exist only in the minds of intellectuals and clerics; rather, they were embedded in State practice. Vitoria observed that “many . . . distinguished Christian emperors,” including Constantine the Great, “had saintly and learned bishops as their advisers” in deciding whether to wage war.⁵⁴ In a letter purporting to be from King—later Saint—Louis IX of France to his eldest son Philip, the King advised the Prince to “be careful not to start the war before you have good counsel that the cause is most reasonable, and before you have summoned the offender to make amends, and have waited as long as you should.”⁵⁵ In 1369, Charles V of France reopened hostilities against England only after consulting French and other experts on canon and civil law regarding the justice of his cause.⁵⁶ In 1419, Philip, Duke of Burgundy, sought his counselors’ advice as to whether to accept the peace terms offered by Henry V of England, which would entail renouncing his pledged allegiance to Charles VI of France. Their advice “was proffered in scholastic form, with arguments listed for and against,” and “took careful note of the point of conscience” involved in abjuring a pledged allegiance.⁵⁷ Charles VII of France and his councilors examined the juridical and moral factors, as well as the military and political ones, of the situation before breaking the Truce of Tours in 1449.⁵⁸

English and Scottish kings behaved similarly. One late fourteenth century source reports that before going to war, Edward III customarily took counsel from legal experts.⁵⁹ In

⁵³ *The III Consideracions Right Necesserye to the Good Governauce of a Prince*, in *FOUR ENGLISH POLITICAL TRACTS OF THE LATER MIDDLE AGES* 207 (Jean-Philippe Genet ed., 1977) (citation omitted).

⁵⁴ DE VITORIA, *supra* note 43, at 298. Vitoria specifically says that princes, in deciding doubts on the lawfulness of war, must be guided by the clergy. See Erich Hula, *The Revival of the Idea of Punitive War*, 21 *THOUGHT* 405, 429 (1946).

⁵⁵ *Saint Louis’ Advice to His Son*, in *MEDIEVAL CIVILIZATION* (Dana Carleton Munro & George Clarke Sellery eds., 1910), available at <http://www.fordham.edu/halsall/source/stlouis1.html>.

⁵⁶ See PHILIPPE CONTAMINE, *WAR IN THE MIDDLE AGES* 285 (Michael Jones trans., 1984).

⁵⁷ Catto, *supra* note 21, at 95.

⁵⁸ CONTAMINE, *supra* note 56, at 285.

⁵⁹ *Id.*

1599—the year in which *Henry V* was written⁶⁰—King James VI of Scotland—later, James I of England—advised his son to be “slow in taking on a warre,” making sure “abo[v]e all, [not to] let . . . the wrong cause be on your side” and, before going to war, to “heare and doe all reason.”⁶¹ But most importantly for understanding Shakespeare’s play, the practice was followed in England during Shakespeare’s lifetime.

In 1585, Queen Elizabeth I intervened against Spain in the Netherlands, sending troops under the Earl of Leicester to fight on behalf of the rebelling Dutch Protestants. Elizabeth, however, was said to have been “very tender of entering into this open breach with Spain,” so Leicester sought the advice of her Archbishop of Canterbury, John Whitgift, who gave a guarded answer.⁶² Elizabeth also consulted the Bishop of Sarum on the theological side of the question. Thus, as the Shakespeare critic Lily Campbell pointed out, “[m]aking King Henry V take the initiative in seeking advice from the Archbishop of Canterbury as to his moral justification for going to war . . . [had an] Elizabethan precedent.”⁶³ Indeed, in her view, “[w]hen Henry asks the archbishop to argue his right ‘justly and religiously’ since he does not want to go to war without the assurance of right and justice on his side, he speaks in the best Tudor tradition.”⁶⁴

B. *The Archbishop’s Arguments (Act I, Scene ii)*

The Archbishop answers Henry with a lengthy legal analysis of the Salic Law. He posits that “[t]here is no bar / To make against your highness’ claim to France / But this.”⁶⁵ Then, he propounds the argument that the Salic Law is misconceived if it is thought to pose such a bar. Essentially, he makes two arguments. First, the Law established only that “no

⁶⁰ Theodor Meron, *Shakespeare’s Henry the Fifth and the Law of War*, 86 AM. J. INT’L L. 1, 1 (1992).

⁶¹ THE POLITICAL WORKS OF JAMES I 28–29 (Charles Howard McIlwain ed., 1918).

⁶² CAMPBELL, *supra* note 10, at 268 (quoting JOHN STRYPE, THE LIFE AND ACTS OF ARCHBISHOP JOHN WHITGIFT, D.D., THE THIRD AND LAST LORD ARCHBISHOP OF CANTERBURY IN THE REIGN OF QUEEN ELIZABETH 434 (1822)).

⁶³ *Id.* at 269.

⁶⁴ *Id.* at 270.

⁶⁵ SHAKESPEARE, HENRY V, *supra* note 2, at act 1, sc. 2, ll. 35–37.

female / Should be inheritrix in Salic land.”⁶⁶ But France was not a “Salic land”; rather, the Salic land lay “twixt Elbe and Saala,” or what “at this day in Germany [is] called Meissen.”⁶⁷ Hence, the Law “[w]as not devised for the realm of France.”⁶⁸ Second, the precedents show that three French kings—Pépin, Hugh Capet, and Louis IX—all held their claims to the Crown “in right and title of the female.”⁶⁹

Henry appears to be unconvinced by the Archbishop’s reasoning. At any rate, he presses him further, replying brusquely: “May I with right and conscience make this claim?”⁷⁰ The Archbishop, driven to the wall, stakes everything. Making the only explicit quotation from Scripture in all of Shakespeare, he says: “The sin upon my head, dread sovereign. / For in the Book of Numbers is it writ, / ‘When the son dies, let the inheritance / Descend unto the daughter’. Gracious lord, / Stand for your own; unwind your bloody flag”⁷¹

If Henry was indeed skeptical of the Archbishop’s analysis of the Salic Law, he was right to have been so. For “more than four centuries, the Salic Law was held among Frenchmen to have been one of the chiefest sustaining members of the monarchical structure, persisting from that age when the French lived in the lands beyond the Rhine,” that is, near Meissen.⁷² The Salic Law doctrine of the inalienability of the French Crown “provided a lasting guarantee of the integrity of French state and nation.”⁷³

⁶⁶ *Id.* at act 1, sc. 2, ll. 50–51.

⁶⁷ *Id.* at act 1, sc. 2, ll. 51–53.

⁶⁸ *Id.* at act 1, sc. 2, l. 55.

⁶⁹ *Id.* at act 1, sc. 2, l. 89.

⁷⁰ *Id.* at act 1, sc. 2, l. 96.

⁷¹ *Id.* at act 1, sc. 2, ll. 97–101 (quoting *Numbers* 27:8). In the Geneva Bible translation (1599), the verse reads: “Also thou shalt speak unto the children of Israel, saying, If a man die and have no son, then ye shall turn his inheritance unto his daughter.” *Numbers* 27:8 (Geneva). The Geneva Bible, the most commonly printed book of Shakespeare’s day, is available at <https://www.biblegateway.com/versions/1599-Geneva-Bible-GNV/>. Shakespeare’s knowledge of the Bible seems to have come primarily through his own private reading. See Naseeb Shaheen, *Shakespeare’s Knowledge of the Bible—How Acquired*, 20 SHAKESPEARE STUD. 201, 212 (1988). If Shakespeare was a reader of the Bible, the Geneva Bible is probably the version he read. See Leland Ryken, *Shakespeare and the Geneva Bible*, REFORMATION 21 (July 2009), <http://www.reformation21.org/articles/shakespeare-and-the-geneva-bible.php>.

⁷² See John Milton Potter, *The Development and Significance of the Salic Law of the French*, 52 ENG. HIST. REV. 235, 235–36 (1937) (internal quotation marks omitted).

⁷³ *Id.* at 236.

The French nobility and French lawyers had firmly maintained the doctrine. The assembly of notables in 1317 had determined the manner of succession: "Women do not succeed to the crown of France."⁷⁴ In 1328, the assembly of notables logically extended this principle to those claiming as heirs of women.⁷⁵ "[M]ost of the French lawyers probably approved, on political and . . . patriotic grounds, of the maintenance of the masculine succession."⁷⁶ Foreign lawyers also sanctioned the French custom. "[I]n 1377, the great Roman jurist Baldus de Ubaldis . . . wrote simply that 'according to the reasonable custom of the French, the daughter of the king may not succeed to the realm, nor in consequence may her son claim any right therein'. "⁷⁷ And in 1340, Pope Benedict XII, without referring to the Salic Law, mentioned in a letter to Edward III of England "the firm custom of barring succession to the French kingdom through the female line."⁷⁸ According to the Renaissance historian Garrett Mattingly, the principle of succession to the French Crown and its "appanages"—fiefs granted to junior branches of the royal family—through the male line only gave France a "great constitutional advantage" in dynastic politics.⁷⁹ It "not only insured France against the accession through marriage of a foreign dynasty, it provided a double remedy for the dangerous practice of alienating provinces to provide for scions of the royal house."⁸⁰ And one leading medieval historian, Charles T. Wood, has noted that the differing English and French rules for succession intensified the constitutional differences that distinguished the two realms in fundamental ways, for example, in matters of the election or deposition of monarchs, making English kings more dependent on their own power and abilities rather than on the "sacredness" of their blood.⁸¹ Shakespeare's learned Archbishop, who claims to have

⁷⁴ *Id.* at 237 (internal quotation marks omitted).

⁷⁵ *Id.*

⁷⁶ *Id.* at 239.

⁷⁷ *Id.* at 241.

⁷⁸ MERON, HENRY'S WARS AND SHAKESPEARE'S LAWS, *supra* note 5, at 30.

⁷⁹ MATTINGLY, *supra* note 6, at 112.

⁸⁰ *Id.* at 112–13.

⁸¹ See CHARLES T. WOOD, JOAN OF ARC & RICHARD III: SEX, SAINTS, AND GOVERNMENT IN THE MIDDLE AGES 26–28 (1991).

studied the French “authors” writing on the subject,⁸² might have been expected to address this body of law, custom, and policy, had he been reasoning honestly.⁸³

Canterbury’s argument concerning the three French kings who claimed through the female line is even more obviously faulty. The Archbishop’s own descriptions of those rulers reveal their claims to have been illegitimate. Of the first, Pépin, he says that he “deposèd Childéric,” of the second, Hugh Capet, he says that he “usurped the crown / Of Charles the Duke of Lorraine, sole heir male / Of the true line and stock of” Charlemagne; of the third, the saintly Louis IX, he says that this “sole heir to the usurper Capet, / Could not keep quiet in his conscience / Wearing the Crown of France.”⁸⁴ Canterbury’s argument impeaches itself: It shows each of these kings to be “a usurper grasping for any source of legitimacy.”⁸⁵

⁸² SHAKESPEARE, HENRY V, *supra* note 2, at act 1, sc. 2, l. 43. Henry Chichele (1364-1443) may have been the model for Shakespeare’s Archbishop of Canterbury; he is identified in *Holinshed’s Chronicles* (1587), Shakespeare’s main source for the historical incidents in play, as the Archbishop who made these arguments. E.F. JACOB, HENRY IV AND THE INVASION OF FRANCE 39 (1966). And Chichele was a lawyer of very considerable attainments. *See id.* But the attribution of the Archbishop’s speech to Henry Chichele is incorrect. *See* MERON, HENRY’S WARS AND SHAKESPEARE’S LAWS, *supra* note 5, at 31. The deliberations that Shakespeare dramatizes began at the end of April, 1414, and the See of Canterbury was technically vacant at that point. *See* E.F. JACOB, ARCHBISHOP HENRY CHICHELE 16, 20 (1967); *see also*, *Henry Chichele*, WIKIPEDIA, http://en.wikipedia.org/wiki/Henry_Chichele (last visited June 14, 2015). Henry V had recommended that the Pope elevate Chichele to the primacy in March, 1414, after the death of Archbishop Thomas Arundel in February of that year, but Chichele was not invested until July. *See id.* Moreover, there is no contemporary evidence that Chichele was present at that conference; the earliest suggestion that he attended it appeared in 1540, long after the events. *See id.*

It does not matter much whether we identify Shakespeare’s Archbishop with Chichele or not. Shakespeare’s character is representative in any case of the “university-educated clergy, sometimes theologians but more often canon or civil lawyers, [who] filled the councils of every prince and . . . [who] had a pivotal role both in directing the conscience of princes and ministers, and in filling the office of minister themselves.” Catto, *supra* note 21, at 87.

⁸³ Even after the disaster at Agincourt, French lawyers continued to insist that the Salic Law applied in their kingdom. In 1415-1416, Jean de Montreuil argued, in his *Traité contre les Anglois*, that the Salic Law “derived[d] from the Romans, was established in France before ever there were Christian kings, and was confirmed by Charlemagne . . . Montreuil held . . . that the force of the rule excluding women and their heirs from the crown is customary, and proceeded upon that ground to defend its reasonableness.” Potter, *supra* note 72, at 247.

⁸⁴ SHAKESPEARE, HENRY V, *supra* note 2, at act 1, sc. 2, ll. 65, 69-71, 78-80.

⁸⁵ Spencer, *supra* note 37, at 171.

