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The Ancient Constitution, Common Law and the Idyll of Albion: Law and Lawyers in *Henry IV, Parts 1 and 2*

Paul Raffield

Abstract. In *Henry IV, Parts 1 and 2* Shakespeare provides an image of the unifying function of law in a disjointed society. This article examines the depiction in these plays of an idealized legal system, whose agents subscribe to the axioms of an equitable jurisprudence, in which kings are subject to an unwritten moral law. The central role played by common lawyers in shaping the development of the ancient constitution is considered by reference to two of the principal players in *Henry IV, Part 2*: the Lord Chief Justice and Justice Shallow. The influence of several judges of the early modern period (especially the Lancastrian Chief Justice, Sir John Fortescue) over the depiction of these two characters is analyzed. In the second part of the article the various models of fatherhood offered in the plays are examined. The correlation between paternity and the mystical nature of kingship provides the basis for the final section of the article, in which is considered the possible influence of Plowden's Report of the Case of the Duchy of Lancaster over the formulation of *Henry IV, Parts 1 and 2*.

Keywords: Shakespeare; *Henry IV, Parts 1 and 2*; Justice Shallow; Lord Chief Justice; ancient constitution; Sir John Fortescue; common lawyers; Edmund Plowden

INTRODUCTION

In his great diptych of the English state, *Henry IV, Parts 1 and 2*, Shakespeare provides a sustained image of the unifying function of law in a disjointed society. It is the purpose of this article to examine the depiction in these plays of an idealized legal system, whose agents subscribe to the axioms of an equitable

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jurisprudence in which kings are subject to the imperatives of unwritten law. I analyze the central role played by common lawyers in shaping the development of the ancient constitution, by reference to two of the principal players in *Henry IV, Part 2*: the Lord Chief Justice and Justice Shallow. I consider the influence of several judges of the early modern period (the most significant of whom in this context is the Lancastrian Chief Justice, Sir John Fortescue) over the depiction of these two characters, both of whom provide multifaceted representations of common lawyers.

Fatherhood is a ubiquitous theme in *Henry IV, Parts 1 and 2*, and in psychoanalytical terms is relevant to an understanding of the emotional power of law to control the imagination of its subjects, binding them into a state of allegiance to a symbolic father or original.¹ In the second part of the article I examine the various models of fatherhood offered in the plays, predicated upon Prince Hal's relationship with his actual father, King Henry IV; his surrogate and antithetical father, Falstaff; and the symbolic father of the law, the Lord Chief Justice. The correlation between paternity, filial relations, and the mystical nature of kingship provides the basis for the final section of the article, in which I consider the possible influence of Plowden's Report of the *Case of the Duchy of Lancaster* on the formulation of *Henry IV, Parts 1 and 2*.

Sacerdotes or Rabulae Forenses? Images of the Elizabethan Lawyer

The development in the sixteenth century of a standardized, self-regulating legal profession was instrumental in diminishing the relevance of its sacerdotal role, as proclaimed by Sir John Fortescue in *De Laudibus Legum Angliae*. Fortescue's characterization of the judiciary as "sacerdotes" or priests, whose primary role is to teach "Holy Things,"² implies a jurisprudence that is coexistent with and indivisible from the Word of God. As forensic rhetoric attained unprecedented levels of emphasis in the education of common lawyers during the sixteenth century, so the practice of law and the practices of lawyers became associated in the public imagination more with trickery than divinity. Still less did the spiritual correlation between lawyers and priests, made in the previous century by Fortescue, appear to have any basis in reality. Late Elizabethan jurists such as William Fulbecke conflated the temporal and spiritual aspects of common law, arguing that "though the charge and calling be secular, yet it must be religiously handled. For God is the author of the

Law, and the revenger of the abuse thereof.”³ Despite the biblical tone of Fulbecke’s injunction against irreligious conduct, it seems that Sir John Doderidge more accurately reflected the popular perception of lawyers at the end of the sixteenth century when he argued that “[t]he first and chiefest Natural gift [of the common lawyer] is sharpenesse, and dexterity of wit.”⁴ Indeed, in his popular, satirical comic drama, *Law-Trickes or, Who Would Have Thought It*, John Day implies that the preeminent skills of the barrister are those of dissimulation. The character of Polymetes is described as:

A parlous youth, sharpe and satyricall,
Would a but spend some study in the law,
A would prove a passing subtle Barrister.⁵

It was the acquisition merely of “sharp” and “subtle” skills at the Inns of Court to which the scholar, poet, and lawyer, Abraham Fraunce, objected most strongly in *The Lawiers Logike*, published in 1585. Fraunce was not opposed to the learning of rhetorical skills *per se*; rather it was the absence of any logical, structural, or ethical basis to legal education that he found most offensive and least conducive to the creation of a distinguished legal profession. Legal education of this period was predicated upon the rehearsal of disputatious skills. Cases were “pleadyd and declared in homely Law-french” by inner-barristers (law students); after which, an utter-barrister (qualified advocate) “doth rehearse, and doth argue and reason to it in the Law-frenche.”⁶ Similarly, at “readings,” after the Reader had given a lecture on a particular legal issue, he would offer up cases, which would be disputed by utter-barristers and Benchers: “The Judges and Benchers argue according to their antiquity, the puisne [subordinate] Bencher beginning first; and so everyone after another.”⁷