Canterbury's reference to the Book of Numbers is also unhelpful to Henry. If claims to kingship can descend through the female line, then Henry's claim to the throne of *England* is at risk, because the imprisoned Edmund Mortimer will have a better claim to it than Henry.⁸⁶

The infirmities in Canterbury's justification of Henry's war do not end there. For one thing, notice that the Archbishop collapses the question of the justice of Henry's war into the narrower question of the validity of Henry's title. Having clinched—as he thinks—the question of title, he immediately urges Henry to “unwind your bloody flag.”⁸⁷ But the validity of Henry's claim to France is at most a necessary, not a sufficient, condition of the justice of his war. Thus, it had long been held that unless a king fought a war from worthy motives, that war would be unjust. The twelfth century canonist Bishop Rufinus of Assisi maintained that a ruler “should wage [war] with a fervour penetrated by goodwill,” and that if that condition were lacking, the war would be unjust.⁸⁸ Writers in Shakespeare's period were in accord. In his *Institutes of the Christian Religion* (1536), John Calvin wrote that in undertaking war, “all magistrates must here be particularly cautious not to give way, in the slightest degree, to their passions.”⁸⁹ And Vitoria stoutly reaffirmed the “well established” proposition that “the personal glory or convenience of the prince is not a cause of just war. . . . This is the difference between a legitimate king and a tyrant: the tyrant orders the government for his own profit and convenience, whereas the king orders it for the common good”⁹⁰

Henry's Archbishop seeks to drive his point home by closing his presentation with an appeal to the young King's desire for fame and glory—an appeal that, if effective, would *subvert* his

⁸⁶ WILLIAM SHAKESPEARE, *THE FIRST PART OF KING HENRY VI* act 2, sc. 5, ll. 63–92 (Micheal Hattaway ed., 1990) (the dying Mortimer unfolds the argument to his nephew Richard Plantagenet); WILLIAM SHAKESPEARE, *THE SECOND PART OF KING HENRY VI* act 2, sc. 5, ll. 61–81 (Roger Warren ed., 2002) (Richard in turn elaborates the argument to the Earl of Warwick); see also GRAHAM BRADSHAW, *MISREPRESENTATIONS: SHAKESPEARE AND THE MATERIALISTS* 50 (1993); William Huse Dunham, Jr. & Charles T. Wood, *The Right To Rule in England: Depositions and the Kingdom's Authority, 1327-1485*, 81 *AM. HIST. REV.* 738, 749 (1981).

⁸⁷ SHAKESPEARE, *HENRY V*, *supra* note 2, at act 1, sc. 2, l. 101.

⁸⁸ CONTAMINE, *supra* note 56, at 282 (quoting Rufinus, *Summa Decretorum*).

⁸⁹ JOHN CALVIN, *INSTITUTES OF THE CHRISTIAN RELIGION* bk. II, ch. 20, at 12 (1536).

⁹⁰ DE VITORIA, *supra* note 43, at 303 (emphasis omitted).

earlier argument that the war would be just: "Look back into your mighty ancestors./Go, my dread lord, to your great-grandsire's tomb,/From whom you claim; invoke his warlike spirit,/And your great-uncle's, Edward the Black Prince,/Who on the French ground played a tragedy,/Making defeat on the full power of France . . ." ⁹¹ And lest the Archbishop's appeal be insufficiently stirring, it is seconded by his episcopal companion, the Bishop of Ely:

Awake remembrance of those valiant dead,
And with your puissant arm renew their feats.
You are their heir, you sit upon their throne,
The blood and courage that renownèd them
Runs in your veins—and my thrice-puissant liege
Is in the very May-morn of his youth,
Ripe for exploits and mighty enterprises. ⁹²

If the bishops are successful in arousing Henry's youthful passion for glory, then they will necessarily have failed in establishing that the ensuing war in France will be just. Indeed, they will, surely knowingly, have launched him on an *unjust* war. Shakespeare's prelates are behaving in exactly the way Erasmus had condemned: "Even if we allow that some wars are just, yet since we see that all mankind is plagued by this madness, it should be the role of wise priests to turn the minds of . . . princes to other things. Nowadays we often see them as very firebrands of war." ⁹³

⁹¹ SHAKESPEARE, HENRY V, *supra* note 2, at act 1, sc. 2, ll. 102–07.

⁹² *Id.* at act 1, sc. 2, ll. 115–21.

⁹³ ERASMUS, THE EDUCATION OF A CHRISTIAN PRINCE, *supra* note 16, at 108. Readers of Erasmus could also have been reminded of Erasmus' *Complaint of Peace* (1521). In that work, Erasmus has "Peace" say this of bishops:

The right reverend fathers in God, the holy bishops, forgetting their personal and professional dignity, were continually running to and fro, like the evil-one, adding virulence to the public disease of the world, by their mischievous officiousness; instigating, on one hand, Julius the pope, and, on the other, the surrounding kings, to push on the war with vigour; as if both pope and kings were not mad enough without their inflammatory suggestions. In the mean time, the fathers in God failed not to call their bloodthirsty rage, a zeal for law, order, and religion.

To forward their sanguinary purposes, they wrest the laws of heaven to a constructive meaning never meant, they misinterpret the writings of good men, they misquote and misrepresent the sacred scripture, I do not say, with the most barefaced impudence only, but the most blasphemous impiety.

"Peace" also speaks of the clergy in terms that seem almost pointed at Shakespeare's bishops:

Moreover, the Archbishop fails to address whether Henry's project has a reasonable chance of success—a condition sometimes posited as a requirement for waging a just war.⁹⁴ And despite the strength of Henry's military expedition, the answer would not have been obvious. Gabriela Blum has argued powerfully that the failure to clarify what was to count as "victory" was a deep conceptual flaw both in the American strategy for the Second Gulf War and in the argument for the war's "justice."⁹⁵ Henry's project was infected with a similar ambiguity. "Victory" could not have been defined merely as military success in battle, nor as the capitulation of the French King, nor even as a treaty and a dynastic marriage uniting the two Crowns. Henry was seeking the unification of two—or more—nations and peoples into a single empire. But despite the long and bitter record of enmity between England and France—which is, indeed, recalled in the Archbishop's speech⁹⁶—Henry and his advisers did not consider the effects of an English conquest on French (proto-) nationalism. Would the French nobility and people ever acquiesce in the rule of a foreign King, even one proclaimed as heir by their own King and married to that King's daughter? In such scenes as Henry's courtship of the princess Catherine, Shakespeare playfully explores the difficulties that the French and English, speaking different languages, experience in trying to comprehend each other. The comical dialects of Henry's Irish, Welsh, and Scottish soldiers cause similar problems in intelligibility, underscoring the fragility of the "British" identity they supposedly share with their

[C]lergymen, solemnly consecrated to God, are often among the first to inflame the minds, both of king and people, to blood and devastation. They convert the sweet accents of the gospel to the trumpet of Mars; and, forgetting the dignity of their profession, run about making proselytes to their opinion, ready to do or suffer any thing, so long as they can but succeed in kindling the flames of war. Kings who perhaps might otherwise have kept quiet, are set on fire by those very men, who ought, if they acted in character, to cool the ardour of warring potentates by their official and sacred authority.

ERASMUS, *THE COMPLAINT OF PEACE* (The Open Court Publ'g 1917) (1521), available at <http://oll.libertyfund.org/titles/erasmus-the-complaint-of-peace>.

⁹⁴ See, e.g., WILLIAM V. O'BRIEN, *THE CONDUCT OF JUST AND LIMITED WAR* 30–31 (1982).

⁹⁵ See Gabriella Blum, *The Fog of Victory*, 24 *EUR. J. INT'L L.* 391, 408–09 (2013).

⁹⁶ The Archbishop's speech throughout "summons a sense of France's historical, geographical, and cultural *separateness*." BRADSHAW, *supra* note 86, at 50.

English counterparts.⁹⁷ “What ish my / nation?” the Irish Captain Macmorris asks.⁹⁸ These episodes may seem light-hearted, but they convey the inherent difficulty—unacknowledged by the Archbishop—in Henry’s project of uniting the English and French under a single crown. “[L]anguage stands as an insurmountable barrier to erasing national difference because identity is so intertwined with how one speaks.”⁹⁹ Indeed, the ferocity of French resistance to the project of a unified Crown even after the disaster at Agincourt soon became apparent in the emergence, from the ranks of the French people, of Joan of Arc (1412-1431).¹⁰⁰ France, as Henry and his advisers should have foreseen, “was too large and too hostile to permit foreign conquest and occupation”; it ultimately proved to be “a bottomless hole into which English men and money were poured.”¹⁰¹

⁹⁷ See SHAPIRO, *supra* note 2, at 96–97.

⁹⁸ SHAKESPEARE, HENRY V, *supra* note 2, act III, sc. iii, ll. 64–65. Ethnic quarrels were a genuine problem within the historical Henry’s multi-national army. Some versions of his Military Ordinances for the campaigns in France condemned “barrators” in the army who “reproach any one because of the country he is of, [whether French], English, Welsh or Irish” or of anywhere else. Anne Curry, *The Military Ordinances of Henry V: Texts and Contexts, in WAR, GOVERNMENT AND ARISTOCRACY IN THE BRITISH ISLES, c. 1150-1500: ESSAYS IN HONOUR OF MICHAEL PRESTWICH* 214, 235, 247–48 (Chris Given-Wilson et al. eds., 2008). The punishment might, at the King’s discretion, be death. *Id.* Remember too that, even as the play was first being staged, an English army was attempting to subdue a rebellion in Ireland. *Id.*

⁹⁹ SHAPIRO, *supra* note 2, at 97. Whether the historical Henry V had a firm grasp of French is uncertain. When writing to the Pope, he used English, and in diplomatic dealings with the French he requested that documents be in Latin. See MALCOLM VALE, *THE ANCIENT ENEMY: ENGLAND, FRANCE AND EUROPE FROM THE ANGEVINS TO THE TUDORS* 78–79 (2007). The upper English nobility of the period seems to have had a command of written, and even spoken, French, and the English “ascendancy” that settled in France after Henry’s victory used French. *Id.* On the other hand, ordinary soldiers in Henry’s army understood neither French nor Gascon. *Id.* After Henry’s conquest, the English and French parts of his kingdom formed separate administrative and linguistic entities under a single crown. *Id.*

¹⁰⁰ Although French nationalism did not mature until centuries later, “Joan of Arc’s France possessed an identity which even a peasant girl could share.” ADRIAN HASTINGS, *THE CONSTRUCTION OF NATIONHOOD: ETHNICITY, RELIGION AND NATIONALISM* 98–99 (1997). Both in history and in myth, Joan made a significant contribution to the growth of the consciousness of a French national identity. *Id.* Shakespeare portrays Joan as appealing successfully to the common French identity she and her soldiers share with the Duke of Burgundy, who had sided with the English: “thou fight’st against thy countrymen.” See WILLIAM SHAKESPEARE, *THE FIRST PART OF KING HENRY VI*, *supra* note 86, at act 3, sc. 2, l. 74.

¹⁰¹ BRYCE LYON, *A CONSTITUTIONAL AND LEGAL HISTORY OF MEDIEVAL ENGLAND* 578 (1960).

In yet one more way, Shakespeare subtly conveys that Henry's projected war does not satisfy the requirements of justice. After hearing the bishops' arguments and pleas in full, and then hearing the advice of his nobility, Henry announces that he is "well resolved" on war: "France being ours we'll bend it to our awe, / Or break it all to pieces."¹⁰² But he announces his resolve to go to war *before* hearing the proposals of the French Ambassador. Although a French rejection of Henry's broad claims to "France and all her almost kingly dukedoms"¹⁰³ was only to be expected, the Ambassador might, for all Henry knew, have offered a reasonable compromise. By deciding on war before hearing the French offer, Henry violated the requirement that war be initiated only if all recourse to diplomacy had failed and no alternative but war remained possible. Interestingly, Shakespeare could have found that very test set forth in the 1598 *Apology* of Robert Devereaux, the Earl of Essex,¹⁰⁴ who may have served him as a model for the character of Henry:

I have thoughte excellent Myndes [s]hould come to the Warrs, as Chirurgions doe to their Patients, when noe other Remeddie will [s]erve; or as Men in particular Que[s]tions are allowed to challeng Combatts,- when there is no Way but by the Sowrd to prove the Truth of their Plea, and to obtaine their detained Right. Yea I will goe one Degree further, I thinke the Prince, or State, offends as much again[s]t Ju[s]tice and Rea[s]on, that omitteth a faire Occa[s]ion of makinge an honourable and [s]age Peace, as they which ra[s]hlie and cau[s]ele[s]lie move an unju[s]t Warre.¹⁰⁵

Finally, even if Henry had had just cause for war, it would not have followed that he was compelled to wage it. Erasmus pointed out that even if the prince has just cause for war, he still need not pursue it, especially in view of the sufferings that a war, however just, will cause. "[T]he Christian prince must be suspicious about his 'rights', and then, if they are established beyond doubt, he must ask himself whether they have to be vindicated to the great detriment of the whole world. Wise men

¹⁰² SHAKESPEARE, HENRY V, *supra* note 2, at act 1, sc. 2, ll. 222, 224–25.

¹⁰³ *Id.* at act 1, sc. 2, l. 226.

¹⁰⁴ Shakespeare had perhaps read this pamphlet. See SHAPIRO, *supra* note 2, at 46–47.

¹⁰⁵ THE EARL OF ESSEX'S VINDICATION OF THE WAR WITH SPAIN 3–4 (Oxford-Arms 1729) (1598).

prefer sometimes to lose a case rather than pursue it”¹⁰⁶ A century later, the great Dutch lawyer and thinker Hugo Grotius (1583-1645) noted in his *The Rights of War and Peace* (1625) that it is a mistake for a ruler to “imagine, that whenever he has a just Cause given him, he is thereupon immediately obliged to declare War, or that it is warrantable at any Time for him so to do.”¹⁰⁷ Rather,

it happens that it is commonly a greater Piece of Goodness and much more commendable to abate somewhat of our Right, than rigorously to pursue it. . . . [The] Instance [of Christ] should much more excite and direct us not to be so eager in pursuing our Rights to that Degree, as to bring upon others all those Inconveniences and Mischiefs which War is attended with.¹⁰⁸

Thus, those critics who, like Lily Campbell, appear to take the colloquy between the King and the Archbishop at face value are mistaken.¹⁰⁹ The Archbishop’s arguments are flimsy, even specious; worse, they are logically—and, insofar as they appeal to passion rather than to reason, pragmatically—self-refuting. And the King seems to understand that. But Shakespeare has already alerted his viewers and readers to this possibility. The first scene of the play—an exchange between Canterbury and Ely just before they meet the King—tells us much about the character both of the King and of his ecclesiastical advisers.

C. *The Bishops’ Plot (Act I, Scene i)*

The action of the play opens with a private conference between the two bishops, Canterbury and Ely, who will soon meet Henry. The Archbishop of Canterbury immediately broaches the subject of a bill, pending before Parliament, to

¹⁰⁶ See ERASAMUS, *THE EDUCATION OF A CHRISTIAN PRINCE*, *supra* note 16, at 106.

¹⁰⁷ HUGO GROTIUS, *THE RIGHTS OF WAR AND PEACE* bk. II, ch. XXIV (Richard Tuck ed., Liberty Fund 2005) (1625).

¹⁰⁸ *Id.*

¹⁰⁹ Campbell is not alone. Henry Ansgar Kelly wrote:

[I]t would seem that we are also to believe the archbishop sincere in his declaration of Henry’s right to the French crown. . . . Shakespeare, while showing [the bishops] to be more concerned for the Church’s possessions than would be considered proper in his time, does not evidently portray their concern as completely damning.

HENRY ANSGAR KELLY, *DIVINE PROVIDENCE IN THE ENGLAND OF SHAKESPEARE’S HISTORIES* 233 (1970) (footnote omitted). For similarly-minded interpreters, see Rabkin, *supra* note 17, at 290.

confiscate “the better half” of the Church’s lands.¹¹⁰ The Church had amassed vast wealth—in this period, land was the main form of capital—through its ownership of “the temporal lands which men devout / By testament have given” it.¹¹¹ The bill would strip the Church of sufficient land to “maintain, to the King’s honour, / Full fifteen earls and fifteen hundred knights, / Six thousand and two hundred good esquires,” and “to the coffers of the King beside, / A thousand pounds by th’ year.”¹¹² In addition, the bill would make some provision for the care of the sick and poor by providing revenues to supply a “hundred almshouses.”¹¹³ Ely is aghast at hearing this news: “This would drink deep.”¹¹⁴ Canterbury concurs: “’Twould drink the cup and all.”¹¹⁵ For “prevention” of the bill’s passage, they must turn to the King, “a true lover of the holy Church,” as Ely hopefully describes him.¹¹⁶

Canterbury then launches on a long description of the character of the King, now startlingly reformed. King Henry is not the riotous Prince Hal: The moment that his father died and Henry assumed the throne, “[c]onsideration like an angel came / And whipped th’ offending Adam out of him, . . . Never came reformation in a flood / With such a heady currance scouring faults . . .”¹¹⁷ How was this transformation achieved? Through natural causes, the bishops agree, not by supernatural ones; for, as the Archbishop says, “miracles are ceased, / And therefore we must needs admit the means / How things are perfected.”¹¹⁸ This offhand but revealing comment, which Ely does not challenge, may well be double-edged. It could refer to the Protestant position—common in Elizabethan England—that

¹¹⁰ SHAKESPEARE, HENRY V, *supra* note 2, at act 1, sc. 1, l. 8.

¹¹¹ *Id.* at act 1, sc. 1, ll. 9–10.

¹¹² *Id.* at act 1, sc. 1, ll. 12–14, 18–19.

¹¹³ *Id.* at act 1, sc. 1, l. 17.

¹¹⁴ *Id.* at act 1, sc. 1, l. 20.

¹¹⁵ *Id.* at act 1, sc. 1, l. 21. Bradshaw observes that Canterbury’s reference to the “cup” is “a near-blasphemous joke.” BRADSHAW, *supra* note 86, at 49.

¹¹⁶ SHAKESPEARE, HENRY V, *supra* note 2, at act 1, sc. 1, ll. 22, 24.

¹¹⁷ *Id.* at act 1, sc. 1, ll. 29–30, 34–35.

¹¹⁸ *Id.* at act 1, sc. 1, ll. 67–70.

miracles had ceased.¹¹⁹ But may it not also hint at the “Machiavellian” doctrine that the ends—“How things are perfected”—“admits” or justifies “the means?”¹²⁰

In any event, the two bishops then fall to considering what they should do to mitigate “this bill / Urged by the Commons.”¹²¹ The King seems “indifferent” to it, Canterbury says, or “rather swaying more upon our part.”¹²² Canterbury then discloses that he has already had a private meeting with the King, in which he has had “opened . . . at large” on “causes now in hand,” including that “touching France.”¹²³ He has promised the King that if he goes to war with France, the Church will finance the enterprise; indeed, it will “give a greater sum / Than ever at one time the clergy yet / Did to his predecessors part withal.”¹²⁴ Had the King accepted the offer, Ely asks. Not so far, Canterbury replies: “[T]here was not time enough to hear, / As I perceived his grace would fain have done,” because the “French ambassador upon that instant / Craved audience.”¹²⁵

¹¹⁹ It is important to state the Protestant position accurately.

If Protestant propagandists repeatedly reiterated the slogan that ‘miracles had ceased,’ they did not mean that God himself could no longer disrupt, change, or subvert nature, but only that, since the truth had been revealed and received, He saw less need to do so. What they denied was that miracles could occur at the behest of human beings, whether clergy or laity—a fundamental, if fine, distinction that has not always been sufficiently recognized by modern historians.

Alexandra Walsham, *The Reformation and “The Disenchantment of the World” Reassessed*, 51 *HIST.* 497, 509 (2008).

¹²⁰ See John S. Mebane, “*Impious War*”: *Religion and the Ideology of Warfare in “Henry V,”* 104 *STUD. PHILOLOGY* 250, 256 (2007). The widespread attribution of this view to Machiavelli seems to derive from his teaching on “necessity”:

[A] ruler, and especially a new ruler, cannot always act in ways that are considered good because, in order to maintain his power, he is often forced to act treacherously, ruthlessly, or inhumanely, and disregard the precepts of religion. Hence, he must be prepared to vary his conduct as the winds of fortune and changing circumstances constrain him and . . . be capable of entering upon the path of wrongdoing when this becomes necessary.

MACHIAVELLI, *THE PRINCE*, *supra* note 35, at 62 (footnote omitted). For an illuminating analysis of Machiavelli’s understanding of “necessity,” see PHILIP BOBBITT, *THE GARMENTS OF COURT AND PALACE: MACHIAVELLI AND THE WORLD THAT HE MADE* 42–43 (2013).

¹²¹ SHAKESPEARE, *HENRY V*, *supra* note 2, at act 1, sc. 1, ll. 71–72.

¹²² *Id.* at act 1, sc. 1, ll. 74–75.

¹²³ *Id.* at act 1, sc. 1, ll. 78–80.

¹²⁴ *Id.* at act 1, sc. 1, ll. 80–82.

¹²⁵ *Id.* at act 1, sc. 1, ll. 85–86, 92–93.

This instructive scene informs us how to interpret the conspicuously *public* conference that immediately follows it. Above all, Shakespeare is coaching us to see the public conference as an elaborately staged and scripted farce. Its outcome has been rigged. The King *already* knows that the Archbishop will lend the Church's spiritual and legal sanction to his war; the Archbishop has even agreed that the Church will *finance* it. Interestingly, Shakespeare's main historical source, *Holinshed's Chronicles*, situated the Archbishop's offer to fund the campaign in the *public* meeting he had with the King.¹²⁶ Shakespeare has intentionally deviated from Holinshed to place the Archbishop's offer in his *private* conversation with the King, so that Henry knows, even before the public conference, what the Archbishop's advice will be. And what Henry knows, we know.

Indeed, we may infer that Henry had determined to go to war in France *even before his private interview* with the Archbishop. The pending bill would have provided the King with the military forces—"fifteen earls and fifteen hundred knights, / Six thousand and two hundred good esquires"—and revenues—"A thousand pounds by th' year"—needed for an invasion.¹²⁷ While Henry seems "indifferent" to the bill, he does not promise Canterbury that he will deny it his assent. One way or the other, therefore, Henry will get the war he wants—either by passing the bill and confiscating the Church's lands if the Church will not cooperate with him on the project or by leveraging the threat of the bill's passage to secure from the Church both approval and financial backing. Of course, Henry would no doubt prefer the Church's cooperation to its opposition, especially if cooperation brought in substantial funding. Going to war abroad, he would not want to leave a divided kingdom and an embittered clergy behind him. If the bishops think they are Machiavellians trying to manipulate Henry into a war in France, he has taken their measure: He makes them *implore* him to do what he has resolved to do in any case.¹²⁸

¹²⁶ As pointed out in the New Cambridge Shakespeare edition. See SHAKESPEARE, KING HENRY V, *supra* note 2, at 83 nn. 75–81.

¹²⁷ *Id.* at act 1, sc. 1, ll. 13–14, 19.

¹²⁸ Henry's skill in deceiving of the bishops is closely paralleled by his later deception of the three traitors, Lord Scrope, the Earl of Cambridge, and Sir Thomas Grey, in Act II, Scene 2. Instead of duping Henry, he dupes them—three times over, in fact. SHAKESPEARE, Henry V, *supra* note 2, at act 2, sc. 2. First, he persuades them that they are in his confidence, when they are not. *Id.* Second, he makes them

The bishops do not seem to comprehend what they are up against. In one of the play's many allusions to the similarities between Henry and Alexander the Great, Canterbury has told Ely that Henry is a master of guile and strategems: "Turn him to any cause of policy, / The Gordian knot of it he will unloose, / Familiar as his garter . . ." ¹²⁹

The Gordian knot that Alexander unlooses by the force of his sword, Henry will unravel by the subtle, or fraudulent, art of speaking "sweet and honeyed sentences." ¹³⁰ But even though the bishops know that he possesses this art, they are themselves duped by it. Henry knows how to probe and to exploit the critical weakness of the late medieval Church, which was at once a landed proprietor enjoying important legal prerogatives, but also the keeper of consciences and souls. "It was this combination which made it so vulnerable to opposition; for one tended to undermine the other." ¹³¹

The point of the scene of the conversation between the bishops is not to show that the Archbishop's advice to the King is tainted by ulterior motives—though it is. ¹³² Legal reasoning may be sound even when it serves grubby motives. More important are the clues that the introductory scene provides for understanding the character and motives of *Henry*, and generally for grasping the nature and necessities of a kingship. Henry has succeeded—literally, behind the scenes—in ensuring that the Church, rather than being an obstacle to his project, serves as his instrument. Even while pretending to submit to the Church, he corrupts it—or deepens its existing corruption—and uses it for his own ends. He reduces the Church to a bureaucratic arm of the State.

"overcome" his feigned wish to pardon a man guilty of a much lesser offense, thus making it impossible for them to plead moments later for pardons for themselves, or rather for their descendants. *Id.* Third, the "commissions" that they think he has given them are in fact, as they discover on opening them, indictments for their crime. *Id.* Henry also practices deception on his own soldiers, walking among them on the eve of the Agincourt, but disguised as "a gentleman of a company", so that he can determine their readiness for the battle. *Id.* at act 4, sc. 1, l. 39.

¹²⁹ *Id.* at act 1, sc. 1, ll. 46–48.

¹³⁰ *Id.* at act 1, sc. 1, l. 51.

¹³¹ Gordon Leff, *Heresy and the Decline of the Medieval Church*, 20 PAST & PRESENT 36, 46 (1961).

¹³² See Meron, *supra* note 2, at 25.

Furthermore, the opening pair of scenes conveys a thoroughly disillusioned vision of the law. Instead of being a restraint on Henry's war-making power, the law becomes the means for rationalizing his exercise of it. Sixteenth century thinkers like Erasmus had argued that the concept of "just cause" was so plastic and malleable that it could be stretched to cover almost any occasion¹³³; Elizabethan divines had said the same.¹³⁴ Shakespeare dramatizes the truth of these contentions. To use the words of Thersites in Shakespeare's *Troilus and Cressida*, the Archbishop's reasoning is "such patchery, such juggling and such / knavery! All the argument is a whore and a cuckold—a / good quarrel to draw emulous factions and bleed to death / upon!"¹³⁵

Indeed, Shakespeare seems to be demonstrating that just war doctrine, far from constraining royal power, paradoxically serves instead as a means of *enlarging* a ruler's freedom of action in war, of *empowering* him in that activity. How so? In two ways. First, it motivates and mobilizes support for a war; even in the medieval period, the doctrine did "not so much restrict war, as encourage propaganda."¹³⁶ Second, the firmer the belief that a war is just, the less reason there will be to limit the kinds or moderate the extent of the violence used against the enemy. In a "just" war, the employment of whatever means are necessary to win the war, however atrocious they may be, may seem acceptable.¹³⁷ Think how unhesitatingly the United States used

¹³³ "[W]ho is there who does not think his cause just? . . . [H]ow could anyone not find a pretext, if any sort of pretext is enough to start a war?" ERASMUS, *THE EDUCATION OF A CHRISTIAN PRINCE*, *supra* note 16, at 104; *see also* José A. Fernández, *Erasmus on the Just War*, 34 *J. HIST. IDEAS* 209, 214–16 (1973). But even if just war doctrine was only a slight restraint on princes' decisions to go to war, it appears to have had useful and beneficent consequences in other ways, as in its distinction between permissible "public" wars and forbidden "private" wars. *See* Col. G.I.A.D. Draper, *The Law of Ransom During the Hundred Years War*, 7 *MIL. L. & L. WAR REV.* 263, 268–69 (1968).

¹³⁴ *See* J.R. HALE, *WAR AND SOCIETY IN RENAISSANCE EUROPE 1450-1620*, at 36 (1985).

¹³⁵ SHAKESPEARE, *TROILUS AND CRESSIDA*, *supra* note 50, at act 2, sc. 3, ll. 67–70.

¹³⁶ JIM BRADBURY, *THE MEDIEVAL SIEGE* 298 (1992); *see also* MERON, *supra* note 2, at 30 (arguing the just war doctrine "proved largely useless as an effective vehicle for the discouragement of wars").

¹³⁷ *See* Richard Shelly Hartigan, *Saint Augustine on War and Killing: The Problem of the Innocent*, 27 *J. HIST. IDEAS* 195, 204 (1966) (arguing that with "such a theologically sensitized doctrine of war" as just war theory, it is "not surprising that . . . [a] crusader mentality proliferated among Christian writers" nor that

atomic bombs in what Americans overwhelmingly saw as a just war against Japan. The ruthlessness and cruelty that Henry shows in the conduct of the war in France may stem from his conviction, real or feigned, that his cause is a “just” one.

D. Just War, Holy War, and the Conduct of Warfare

The latter point, about the relationship of *jus ad bellum* to *jus in bello*, needs some explanation. The highest form of just war was “holy” war,¹³⁸ of which the crusade was a form; and Henry seems to think—or feign—that he is waging a crusade in France.¹³⁹ In an interview with the French Ambassador in the scene that follows directly after Canterbury’s speech, the Ambassador delivers to Henry the Dauphin’s insulting reply to Henry’s claim to French titles. The gift is a box of tennis balls, intended to convey the French Dauphin’s opinion that Henry is better suited to sport than to wars.¹⁴⁰ Henry returns the insult in a long harangue to the French Ambassador, saying in part that “by God’s grace” he will “play a set / Shall strike his father’s crown into the hazard.”¹⁴¹ He describes the horrifying war that he will wage on France, adding: “But this lies all within the will

“theologians and philosophers demonstrated literally no concern to place limits on the acts of war” until “the later Middle Ages”).

¹³⁸ The Elizabethans, like their predecessors, were accustomed to thinking of some wars as “holy.” In his *Apology*, the Earl of Essex argued for prolonging England’s war with Spain, despite the defection of England’s ally France, because the war was “holy”:

Did the Kinges, and the religious People, . . . to maineteine the Warrs again[s]t the Enimies of GOD, [s]ell the Ornaments of the *Temple*, and Things con[s]ecrated to holie U[s]es, and [s]hall we, which have as holie a Warre, [s]pare those Things which are dedicated to our idle and [s]en[s]uall Plea[s]ures?

THE EARL OF ESSEX’S VINDICATION OF THE WAR WITH SPAIN, *supra* note 105, at 45.

¹³⁹ See Steven Marx, *Holy War in Henry Fifth*, SHAKESPEARE SURVEY 48, 85–98 (1995), available at <http://cla.calpoly.edu/~smarx/Publications/henry.html>.

The King claims God’s authorization and backing for what he does . . . The attack against France is by implication a substitution for his father’s oft-repeated intention to lead a holy crusade to liberate Jerusalem from the Turks. Crusade is a form of holy war . . . [I]t is the human enactment of God’s will on earth. Crusade undertakes to right wrongs, reestablish justice, punish evildoers and express God’s wrath through human agency. . . . This notion . . . justifies unlimited brutality against those who resist. . . .

Id.

¹⁴⁰ SHAKESPEARE, HENRY V, *supra* note 2, at act. 1, sc. 2, l. 261.

¹⁴¹ *Id.* at act 1, sc. 2, ll. 262–63.

of God, / To whom I do appeal, and in whose name / Tell you the Dauphin I am coming on / To venge me as I may, and to put forth / My rightful hand in a well-hallowed cause."¹⁴² Later, before the battle at Agincourt, Henry sees himself as God's chosen instrument for the just punishment of France: "War is [God's] / beadle. War is his vengeance."¹⁴³ And Henry is God's agent.

Shakespeare's Henry announces a "project for founding an English empire in France" that seems to "assume the moral force of a crusade"—the kind of war that the Henry of history actually made.¹⁴⁴ Henry's hand is "rightful" and his cause "well-hallowed." What gives him his—ostensible—conviction of the sanctity of his cause? Surely it cannot be the personal insult delivered by the message from the Dauphin. The belief that this war will be *holy* must depend, in considerable part at least, on the Archbishop's judgment that it would be *just*.

Armed with that justification, Henry can wage a war that may seem largely free from moral inhibitions—certainly those inhibitions codified in our contemporary *jus in bello*. For instance, during the siege of Harfleur, he threatens that his men will inflict the most extreme savageries on its inhabitants unless they surrender.¹⁴⁵ To be sure, carrying out that threat would have been consistent with the laws and customs of war in Henry's period.¹⁴⁶ Nonetheless, such brutality would not have

¹⁴² *Id.* at act 1, sc. 2, ll. 289–93.

¹⁴³ *Id.* at act 4, sc. 1, ll. 161–62.

¹⁴⁴ Catto, *supra* note 21, at 98.

¹⁴⁵ SHAKESPEARE, HENRY V, *supra* note 2, at act 3, sc. 3, ll. 80–123.

¹⁴⁶ The medieval law and customs of siege warfare would have permitted brutalities of the kind Henry threatened at Harfleur. See Taylor, *supra* note 12, at 236–37; Randall Lesaffer, *Siege Warfare and the Early Modern Laws of War*, in TILBURG WORKING PAPER SERIES ON JURISPRUDENCE AND LEGAL HISTORY NO. 06–01, at 8 (Jan. 12, 2006), available at <http://ssrn.com/abstract=926312>; Robert C. Stacey, *The Age of Chivalry*, in THE LAWS OF WAR 27, 38 (Michael Howard, George J. Andreopoulos & Mark R. Shulman eds., 1994); BRADBURY, *supra* note 136, at 318 (“[T]he normal medieval view was that the defeated [after a successful siege] had brought their fate upon themselves, and it was common practice throughout that time to enforce punitive rights.”). Even in the seventeenth century, Grotius could say:

It is not against the Law of Nature to spoil or plunder him whom it is lawful to kill [I]t is lawful to take away, or destroy, . . . the Forts, Havens, Cities, Men, Ships, Fruits of the Earth, and such like Things of an Enemy We may find in History, almost in every Page, the dismal Calamities of War, whole Cities destroyed, or their Walls thrown down to the Ground, Lands ravaged, and every Thing set on fire. And we may

been *obligatory*. But in a “holy” war, it becomes not merely permissible, but mandated; if Henry’s threats had been realized, he would only have been complying with the instructions for siege war found in chapter twenty of the *Book of Deuteronomy*, in cases where God, having authorized a war, has delivered a city into the besieger’s hands.¹⁴⁷ Henry’s conduct of war, brutal as it

observe, these Things are lawful to be done, even to those that surrender themselves.

GROTIUS, *supra* note 107, at III, v, 1.

The exceptional brutality of traditional siege warfare, and the permissiveness of the law surrounding it, was likely due to the peculiar problems that besiegers encountered in a pre-gunpowder age. The use of castles gave the advantage to defensive rather than offensive forces. See Richard Bean, *War and the Birth of the Nation State*, 33 J. ECON. HIST. 203, 207 (1973). Castles enabled defenders to resist much larger enemy armies, and even a small area could be dotted with numerous castles. *Id.* Thus, despite his victory at Agincourt, it took Henry V ten years to conquer Normandy. *Id.* Castles often had to be starved out one at a time, besieging armies had to be fairly large, and sieges could drag on for months. *Id.* Owing to the length of a siege and the difficulties of foraging in areas already stripped bare, the attackers might find themselves running out of food sooner than the besieged did. *Id.* And, of course, friendly forces might arrive to relieve a castle’s defenders. *Id.* These asymmetries encouraged extreme ruthlessness in besieging armies. By threatening—or imposing—extraordinarily severe consequences if a castle’s defenders refused to surrender, besiegers could alter the defenders’ incentives, making them more inclined to surrender rather than hold out. The traditional law of siege warfare was fashioned to accommodate the attackers’ needs.

¹⁴⁷ In the Geneva Bible translation:

When thou comest near unto a city to fight against it, thou shalt offer it peace. / And if it answer thee again peaceably, and open unto thee, then let all the people that is found therein, be tributaries unto thee, and serve thee. / But if it will make no peace with thee, but make war against thee, then shalt thou besiege it. / And the LORD thy God shall deliver it into thy hands, and thou shalt smite all the males thereof with the edge of the sword. / Only the women, and the children, and the cattle, and all that is in the city, *even* all the spoil thereof shalt thou take unto thyself, and shalt eat the spoil of thine enemies, which the LORD thy God hath given thee. / Thus shalt thou do unto all the cities, which are a great way off from thee, which are not of the cities of these nations here. / But of the cities of this people, which the LORD thy God shall give thee to inherit, thou shalt save no person alive, / But shalt utterly destroy them

Deuteronomy 20:10–17 (Geneva).

We know that the Henry of history was an attentive reader of *Deuteronomy*. His personal chaplain revealed that “after he had first taken his seat upon the throne of the kingdom, [he] wrote out for himself the law of *Deuteronomy* in the volume of his breast” Catto, *supra* note 21, at 97. Further, in July, 1415, during the campaign in France, Henry wrote a letter to King Charles VI that recalled the rules of siege warfare set out in *Deuteronomy* 20. See Taylor, *supra* note 12, at 237. I take Shakespeare’s Henry to be alluding to *Deuteronomy* 20 before the battle of Agincourt when he gives the order to “proclaim it presently through my host / That he which hath no stomach to this fight, / Let him depart.” WILLIAM SHAKESPEARE,

may seem to us, would be not just defensible, but required, on the assumption that his war is truly a "well-hallowed" one.¹⁴⁸

Must we conclude, then, that Shakespeare is giving us a Machiavellian Henry, not as crude and bold-faced a Machiavellian as Shakespeare's Richard III, but a Machiavellian nonetheless? Not yet: We will need to sift the evidence further.

II. HENRY AS A MACHIAVELLIAN PRINCE

Thus far, Shakespeare appears to be painting a portrait of a Machiavellian ruler, not of a model Christian king.¹⁴⁹ This perception will be reinforced if we consider Machiavelli's account of Ferdinand of Aragon, the King of Spain when Machiavelli's book was written, whom Machiavelli praised because "from being a weak king, he has become the most famous and glorious king in Christendom."¹⁵⁰ The parallels between Machiavelli's Ferdinand and Shakespeare's Henry are striking.¹⁵¹

A. *Four Parallels to Machiavelli's Portrait of Prince*

First, "[Ferdinand] attacked Granada at the beginning of his reign, and this campaign laid the foundations of his state."¹⁵² Henry's invasion of France likewise occurred early in his reign and likewise laid the foundation for his enlarged state.

HENRY V, at act 4, sc. 3, ll. 34–36. This echoes Deuteronomy 20:8: "And let the officers speak further unto the people, and say, Whosoever is afraid and faint hearted, let him go and return unto his house . . ." *Deuteronomy* 20:8 (Geneva).

¹⁴⁸ Note, however, that Henry's conduct of the war is consistent *both* with the interpretation that Shakespeare is portraying him as a Machiavellian *and* with the theory that Shakespeare is holding him up as a model Christian King. Rabkin seems to adopt a Machiavellian interpretation of Henry's speech before Harfleur. See Rabkin, *supra* note 17, at 291–92. And Marx believes that in scenes like that "Shakespeare exposes holy war as a device manipulated by Kings for political ends." Marx, *supra* note 139, at 4. But a pious Christian King could sincerely, if also perhaps naively and self-servingly, regard Deuteronomy's prescriptions as authoritative, still binding, and of divine origin.

¹⁴⁹ See WILDERS, *supra* note 17, at 51 (Henry V is "not simply the most successful of Shakespeare's political adventurers, but the one who most closely follows the advice of Machiavelli . . .").

¹⁵⁰ MACHIAVELLI, THE PRINCE, *supra* note 35, at 76 (footnote omitted). Machiavelli's *Prince* has often been interpreted as a kind of inverted "mirror for princes." For a critique of that interpretation, see BOBBITT, *supra* note 120, at 32–36. Bobbitt argues that "[i]t is not that by following Machiavelli's suggestions a prince will be a better prince; rather, it is that the very notion of what it means to be a prince must change with the advent of the princely state." *Id.* at 36.

¹⁵¹ See WILDERS, *supra* note 17, at 59.

¹⁵² MACHIAVELLI, THE PRINCE, *supra* note 35, at 76 (footnote omitted).

Second, Ferdinand's campaign against Granada "kept the minds of the barons of Castile occupied with that war, so that they would not plan any revolts."¹⁵³ In invading France, Henry is following the advice of his dying father, Henry IV, to make it his "course to busy giddy minds / With foreign quarrels" so that his right to England's throne—usurped by his father—might not be contested.¹⁵⁴ Foreign wars will distract attention away from Henry's shaky claim to the throne.

Third, Ferdinand "was able to maintain armies with money from the Church."¹⁵⁵ Likewise, of course, was Henry.

Fourth, "in order to undertake even greater campaigns, [Ferdinand] continued to make use of religion, resorting to a cruel and apparently pious policy . . . of hunting down the Moors."¹⁵⁶ After his victory at Agincourt, Henry also "continued to make use of religion." In his triumphant return to London, the Chorus tells us, he demonstratively presented himself as "free from vainness and self-glorious pride, / Giving full trophy, signal, and ostent / Quite from himself, to God."¹⁵⁷ Yet the Chorus that ends the play seems slyly to be debunking Henry's very conspicuous display of modesty. It attributes his victory over France, not to God, but to the Machiavellian goddess, Fortune. "Fortune made his sword, / By which the world's best garden he achieved."¹⁵⁸

¹⁵³ *Id.* at 76–77.

¹⁵⁴ The passage in which Henry IV advises his son deserves a longer quotation: [T]hou the garland wear'st successively. / Yet though thou stand'st more sure, [than] I could do, Thou art not firm enough, since griefs are green, / And all [my] friends, which thou must make thy friends, / Have but their stings and teeth newly ta'en out, / By whose fell working I was first advanc'd, / And by whose power I well might lodge a fear / To be again displac'd; which to avoid, / I cut them off, and had a purpose now / To lead out many to the Holy Land, / [Lest] rest and lying still might make them look / Too near unto my state. *Therefore, my Harry, / Be it thy course to busy giddy minds / With foreign quarrels, that action, hence borne out, / May waste the memory of the former days.*

SHAKESPEARE, HENRY IV, *supra* note 33, at act 4, sc. 5, l.20.

¹⁵⁵ MACHIAVELLI, THE PRINCE, *supra* note 35, at 77.

¹⁵⁶ *Id.* (footnote omitted).

¹⁵⁷ SHAKESPEARE, HENRY V, *supra* note 2, at act 5, chor. 20–22.

¹⁵⁸ *Id.* at act 5, epilogue chor. 6–7. For this interpretation, see Gurr, *supra* note 126, at 218 n.6.

B. *The Concluding Chorus*

In fact, the concluding Chorus appears to be designed to do much more than merely expose Henry's pretense of pious modesty. In his famous discussion of Fortune in chapter XXV of *The Prince*, Machiavelli condemns those rulers who trust entirely to fortune, and so are ruined when their luck runs out.¹⁵⁹ Machiavelli argues that rulers must rely on their own prudence as well as on fortune if they are to be successful. "I am disposed to hold that fortune is the arbiter of half our actions, but that it lets us control roughly the other half."¹⁶⁰ The concluding Chorus seems to be suggesting that Henry was right to say that the glory of Agincourt should not be ascribed to him. But instead of ascribing it to God—as Henry, with his show of piety, would have us do—the Chorus hints that the victory should be ascribed simply to Henry's good luck.¹⁶¹ Either way, Henry's agency had nothing to do with the outcome.

Moreover, if Henry's victory must be ascribed only to luck, then we cannot see the hand of God in it: Henry's providentialist interpretation of the battle must be false. Success even in a seemingly decisive battle does not confirm the justice of the victor's cause; for luck can turn, and France too can win. Thus, in *1 Henry VI*, the French Dauphin reminds us of the god of war, Mars, whose planetary influence, like that of Fortune, causes endless fluctuation in battle.¹⁶² "Mars his true moving, even as in the heavens / So in the earth, to this day is not known. / Late did he shine upon the English side; / Now we are victors: upon us he smiles."¹⁶³

In the end, the concluding Chorus, vested by Shakespeare with a "prophetic" insight, does not tell us of Henry's glory, but of his final failure. If Henry was truly a Machiavellian prince,

¹⁵⁹ MACHIAVELLI, *THE PRINCE*, *supra* note 35, at 85.

¹⁶⁰ *Id.*

¹⁶¹ Still other ironies can be found in these remarkably rich and subtle lines from the concluding Chorus. The Chorus's description of France as "the world's best garden" seems to refer back, ironically, to the Duke of Burgundy's description of a devastated France, which he calls "this best garden of the world" after Henry's war had ravaged it. SHAKESPEARE, *supra* note 2, at act 5, sc. 2, ll. 36–37; epilogue chor. 7–10. Even more ironically, the Chorus may be comparing Henry's conquest of France to the recovery of the garden of Paradise.

¹⁶² See Jorgenson, *supra* note 1, at 224.

¹⁶³ SHAKESPEARE, *THE FIRST PART OF KING HENRY THE VI*, *supra* note 86, at act 1, sc. 2, ll. 1–4.

then, the Chorus says, he must be judged a poor one by the standards that Machiavellianism sets up. The test for the Machiavellian prince is success, and Henry's success, the Chorus says, was ephemeral:

Fortune made his sword,
By which the world's best garden he achieved,
And of it left his son imperial lord.
Henry the Sixth, in infant bands crowned king
Of France and England, did this king succeed,
Whose state so many had the managing
That they lost France and made his England bleed¹⁶⁴

In other words, the Chorus says, Henry's dream of dynastic glory was shattered not long after his short life ended. Like Alexander the Great, to whom he is often compared in the play, his Empire begins to dissolve with his death.¹⁶⁵ The war he had fought in France ended, in the longer term, in defeat. Nothing would come of Henry's grand ambition to have a son who would not only unite the Crowns of France and England, but also become the ruler of a new Roman Empire.¹⁶⁶ "The legacy left by Henry V to later ages may have been the heroic epic of great feats of arms but the immediate legacy was sixty years of civil strife and drift."¹⁶⁷

¹⁶⁴ SHAKESPEARE, HENRY V, *supra* note 2, chor. 6–12 (emphasis added).

¹⁶⁵ The opening scene of *The First Part of King Henry VI* reminds us of how fleeting Henry's triumph was. He has not even been buried before news comes from France "Of loss, of slaughter, and discomfiture: / Guyenne, Compiègne, Rheims, Rouen, Orléans, / Paris, Gisors, Poitiers, are all quite lost." Henry's son, the Duke of Bedford and Regent of France, responds to the messenger: "What say'st thou, man, before dead Henry's corse? / Speak softly, or the loss of those great towns / Will make him burst his lead and rise from death." SHAKESPEARE, THE FIRST PART OF KING HENRY VI, *supra* note 86, at act 1, sc. 1, chor. 59–64.

¹⁶⁶ Henry wished for a son "half-French half-English, that shall go to / Constantinople and take the Turk by the beard . . ." SHAKESPEARE, HENRY V, *supra* note 2, at act 5, sc. 2, ll. 201–02. After the fall of Constantinople to the Ottomans, the Sultan claimed to be the rightful heir of Rome/Byzantium, and thus the Roman Emperor. See ANDREW PHILLIPS, WAR, RELIGION AND EMPIRE: THE TRANSFORMATION OF INTERNATIONAL ORDERS 100 (2011). Had Henry had his wish, his son could have made the same claim, with as much or as little justice.

¹⁶⁷ LYON, *supra* note 101, at 577.

III. WHICH HENRY IS SHAKESPEARE'S HENRY?

The verdict, thus far, would seem to be this: If Shakespeare's Henry is a Christian, he is a bad one; and if he is a Machiavellian, he is—ultimately—a failed one.¹⁶⁸ But that, it seems to me, cannot be right. Of course it is possible that Shakespeare meant to leave us in an insoluble quandary. It is also possible that he intended to fashion one image of the King, but inadvertently projected two: Shakespeare unintentionally subverted the structure he had created. Or it may be that his art failed: He did not master his materials; they mastered him.¹⁶⁹ Or, much more plausibly, he may be offering “the perception of reality as intransigently multivalent.”¹⁷⁰ And, to be sure, we must avoid trying to domesticate Shakespeare: We must be open to the play's “interrogative energies,” rather than trying to suppress them.¹⁷¹ Still, with an artist of Shakespeare's unequalled intelligence and stature, we should look for intentionality and coherence—even if the order that Shakespeare's play creates may not permit “a conventionally ‘satisfying resolution.’”¹⁷² And to achieve such a view of *Henry V*, we undoubtedly need more analytic pieces on the chessboard than “Christian King” and “Machiavellian Prince.”

¹⁶⁸ As Machiavelli himself states:

[K]ingdoms which rests entirely on the qualities of its prince, lasts for a but for a brief time, because these qualities, terminating with his life, are rarely renewed in his successor . . . [T]he safety of a commonwealth or kingdom lies, not in its having a ruler who governs it prudently while he lives, but in one who so orders things, that when he dies, the State may still maintain itself.

NICCOLO MACHIAVELLI, 2 DISCOURSES ON THE FIRST TEN BOOKS OF TITUS LIVIUS, BK. I, C. XI 20–21 (Christian Detmold trans., Osgood & Co. 1882) (1513).

¹⁶⁹ On the various interpretative possibilities, see Rabkin, *supra* note 17, at 294–95.

¹⁷⁰ *Id.* at 295.

¹⁷¹ BRADSHAW, *supra* note 86, at 39.

¹⁷² *Id.* at 77. Bradshaw argues powerfully against *any* “either/or” view of the play, finding instead that Shakespeare creates a complex order that engages us “in an immensely varied series of interpretative choices.” *Id.* at 80 (internal quotation marks omitted).

It may therefore be helpful to complicate the analysis by considering the *original* “Mirror of Princes” in Christian literature¹⁷³ which is found in chapter 24 of Book V of St. Augustine’s *City of God*, entitled “The Good Christian Emperor.” The chapters preceding it concern the virtues of the pre-Christian Romans while the ensuing chapters describe several Christian Emperors.¹⁷⁴

I am not going to claim that Shakespeare was familiar with Augustine’s views on these matters, or that in writing *Henry V*, Shakespeare was thinking—whether he knew it or not—in Augustinian terms. But we *can* ask: Do Augustine’s categories enable us to reconcile or harmonize, more or less satisfyingly, the apparently contradictory aspects of Shakespeare’s King? I argue that while Augustine’s thought illuminates our understanding of Shakespeare’s Henry, it still does not provide a “conventionally satisfying resolution” to the play’s complex problems.

A. *Augustine’s Mirror for Christian Kings*

Augustine believes that God’s providence had assigned an essential place in human history to the Roman Empire and, before it, to the Roman Republic. But his explanation of the “earthly glory” of that “supreme empire”¹⁷⁵ relies, not only on God’s actions, but also on what the Elizabethans would have called “second causes,” or purely human qualities and activities. Augustine finds much to praise in the Roman empire-builders: They had—from a human perspective—remarkable virtues. They “disregarded their private interests for the sake of the common good, that is, for the sake of the republic, as well as for the public treasury. They resisted greed, and they advised their homeland with independent counsel, addicted neither to crime (according to its laws) nor to lust.”¹⁷⁶ And these undoubted virtues led them to—what they would have accounted—success. “By all these arts, as if by a [Christian] way, they strove for

¹⁷³ See Wilfrid Parsons, *The Mediaeval Theory of the Tyrant*, 4 REV. POLITICS 129, 129 (1942); JOHN NEVILLE FIGGIS, THE POLITICAL ASPECTS OF ST. AUGUSTINE’S ‘CITY OF GOD’ 10, 84 (1921). For a brief but superlative account of Augustine’s political theory, see R.A. Markus, *The Latin Fathers*, in THE CAMBRIDGE HISTORY OF MEDIEVAL POLITICAL THOUGHT 92, 103–16 (J.H. Burns ed., 1988).

¹⁷⁴ ST. AUGUSTINE, *The City of God*, in THE WORKS OF ST. AGUSTINE 175 (Boniface Ramsey ed., 2012).

¹⁷⁵ *Id.* at 165.

¹⁷⁶ *Id.*

honors, power and glory. They were honored among almost all peoples”¹⁷⁷ Far from denying that these Romans were admirable, Augustine expects his Christian readers to find them, in some respects, worthy of emulation.

Let us keep in mind how much those Romans disdained, what sufferings they endured, what passions they suppressed, all for the sake of human glory. They deserved to receive human glory as their reward for virtues of this sort.¹⁷⁸ . . . [T]he lives of those Romans were judged worthy enough of human glory in this present age.¹⁷⁹

The ancient Romans were, in short, the kind of rulers and statesmen of whom Machiavelli later dreamed: self-disciplined, civic-minded, honorable, heroic lovers and winners of glory, excelling in “the strong and harsh things.”¹⁸⁰

Augustine also distinguishes between the admirable Roman leaders who sought “true glory” and those who desired “domination.”¹⁸¹ The former win the “human praise” that they seek through displaying “good qualities of character” that earn them the esteem of those with “sound judgment.”¹⁸² Even though they lack the “true virtue” found only in those who practice the

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 167.

¹⁷⁹ *Id.* at 171. See also St. Augustine’s Letter to Marcellinus, in which he wrote: [That republic which the early Romans founded and enlarged by their virtues, when, though they had not the true piety towards the true God which could bring them, by a religion of saving power, to the commonwealth which is eternal, they did nevertheless observe a certain integrity of its own kind, which might suffice for founding, enlarging, and preserving an earthly commonwealth. For in the most opulent and illustrious Empire of Rome, God has shown how great is the influence of even civil virtues without true religion

St. Augustine *Letter 138 to Marcellinus*, in NICENE AND POST-NICENE FATHERS SERIES I, VOLUME I 412 (Philip Schaff ed., J.G. Cunningham trans., 1887).

¹⁸⁰ NICCOLÒ MACHIAVELLI, ART OF WAR 10 (Christopher Lynch ed. & trans., The Univ. of Chi. Press 2003) (1520) [hereinafter MACHIAVELLI, ART OF WAR]. Augustine’s account of the virtues of the ancient Romans is skillfully analyzed in PAUL WEITHMAN, *Augustine’s Political Philosophy*, in THE CAMBRIDGE COMPANION TO AUGUSTINE 234, 242–43 (Eleonore Stump & Norman Kretzmann eds., 2001), available at http://www3.nd.edu/~pweithma/professional_website/My%20Papers/Augustine's%20Political%20Thought.pdf. By contrast, Machiavelli’s “way of thinking,” especially in its “emphasis on worldly glory,” “runs counter to the dominant trend of Christian thought” and is more “characteristic of the ancient world, of the Greeks and perhaps especially of the Romans.” Russell Price, *The Theme of Gloria in Machiavelli*, 30 RENAISSANCE Q. 588, 629 (1977).

¹⁸¹ ST. AUGUSTINE, *supra* note 174, at 172–73.

¹⁸² *Id.* at 171.

“true worship of the true God,” rulers of this kind “are more useful to the earthly city when they at least have the kind of virtue that serves human glory than when they do not.”¹⁸³ By contrast, the latter kind of Roman rulers used “guile and deceit, wishing to seem good when [they] are not.”¹⁸⁴ They often sought domination “by even the most blatantly criminal acts.”¹⁸⁵ God, in his inscrutable wisdom, raised up both kinds of rulers among the Romans.

The same God who gave power to Marius also gave it to Gaius Caesar; the same God who gave power to Augustus also gave it to Nero; the same God who gave it to the Vespasians, father and son, the most temperate emperors, also gave it to Domitian, the cruelest¹⁸⁶

Thus, Augustine distinguished between two kinds of pagan rulers, and, in doing so, parsed apart two categories that Machiavelli seemed—to many later readers—to have conflated.¹⁸⁷ There are the noble pre-Christian rulers, who were avid for power and glory, and who succeeded in achieving them through practicing and exhibiting moral virtues; and then there are rulers, like “certain of the Romans,” who are willing to practice “guile and deceit,” who “wish[] to seem good when [they] are not,” and whose real aim is “domination” over others.

Third and finally, Augustine gives us his depiction of “the Christian emperors.” Insofar as “we”—Christians—call them happy, Augustine says, it is not “that they had longer reigns or that they died peacefully and left sons ruling after them; it is not that they subdued the republic’s enemies or that they were able to guard against and suppress insurgencies against them by hostile citizens.”¹⁸⁸ Rather, “we call [them] happy” if—in brief—“they fear, love, and worship God.”¹⁸⁹ Augustine enumerates at some length the qualities that make a Christian ruler “happy,” but nowhere does he mention any qualities that are shown

¹⁸³ *Id.* at 172–73.

¹⁸⁴ *Id.* at 171 (footnote omitted) (internal quotation mark omitted).

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at 175.

¹⁸⁷ *But see* MACHIAVELLI, *THE PRINCE*, *supra* note 35, at 31 (“[I]t cannot be called virtue to kill one’s fellow-citizens, to betray one’s friends, to be treacherous, merciless and irreligious; power may be gained by acting in such ways, but not glory”).

¹⁸⁸ ST. AUGUSTINE, *supra* note 174, at 177.

¹⁸⁹ *Id.* at 178.

primarily in war.¹⁹⁰ The attributes of a “happy” Christian Emperor, in Augustine’s formulation, are exercised only or primarily in peace. Augustine’s Christian Emperor is a mirror for rulers *because in ruling he is a Christian*, and for no other reason.

B. Augustinian Rulers and Henry V

We can now reformulate our original, binary question whether Shakespeare has dramatized, in Henry, a model Christian King or a model Machiavellian Prince. The better question is which of Augustine’s three models Henry embodies most fully.

First, we should surely deny that Henry belongs among those rulers who seek “domination.” True, Henry, like them, practices “guile and deceit.” But Henry fundamentally is motivated by more than his own, or even his dynasty’s, glory. He aims at *England’s* glory, not—just—his own. Shakespeare’s Richard III may belong in this conceptual space; Shakespeare’s Henry does not.

Is Henry to be compared, then, to the nobler, more virtuous, kind of Roman ruler? Those who consider Henry a kind of Machiavellian might well be inclined to place him here. Certainly he displays many of the—pre-Christian—virtues that on Machiavelli’s account, as on Augustine’s, make for temporal success. And Henry seems genuinely to wish to *be*, and not merely to *seem*, good.

But on reflection, Henry does not belong here after all. He does not wish to emulate a pre-Christian past or even—despite the comparisons other make—to model himself on a figure like Alexander.¹⁹¹ He may manipulate the clergy, but he fears God. Shakespeare’s Henry shows himself, in the most intimate, private and self-revealing moment of the play, to be a Christian searching for grace and longing for forgiveness.

¹⁹⁰ *Id.* He notes that God ordained that the Christian Emperor Constantine should be “most victorious” in “conducting and carrying on wars.” *Id.* But he does not ascribe those victories to any action or virtue of Constantine’s, not even to his conversion. Indeed, he warns that if any Emperor “should become a Christian in order to merit the happiness of Constantine,” he would be disappointed. *Id.*

¹⁹¹ Still less plausible, it seems to me, is the Oxford editor’s suggestion that Shakespeare’s Henry is a kind of Nietzschean, and that Shakespeare’s play “is, in part, about the nature of Will.” TAYLOR, *supra* note 2, at 73.

This crucial scene opens the window into Henry's soul.¹⁹² It is set very shortly before the battle at Agincourt. Henry is alone, in private prayer, face-to-face with God, not knowing whether or not he will be dead within a few hours.¹⁹³ Not long before, he has told his soldiers—who also fear death and judgment—that “they have no wings to fly from God.”¹⁹⁴ “Therefore should every soldier in the wars do as / every sick man in his bed: Wash every mote out of his / conscience.”¹⁹⁵ We see the King trying to do that very thing, to wash every mote out. This is Henry's moment of truth, his dark night of the soul. It is his Jacob-like wrestling with the angel, his Jesus-like Gethsemane.¹⁹⁶ His soul, not merely his crown, is hanging in the balance.

And what does Henry say to God, in this fearful, truth-seeking prayer? It starts out conventionally enough, with an almost formulaic appeal to the “God of battles,”¹⁹⁷ but it swiftly—“Not today, O Lord / O not today”—becomes more urgent, heartfelt, self-convicting and desperate, as Henry closes in on the sin that haunts him, his father's usurpation—“the fault / My father made in compassing the crown”—of Richard II.¹⁹⁸ Then, it seeks to appease God by a recitation of Henry's good works—“I have built / Two chantries.”¹⁹⁹ Then, driving deeper, it painfully acknowledges the futility of any works that he can do—“all that I can do is nothing worth.” And then it ends, abruptly cut off by the Duke of Gloucester's entrance, signaling that the battle is at hand, with Henry “imploring pardon,” but before he can finally break through to discovering what God would require of him before He granted such pardon. Here are the lines:

¹⁹² SHAKESPEARE, HENRY V, *supra* note 2, act 4, sc. 2, ll. 277–93.

¹⁹³ *Id.*

¹⁹⁴ *Id.* at act 4, sc. 1, l. 161.

¹⁹⁵ *Id.* at act 4, sc. 1, ll. 170–71.

¹⁹⁶ See MARX, *Holy War*, *supra* note 139, at 9.

¹⁹⁷ SHAKESPEARE, HENRY V, *supra* note 2, act 4, sc. 2, ll. 274–75. Compare, for example, to 1 *Samuel* 17:45 (Geneva): “Then said David to the Philistine, Thou comest to me with a sword, and with a spear, and with a shield, but I come to thee in the name of the LORD of hosts, the God of the armies of Israel, whom thou hast railed upon.”

¹⁹⁸ SHAKESPEARE, HENRY V, *supra* note 2, act 4, sc. 2, l. 270.

¹⁹⁹ SHAKESPEARE, HENRY V, *supra* note 2, act 4, sc. 2, ll. 277–93. Compare to ERASMUS, THE EDUCATION OF A CHRISTIAN PRINCE, *supra* note 16, at 18 (“Do not think that you have done your duty by Christ well enough if you have . . . built a shrine or a little monastery somewhere” (footnote omitted)).

O God of battles, steel my soldiers' hearts.
 Possess them not with fear. Take from them now
 The sense of reck'ning, ere th'opposèd numbers
 Pluck their hearts from them. Not today, O Lord,
 O not today, think not upon the fault
 My father made in compassing the crown.
 I Richard's body have interrèd new,
 And on it have bestowed more contrite tears
 Than from it issued forced drops of blood.
 Five hundred poor have I in yearly pay
 Who twice a day their withered hands hold up
 Toward heaven to pardon blood. And I have built
 Two chantries, where the sad and solemn priests
 Sing still for Richard's soul. More will I do,
 Though all that I can do is nothing worth,
 Since that my penitence comes after [a]ll,²⁰⁰
 Imploring pardon.²⁰¹

However one reads these increasingly agonized lines, it seems clear to me that they could not have come from anywhere other than the depths of a stricken, but believing, soul. No pagan, however virtuous, could have uttered them.

I am not speaking here of the kind or quality of Henry's Christianity. It would be very plausible, I think, to read the last two lines of Henry's prayer as a plea for what Bonhoeffer famously called "cheap grace."²⁰² He wants forgiveness without repentance. Henry does not probe his conscience deeply enough to confront the question whether, in order to purge his sin, he must first renounce the crown of England.²⁰³ And one might wonder how efficacious his prayer for pardon might be, given

²⁰⁰ The Oxford editor proposes reading "ill" for "all" here. The reading is defended in an extremely illuminating note by Gary Taylor. SHAKESPEARE, HENRY V, *supra* note 2, at 295–301. But for reasons I cannot detail here, I do not think the proposed emendation is correct.

²⁰¹ SHAKESPEARE, *supra* note 2, at act 4, sc. 1, ll. 277–93.

²⁰² See DIETRICH BONHOEFFER, THE COST OF DISCIPLESHIP 45 (R.H. Fuller & Irmgard Booth trans., The Macmillan Co. 1959) (1937).

²⁰³ Stephen Greenblatt compares this to "Claudius's inadequate repentance of old Hamlet's murder, inadequate since he is 'still possess'd / Of those effects' for which the crime was committed." STEPHEN GREENBLATT, SHAKESPEAREAN NEGOTIATIONS: THE CIRCULATION OF SOCIAL ENERGY IN RENAISSANCE ENGLAND 62 (1988) (quoting WILLIAM SHAKESPEARE, HAMLET act 3 sc. 3, ll. 53–54). Likewise, in *The Tempest*, Prospero, in pardoning his treacherous brother Antonio for having usurped his realm, says, "I do forgive / Thy rankest fault; all of them; and require / My dukedom of thee, which perforce, I know, / Thou must restore." WILLIAM SHAKESPEARE, THE TEMPEST act 5, sc. 1, ll. 31–34 (emphasis added).

that he is also seeking God's aid in usurping the crown of France. Henry may at the very same instant be engaging in self-deception, seeing through that self-deception, and asking God to restore him to the state of self-deception. He never achieves the lucid, terrifying self-awareness of those Catholic airmen who, charged with carrying out the obliteration of German cities and their civilian populations in the Second World War, told their chaplains not to give them communion before they set off on their bombing raids, not because they did not fear God, but because they feared Him too much. They knew that if they were killed, they would be damned, but they did not wish to enter Hell with the taste of the consecrated wafer still in their mouths. Henry is approaching such shattering self-awareness just before Gloucester makes his entrance. But at the very point where he seems poised to gain the victory for his soul, he breaks off to gain the field at Agincourt.

No matter: the point that this episode shows Henry to be, in his deepest self, a Christian, even if a broken, confused, halting, and sin-burdened one.

But does the episode show that Shakespeare presented Henry as a "mirror" for Christian rulers in the Augustinian sense? Surely not. He is simply too pagan, both in the ways of the virtuous Romans and even in those of the ignoble ones, to be that. He is not a Louis IX; he is not even a Constantine. He hardly believes, with Augustine, that "human honor" is "smoke without weight."²⁰⁴ His love of his country, of his dynasty, of his personal power and glory, are greater than his love of God. He may want to satisfy all these loves, but he cannot pursue them all, as he tries to do, by the same means.

C. *Kingship and Pardon*

We can fortify the conclusions we have just reached by coming at the issues from another direction, that is, by considering the theme of "pardoning" in the play.

It was considered an essential attribute of a Christian king to show mercy and to grant pardon.²⁰⁵ Renaissance writers as different as Erasmus and Machiavelli counseled rulers to be, or

²⁰⁴ ST. AUGUSTINE, *supra* note 174, at bk V, c. xvii.

²⁰⁵ See, e.g., Sir Thomas Elyot, *The Boke Named The Governour: Book II*, ch. VII (1531), available at <http://pages.uoregon.edu/rbear/gov/gov2.htm#VII>. Elyot's highly influential and much reprinted work was dedicated to King Henry VIII. *Id.*

at least to seem, clement and merciful. And in Tudor England, the public performance of royal pardons was an indispensable element in the ritualized *display* of the State, the theater in which the monarch's authority was exhibited, legitimated, and reinforced. K.J. Kesselring writes:

Pardons made public statements about the relationships between sovereign and subject and the links between mercy and deference. . . . This ceremony of remission and reintegration to the social body occurred amidst the rituals and drama of the court day. . . . Each of the Tudor monarchs recognized the need to appear merciful and accordingly crafted public demonstrations of their princely clemency. They responded to the broad cultural demands that a legitimate ruler embody both justice and mercy, not only through the routine pardons for criminals, but also with self-consciously public performances that advertised their power over life and death. . . . Public pardons served both instrumental and expressive ends; they aided the expansion and legitimation of state power in ways both concrete and symbolic.²⁰⁶

In what follows, I argue that Shakespeare's presentation of Henry's exercise of his power to pardon—especially *after* we have seen Henry “[i]mploring pardon” from God²⁰⁷—reinforces the view that Shakespeare is not portraying him as a model for Christian kings.

Other than in Henry's battlefield prayer, the matter of pardons comes up twice in the play. In both of these cases, Henry's exercise—or non-exercise—of his power to pardon is interlaced with deception and cruelty.

On the first occasion, Henry traps three aristocratic traitors—the Earl of Cambridge, Lord Scroop, and Sir Thomas Gray—into interceding with him *not* to pardon an unnamed man who, Henry says, “yesterday / . . . railed against our person.”²⁰⁸ Henry indicates a desire to show mercy to the man because “[i]t was excess of wine that set him on.”²⁰⁹ “O let us yet be merciful,”

²⁰⁶ K.J. KESSELRING, *MERCY AND AUTHORITY IN THE TUDOR STATE* 136–37 (2003). As the anthropologist Clifford Geertz demonstrated, ritual and theater can have a vital role to play in stabilizing and maintaining political power in States that lack ample enforcement resources. See generally CLIFFORD GEERTZ, *NEGARA: THE THEATRE STATE IN NINETEENTH CENTURY BALI* (1980).

²⁰⁷ SHAKESPEARE, *HENRY V*, *supra* note 2, at act 4, sc. 1, l. 293.

²⁰⁸ *Id.* at act 2, sc. 2, ll. 40–41.

²⁰⁹ *Id.* at act 2, sc. 2, l. 42.

Henry cries.²¹⁰ Dissembling loyalty to the King, the traitors argue against pardoning the man. Henry, reciprocating their deceptiveness, finally decides to “enlarge that man,” even though the traitors “in their dear care / And tender preservation of our person, / Would have him punished.”²¹¹ Moments later, Henry reveals his knowledge of their treachery and swiftly turns their advice against them: “The mercy that was quick in us but late / By your own counsel is suppressed and killed. / You must not dare for shame, to talk of mercy” for their own crimes.²¹²

The second occasion for pardoning occurs after the victory at Agincourt—and so after Henry’s own prayer for pardon: Henry pardons Williams, a common soldier.²¹³ This episode demands close consideration: It reveals much about how Shakespeare would have attentive readers view Henry’s kingship.

Earlier, we have heard that Henry has gone about the fearful and outnumbered English camp on the night before the battle. He is “[t]he royal captain of this ruined band / Walking from watch to watch, from tent to tent . . .”²¹⁴ He calls his soldiers “brothers, friends, and countrymen.”²¹⁵ In the course of his wandering,²¹⁶ he borrows a cloak from Sir Thomas Erpingham and goes about the camp in deliberate disguise, in order to learn what his men are thinking on the eve of the battle. This is a kind of deception, though perhaps excusable, because he wants honest answers.

²¹⁰ *Id.* at act 2, sc. 2, l. 47.

²¹¹ *Id.* at act 2, sc. 2, ll. 56–58.

²¹² *Id.* at act 2, sc. 2, ll. 76–78. The punishment for treason fell, not only on the individual traitor, but on the traitor’s family: Attainder for treason entailed not only savage corporal punishment and loss of possessions, but also the corruption of blood of direct descendants, or the legal death of the family. See SHAKESPEARE, FIRST PART OF HENRY VI, *supra* note 86, at act 2, sc. 4, ll. 90–95 (Somerset to Richard Plantagenet); J.R. Lander, *Attainder and Forfeiture, 1453 to 1509*, 4 HIST. J. 119 (1961). Thus a refusal to pardon traitors could make their wives and children destitute.

²¹³ SHAKESPEARE, HENRY V, *supra* note 2, at act 4, sc. 8, ll. 49–60.

²¹⁴ *Id.* at act 4, chor. 29–30.

²¹⁵ *Id.* at act 4, chor. 34.

²¹⁶ The Chorus’s description of Henry’s nocturnal wandering through the camp is contradicted by the dramatic action we observe, however. “Going about in disguise as Harry Le Roy of Sir Thomas Erpingham’s company is simply not the same as cheering your men by moving among them as their king who is confident of victory and communicates his feelings to his troops.” Marilyn L. Williamson, *The Episode with Williams in Henry V*, 9 STUD. ENG. LITERATURE 275, 276 (1969).

In this disguise, he encounters two common soldiers, one of them named Michael Williams. Challenged to identify himself, he tells these men he is “[a] friend,” serving under Erpingham.²¹⁷ They three men then discuss the King. Though his words are double-edged, Henry emphasizes the common humanity of the King and his subjects: “[T]hough I / speak it to you, I think the King is but a man, as I am. The / violet smells to him as it doth to me . . . His ceremonies laid by, in his nakedness he / appears but a man”²¹⁸

Then Henry pursues his object: to discover what lies hidden in the common soldiers’ minds and hearts. He affirms that the King’s “cause” is “just and his quarrel honourable.”²¹⁹ Williams retorts: “That’s more than we know.”²²⁰ Rebuked, Williams explains himself further, telling Henry that the King will be called to account in the Final Judgment, not only for the death and suffering caused by the battle, but more importantly for the damnation of the souls of fighters who die in sin during the heat of battle:

But if the cause be not good, the King himself / hath a heavy reckoning to make, when all those legs and / arms and heads chopped off in a battle shall join together / at the latter day, and cry all, ‘We died at such a place’— / some swearing, some crying for a surgeon, some upon / their wives left poor behind them, some upon the debts / they owe, some upon their children rawly left. *I am afeard / there are few die well that die in a battle, for how can they / charitably dispose of anything, when blood is their argu- / ment?* Now, if these men do not die well, it will be a black / matter for the King that led them to it—who to disobey / were against all proportion of subjection.²²¹

Williams has given Henry an honest answer, but it is not the answer Henry wanted to hear.²²² Henry attempts to refute him in a series of bad arguments,²²³ none of which meets Williams’ central point: that *the very action of battle causes many of the*

²¹⁷ SHAKESPEARE, HENRY V, *supra* note 2, at act 4, sc. 1, ll. 90–93.

²¹⁸ *Id.* at act 4, sc. 1, ll. 97–103.

²¹⁹ *Id.* at act 4, sc. 1, ll. 122–23.

²²⁰ *Id.* at act 4, sc. 1, l. 124.

²²¹ *Id.* at act 4, sc. 1, ll. 129–40 (emphasis added).

²²² Despite Henry’s displeasure with them, Williams’ answers “may well be representative of those of common soldiers throughout the Hundred Years War.” NICHOLAS WRIGHT, KNIGHTS AND PEASANTS: THE HUNDRED YEARS WAR IN THE FRENCH COUNTRYSIDE 26 (1998).

²²³ SHAKESPEARE, HENRY V, *supra* note 2, at act 4, sc. 1, ll. 141–77.

combatants to sin, from anger, cruelty, fear, blood lust, or revenge, *while denying them any chance to repent of their sin if they die fighting*. Williams has not spoken only of the sins that soldiers carry with them into a battle, when they have not sought pardon for them before; he speaks also of the sins *the battle provokes and in which the sinning soldiers die*, for which later pardon is not possible. While “blood is their argument,” common soldiers cannot pray: as Erasmus asked, “How can you say our Father, addressing the universal parent, while you are thrusting the sharp steel into the bowels of your brother?”²²⁴ Characteristically, just as he has tried to shuffle off responsibility for the war to the Archbishop, so Henry here tries to unload responsibility for the loss of their souls onto his own men.²²⁵

The result of the confrontation is that—the disguised—Henry and Williams agree to a duel. They exchange gloves²²⁶ and agree to wear each other’s glove in their caps, so that they can identify one another after the battle. A duel, however, is obviously impossible once Henry’s true identity as King is revealed, after the battle has been fought.²²⁷ Williams is now charged as a traitor for having insulted his King. Faced with his undisguised monarch, Williams implores Henry’s mercy:

Your majesty came not like yourself. You ap- / peared to me but
as a common man. . . . And what your highness / suffered under
that shape, I beseech you take it for your / own fault and not
mine, for had you been as I took you for, I made no offence.
Therefore I beseech your highness / pardon me.²²⁸

By any ordinary standards of justice, Williams is right. Henry ought to be asking Williams’ pardon, not Williams Henry’s: “take it for your / own fault and not mine.”²²⁹ Henry deliberately deceived his men, including Williams, by going about in Erpingham’s cloak. He affirmatively lied to Williams by telling him that he, Henry, was serving under Erpingham. He

²²⁴ ERASMUS, THE COMPLAINT OF PEACE, *supra* note 93, at 22.

²²⁵ ERASMUS, THE EDUCATION OF A CHRISTIAN PRINCE, *supra* note 16, at 106 (The Christian Prince accepts personal responsibility for the evil consequences of war).

²²⁶ The exchange itself “symbolizes the reciprocity and mutuality existing between Henry and his men,” that Henry’s later encounter with Williams sets aside. Salomon, *supra* note 25, at 350.

²²⁷ SHAKESPEARE, HENRY V, *supra* note 2, at act 4, sc. 8, ll. 29–40.

²²⁸ *Id.* at act 4, sc. 8, ll. 49–55.

²²⁹ *Id.* at act 4, sc. 8, ll. 52–53.

strung Williams along by telling him that the King was simply a man, like any other. He tricked Williams into giving him an honest account of his thoughts and fears. In all this, he treated his own soldiers much as he had treated the traitors earlier in the play, first luring them into his confidence but then arraigning them. He acted as if his soldiers—his “band of brothers,” as he called them before the battle²³⁰—were disloyal to him, simply because they feared that their souls might be damned for the actions that he commanded them to perform. And he told these same common men that if they were damned, they—not he—would be responsible.

Henry does in fact “pardon” Williams, but in a way calculated to humiliate him. Henry orders his uncle Exeter to hand Williams’ glove back to him, filled with golden crowns.²³¹ It is a very ostentatious, very public performance of royal “mercy.” Shakespeare emphasizes that the King does not himself hand the glove to Williams: Henry’s gesture is designed to widen, not to bridge, the social distance between ruler and subject; the *persona* of kingship has devoured the man, Henry.²³² Henry demeans Williams by instructing Exeter to give the crowns to “this fellow,” and by telling Williams, derisively, “Keep it, fellow.”²³³ No longer, it seems, are Henry’s men part of the “fellowship” of which Henry spoke before the battle.²³⁴ Henry orders Williams to wear the glove—and the crowns?—“for an honor in thy cap / Till I do challenge it.”²³⁵ An innocent, Christ-like Williams is mocked by being made to wear Henry’s “crowns” on his head, as if they were his crown of thorns. He is punished because he spoke against war and for common humanity.

As I read it, Henry’s “pardoning” of Williams is Shakespeare’s subtle, dark parody of the ritual of public pardoning enjoined on Christian kings. It is *not* intended to magnify Henry, but to disenchant us with him. Henry can hardly expect God to forgive him his trespasses if this is how he forgives those who trespass against him.

²³⁰ *Id.* at act 4, sc. 3, l. 60.

²³¹ *Id.* at act 4, sc. 8, l. 56.

²³² See ERNST H. KANTOROWICZ, *THE KING’S TWO BODIES: A STUDY IN MEDIAEVAL POLITICAL THEOLOGY* 7–23 (1957).

²³³ SHAKESPEARE, HENRY V, *supra* note 2, at act 4, sc. 8, l. 57.

²³⁴ *Id.* at act 4, sc. 3, l. 39.

²³⁵ *Id.* at act 4, sc. 8, ll. 58–59.

Indeed, let me be extravagantly speculative. Is “Williams” a cipher for “William S”—that is, for Shakespeare himself?²³⁶ Is Shakespeare speaking to us *directly* in the character of Williams, taking the part of common humanity against the King? At the very point in the play in which he seems to be presenting Henry as a merciful and magnanimous monarch, is Shakespeare *personally* subverting that very image? The Oxford editor of the play suggested that the young Shakespeare, sensing his own range and powers, identified himself with the young, conquering Henry.²³⁷ I counter-propose that Shakespeare identified himself, not only *with*, but *as*, the Christ-like common man.

CONCLUSION

Shakespeare seems to be telling us that it is impossible to be both a Christian and a King.²³⁸ When Satan offered Christ all the kingdoms of the earth, He refused.²³⁹ If Christ would not be Caesar, who else would be fit to be? As Williams tells Henry, the king who sends his soldiers into battle sends many of their souls to hell. Yet kings, even the best of them, must send their soldiers into battle.

As Erasmus wrote, where there is empire, there must be war:

Once you have granted imperial rule, you have granted at the same time the business of collecting money, the retinue of a tyrant, armed force, spies, horses, mules, trumpets, war, carnage, triumphs, insurrections, treaties, battles, in short everything without which it is not possible to manage the affairs of empire.²⁴⁰

But just as empire begets war, so war begets sin, making it unlikely, even impossible, for the ruler of an empire, Christian or not, to avoid sin. Even in a just war—assuming one to be possible—a ruler will force his troops to risk their damnation. And, as Erasmus taught, few, if any, wars are just.²⁴¹ So perhaps Shakespeare saw more deeply into things than either Erasmus or

²³⁶ See Crunelle-Vanrigh, *supra* note 25, at 368.

²³⁷ SHAKESPEARE, HENRY V, *supra* note 2, at 73.

²³⁸ Cf. BOBBIT, *supra* note 120, at 32–45.

²³⁹ *Luke* 4:5–8 (New American).

²⁴⁰ Fernández, *supra* note 133, at 221 (quoting ERASMUS, SILENI ALCIBIADES, ADAGES 290–91 (1515)).

²⁴¹ See ERASMUS, THE EDUCATION OF A CHRISTIAN PRINCE, *supra* note 16, at 104–05 (explicitly challenging Augustine).

Augustine had. Shakespeare could not create a mirror for Christian emperors and kings as Erasmus and Augustine had sought to do, because he knew that there could be no such rulers, and so knew that there was nothing for him to mirror. The world is fallen—more fallen than Erasmus, or even Augustine, had understood.

A. *Shakespeare and Erasmus*

Shakespeare shows a deeper insight than Erasmus in another way. Shakespeare grasps, as Erasmus does not, that war and peace are not questions of the ruler's personal virtue or conscience. War is an imperative necessity that follows from the existence of the State in a world of competing States, regardless of the personal qualities of its ruler.²⁴² And the State, or the Empire, is also necessary. Shakespeare, like Machiavelli, understands these impersonal and ineluctable necessities. A century of war in France was not merely the policy of Henry V, or of any other particular English king. Even the mild, accommodating Henry VI, who wished "[t]o stop effusion of our Christian blood,"²⁴³ could not secure a peace with France that was anything more than an unstable truce.²⁴⁴ The war was the work of the English State.

Indeed, Shakespeare's portrayal of Henry VI can be understood as the demolition of the Erasmian ideal of a "Christian Prince." Unlike his father, the pious Henry VI guides the conduct of the State by the Beatitudes: "[B]lessed are the peacemakers on earth," he says.²⁴⁵ But his gentleness breeds disaster for the English realm: First, he loses France, then, his unruly lords plunge the nation into civil war. He cannot preserve his father's conquests; he also cannot fulfill the vital kingly function of arbitrating his nobility's disputes.²⁴⁶ Contenders for

²⁴² See generally KENNETH N. WALTZ, *MAN, THE STATE AND WAR: A THEORETICAL ANALYSIS* (1959); HANS J. MORGENTHAU, *POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE* (1978).

²⁴³ SHAKESPEARE, *THE FIRST PART OF KING HENRY THE VI*, *supra* note 86, at act 5, sc. 1, l. 9.

²⁴⁴ See *id.* at act 5, sc. 1, l. 6.

²⁴⁵ SHAKESPEARE, *THE SECOND PART OF KING HENRY THE VI*, *supra* note 86, at act 2, sc. 1, l. 34.

²⁴⁶ See J.R. Lander, *The Crown and the Aristocracy in England, 1450-1509*, 8 ALBION 203, 205, 212 (1976). In *Richard II*, a common gardener reminds the King that he must "like an executioner, / Cut off the heads of too fast growing

his Crown despise him: Richard, Duke of York and the leader of the Yorkist faction, says that Henry's "church-like humours" unfit him for the Crown.²⁴⁷ Henry's hand, York says, "is made to grasp a palmer's [that is, a pilgrim's] staff, / And not to grace an awful princely sceptre. / That gold must round engird these brows of mine, / Whose smile and frown, like to Achilles' spear, / Is able with the change to kill and cure."²⁴⁸ Even Henry's wife Queen Margaret condemns him for being "cold in great affairs, / Too full of foolish pity."²⁴⁹ "[A]ll his mind is bent to holiness," she says in exasperation, "To number Ave-Maries on his beads. / His champions are the prophets and apostles, / His weapons holy saws of sacred writ . . . I would the college of the cardinals / Would choose him Pope, . . . / That were a state fit for his holiness."²⁵⁰ Henry's "bookish rule hath pulled fair England down," York complains²⁵¹; and the truth of York's complaint is demonstrated when a rebellious mob murders the Erasmian figure, the honest, learned, and lawyerly Lord Saye, Henry's Treasurer.²⁵²

Shakespeare's portrait of Henry VI is a vivid dramatization of what the Christian theologian Reinhold Niebuhr was to describe as the "dangers of religion's inner restraint upon self-assertion": namely, "that such a policy easily becomes morbid, and that it may make for injustice by encouraging and permitting undue self-assertion in others."²⁵³ Shakespeare seems to be confirming the opinion of Machiavelli's friend Francesco Guicciardini that "if one wants" to rule "in the way it is done today," it will be "impossible to do so according to the precepts of Christian law."²⁵⁴ If Henry VI is the model of a Christian prince,

sprays, / That look too lofty in our commonwealth." WILLIAM SHAKESPEARE, KING RICHARD II act 3, sc. 4, ll. 33–35.

²⁴⁷ SHAKESPEARE, SECOND PART OF HENRY VI, *supra* note 86, at act 1, sc. 1, l. 246.

²⁴⁸ *Id.* at act 5, sc. 1, ll. 97–101.

²⁴⁹ *Id.* at act 3, sc. 1, ll. 224–25.

²⁵⁰ *Id.* at act 1, sc. 3, ll. 56–65.

²⁵¹ *Id.* at act 1, sc. 1, l. 258.

²⁵² *Id.* at act 4, sc. 7, ll. 55–111.

²⁵³ REINHOLD NIEBUHR, MORAL MAN AND IMMORAL SOCIETY: A STUDY IN ETHICS AND POLITICS 261–62 (1932).

²⁵⁴ Nicolai Rubinstein, *Italian Political Thought 1450-1530*, in THE CAMBRIDGE HISTORY OF POLITICAL THOUGHT 1450–1700 at 30, 62 (J.H. Burns & Mark Goldie eds., 1991) (internal quotation marks omitted).

then such a figure is unfit to rule: The world cannot be governed by soft power alone.²⁵⁵ “[E]very rod or staff of empire is truly crooked at the top.”²⁵⁶

B. *Shakespeare and Machiavelli*

Does Shakespeare then agree with Machiavelli, or does he offer an even deeper insight than Machiavelli’s into the nature of ruling? Like Augustine and Erasmus, Shakespeare grasps the horror and uselessness of war more surely than Machiavelli seems to do.²⁵⁷ His Henry V has a bruised and tender conscience; he is, whether it pleases him or not, a kind of Christian. Shakespeare seems to think—as Augustine and Erasmus do, and as Machiavelli does not—that after Christianity, there is no going back to pagan virtue. We cannot be again as the ancient Romans were.²⁵⁸ In his portrayal of Henry, Shakespeare seems to be showing us that Christianity has made a decisive and irreversible difference in our moral consciousness: It has given us a radically different understanding of virtue and of heroism from that of the classical, pagan past. No longer does the life

²⁵⁵ The personality of the historical Henry VI remains a mystery. In his study of that King, John Watts writes:

Whatever Henry’s private nature, the really important question about his kingship is whether or not he possessed sufficient independence of will to wield authority properly. In recent years, the consensus seems to have been that he did . . . [however,] there is evidence to suggest that the adult king was a man of little will and little judgment: enough evidence, indeed, to invite the suspicion that the few decisive policies of the period were the work of Henry’s counsellors. . . .

WATTS, *supra* note 16, at 108, 110–11.

²⁵⁶ SIR FRANCIS BACON, *DE SAPIENTIA VETERUM*, reprinted in *THE WORKS OF FRANCIS BACON* 711 (James Spedding et al. eds., 1861).

²⁵⁷ Note, however, that Machiavelli believes that while “the Christian religion” has softened the brutality of war, it has also made the European peoples “corrupt,” by eliminating “that necessity to defend oneself that there was in antiquity.” MACHIAVELLI, *ART OF WAR*, *supra* note 180, at 59–60. And in *The Prince*, Machiavelli attributes the desperate condition of Italy—“without order or stability, beaten, despoiled, lacerated, overrun, in short, utterly devastated”—to the absence of leaders who would follow his methods. MACHIAVELLI, *THE PRINCE*, *supra* note 35, at 88. For Machiavelli, if cruelty is needed to maintain the conditions in which human beings can live in freedom and decency, then “cruelty is the greatest mercy.” WALTZ, *supra* note 242, at 216.

²⁵⁸ “[W]hat greater madness could there be than for a man who has received the Christian sacraments to model himself on Alexander [or] Julius Caesar . . . ?” ERASMUS, *THE EDUCATION OF A CHRISTIAN PRINCE*, *supra* note 16, at 64.

dedicated to the *res publica* constitute the highest human good; rather, the *res publica* itself stands under the judgment of a higher authority.²⁵⁹

To see this, consider the two brief lines in which Henry, at a critical turn in the battle of Agincourt, orders the French prisoners of war to be killed.²⁶⁰ His own troops badly outnumbered, Henry cannot afford to spare any of them to guard the French captives. It is a moment of undoubted Machiavellian necessity. And it may even have been lawful.²⁶¹ Yet Shakespeare deliberately blurs the King's cruelty, moving the dramatic focus swiftly to an exchange between the common soldiers Llewellyn and Gower. They are angered because the French have killed the unarmed boys who had been in charge of the English luggage, an act that Llewellyn denounces as "expressly / against the law of arms."²⁶² So rapid is the passage from one scene to the other that Shakespeare must have wanted audiences watching the play to think that Henry had ordered the killing of the French prisoners in retaliation for the French atrocity in killing the English boys. But it is not so.²⁶³ Shakespeare understands that his audiences would be shocked and dismayed if Henry were clearly presented as ordering the butchery of defenseless prisoners of war. In

²⁵⁹ See LARRY SIEDENTOP, *INVENTING THE INDIVIDUAL: THE ORIGINS OF WESTERN LIBERALISM* 51–99 (2014). Christianity's rupture with paganism was rooted in and anticipated by Judaism. See generally JOSHUA A. BERMAN, *CREATED EQUAL: HOW THE BIBLE BROKE WITH ANCIENT POLITICAL THOUGHT* (2008).

²⁶⁰ WILLIAM SHAKESPEARE, *KING HENRY V*, *supra* note 2, at act 4, sc. 6, ll. 37–38.

²⁶¹ For a very illuminating discussion, see Taylor, *supra* note 12, at 233–36. According to Vitoria, "there is no reason why prisoners taken in a just war or those who have surrendered, if they were combatants, should not be killed, so long as common equity is observed." VITORIA, *supra* note 43, at 321; see also RICHARD SHELLY HARTIGAN, *THE FORGOTTEN VICTIM: A HISTORY OF THE CIVILIAN* 85–86 (1982). Whether or not it was lawful, retaliation against enemy prisoners for death or injury inflicted by enemy captors on one's own prisoners was common in the period of the Hundred Years War. See RÉMY AMBÜHL, *PRISONERS OF WAR IN THE HUNDRED YEARS WAR: RANSOM CULTURE IN THE LATE MIDDLE AGES* 45–48 (2013). As recently as the First World War, it was military doctrine in the German Army that enemy prisoners of wars could be put to death "[i]n case[s] of overwhelming necessity, when other means of precaution do not exist and the existence of the prisoners becomes a danger to one's own existence." *THE WAR BOOK OF THE GERMAN GENERAL STAFF: BEING "THE USAGES OF WAR ON LAND" ISSUED BY THE GREAT GENERAL STAFF OF THE GERMAN ARMY* 97 (J.H. Morgan ed. & trans., 1915).

²⁶² SHAKESPEARE, *HENRY V*, *supra* note 2, at act 4, sc. 7, ll. 1–2.

²⁶³ See Rabkin, *supra* note 17, at 292.

Shakespeare's Christian world, and even perhaps in our post-Christian one, a ruler cannot be *seen* to be a complete Machiavellian. A king must try to fight, as Henry does, for "Harry! England and Saint George!," fusing his personal interests, his nation, and his nation's faith into a seamless unity.²⁶⁴

And yet Shakespeare also seems to have considered the question unsettled: There was more to be said on Machiavelli's side.²⁶⁵ Why could not a ruler, even in a Christian age, practice the virtues of the nobler Roman Emperors, even while dissembling religion and piety, and so achieve the height of temporal glory? Machiavelli had claimed this to be true of Ferdinand of Aragon. Might such figures not signal the beginning of a return to Roman virtue and statecraft, even if they disguised themselves as pious Christians? Would the polity be best governed by such rulers? Are not cruelty, deception, and treachery indispensable, even if sometimes unavowable, elements of successful statecraft? Even though Christianity may have converted—and, for Machiavelli, corrupted—Europe, the ancient virtues, or even perhaps more perfect forms of them, might still be reintroduced.

In *The Art of War*, Machiavelli's spokesman Fabrizio contends that it is still possible, in a modern polity where there is "still something good," to introduce habits "similar to the ancient ones," such as

[t]o honor and reward the virtues, not to despise poverty, to esteem the modes and orders of military discipline, to constrain the citizens to love one another, to live without sects, to esteem the private less than the public, and other similar things that could easily accompany our times.²⁶⁶

Shakespeare seems to have understood that he had not resolved these questions in *Henry V*. That may be why, in the very year in which *Henry V* was produced, he also wrote his

²⁶⁴ SHAKESPEARE, *HENRY V*, *supra* note 2, at act 3, sc. 1, l. 34.

²⁶⁵ Thus, Machiavelli would not have disagreed that practicing atrocities would have impaired a ruler's chances of success. In discussing the Roman Emperor Antoninus, he says that "he committed very many deeds of unexampled barbarity and cruelty As a result, he became greatly hated by everyone and one day he was killed by a centurion in the midst of his own troops." MACHIAVELLI, *THE PRINCE*, *supra* note 35, at 69. A truly successful emperor, Machiavelli teaches, must be like Severus, "a very fierce lion and a very cunning fox." *Id.*

²⁶⁶ MACHIAVELLI, *ART OF WAR*, *supra* note 180, at 11.

Julius Caesar, which takes up, explicitly, the question of Roman virtue.²⁶⁷ Shakespeare's exploration of ambiguity in *Henry V* drew him back into the pre-Christian world. Machiavelli remained to be answered.

²⁶⁷ One might wonder, for instance, if Brutus and Cassius could be seen as embodying, respectively, two aspects of Machiavellianism: the former, its emphasis on honor, courage, and disinterested love of the republic; the latter, its cunning, deceptiveness, and ambition for dominance. One might also wonder whether Shakespeare is showing that the combination of these qualities leads, not to the freedom, glory, and prosperity of the republic, but to its destruction and ruin in civil war. See BLOOM, *supra* note 4, at 92–97.