For many students, the rhetorical and procedural skills that they acquired at the Inns were applied to the administration of large country estates, when they returned to their familial homes after several years of study in London. As Fortescue accurately noted, sons of the gentry were sent to the Inns of Court, “not so much to make the Laws their Study, much less to live by the Profession (having large Patrimonies of their own);”⁸ but the acquisition of some basic tenets of property law would serve them well in the subsequent management of their land. Fraunce was highly critical of this practice, citing it as an example of the failings of an education that produced legal technocrats rather than juristic scholars: “[H]aving in seaven years space met with six

French words, home they ryde lyke brave Magnificoës, and dashe their poore neighboures children quyte out of countenance, with Villen in gros, Villen regardant, and Tenant per le curtesie.”⁹ The absence of any philosophical, critical, or ethical context to legal education led Fraunce to claim that the study of common law was “hard, harsh, unpleasant, unsavoury, rude and barbarous”; as a consequence of which, the lawyers produced were “so many upstart *Rabulæ Forenses*, which under a pretence of Lawe, become altogether lawless, to the continuall molestation of ignorant men, and generall overcharging of the country.”¹⁰

For popular dramatists such as John Day and John Marston, the avarice, pride, and dissemblance of lawyers made them obvious targets of derision in their satirical plays. Hence, in Marston’s *Histrion-Mastix*, performed for an audience of lawyers at the Middle Temple in 1599, the two protagonists, lawyers called Furcher and Vourcher, describe “sweet contention” as “Lawyers best content.” In a parody of the medieval morality play, Marston introduces into his farce the allegorical character of Pride. Upon seeing Furcher and Vourcher (who were presumably attired in legal costume), Pride exclaims:

O these be Lawyers! Concordes enemies,
Prydes fuell shall their fire of strife increase . . .
 . . . Then use your wisdom to enrich your selves,
 Make deepe successe high Steward of your store.¹¹

Whilst Marston and Day directed their satire at the perceived venality of lawyers; Shakespeare’s interest in the law was primarily in exploring models of governance and their twofold effect: on the development of the state and on individual subjects of law.

***Lex Terrae*, Common Lawyers and the Pastoral Idyll: “a goodly dwelling, and a rich”**

Less than ten miles to the south of Stratford-upon-Avon is the village of Ebrington. Along a narrow, winding road, a couple of miles to the west of the main thoroughfare from Stratford to Cirencester (the ancient Fosse Way), it sits on top of a hill, just inside the Gloucestershire border with Warwickshire. The road, which leads to Chipping Campden, is lined intermittently with pretty sand-colored cottages, built from the local Cotswold stone. It winds upwards past the village inn, reaching its highest point at the parish church

of St. Eadburgha, from whose ancient churchyard the view extends over a landscape of meadows, orchards, copses, and farm buildings to the Vale of Evesham in the west, Cirencester and the lower dip-slopes of the Cotswold Hills in the south, and the market town of Stratford-upon-Avon in the north.

The surrounding countryside of Gloucestershire and Warwickshire presents a vision of rural England that Lord Denning regularly invoked in his more idiosyncratic judgments; for example, in *New Windsor Corporation v. Mellor*:

Today we look back far in time. To a town or village green. The turf is old. Animals have grazed there for hundreds of years. Nowadays there are pleasant stretches of grass where people sit and talk. Sometimes they play cricket or kick a ball about. But in medieval times it was the place where the young men mustered with their bows and arrows. There might be stocks there where offenders were put for their petty misdemeanours. In the month of May they set up a maypole and danced around it. We have no record of when it all began.¹²

Noting Lord Denning's "attraction to the pastoral," Dennis R. Klinck remarks of this particular judgment that "the nostalgia is almost palpable."¹³ Denning evokes a sense of timelessness, suggesting (as jurists of the early modern period commented of the common law itself) that the customs of rural England have existed since time immemorial.¹⁴ Roger Sales describes pastoralism as "nostalgia for the good old days,"¹⁵ implying that such days exist only in the imagination. It is axiomatic of Denning's judgment in *Mellor* and in other cases that the England for which he yearns is a pastoral vision of nationhood rather than a statement of historical fact.¹⁶ As Peter Goodrich has observed, the study of common law is as much to do with the study of tradition as it is with the acquisition of technical knowledge;¹⁷ in which case, myth, memory, and the image are as relevant to the accretion of a body of law as the law reports, the texts of jurists, and the legislation of Parliament and the courts.

In terms of historical accuracy, Denning might have been referring in the above case "to a past which was never present":¹⁸ a quasi-fictional "merrie England" of maypoles, village cricket, grazing cattle, and eternal summers. Had he visited the Gloucestershire village of Ebrington, Denning would have lauded the physical manifestation of the unwritten ancient constitution, which his judgments invariably evoke and which Ebrington appears to embody. A constitution, particularly when it is unwritten, represents an aspiration rather

than merely a legalistic set of rules. That aspiration takes the form of diverse images, drawn from the memory of an ideal past and the projection of an optimal future. Ian Ward has succinctly defined a constitution as “a mentality; a collective impression, of past, present and future,”¹⁹ and Denning is certainly not alone among the judiciary in appealing to an idealized past as a paradigm for the present and the future. Sir Edward Coke frequently adopted a similar rhetorical style, as for example, in *Calvin’s Case*:

[W]e are but of yesterday, (and therefore had need of the wisdom of those that were before us) and had been ignorant (if we had not received light and knowledge from our forefathers) and our days upon the earth but as a shadow, in respect of the old ancient days and times past, wherein the laws have been by the wisdom of the most excellent men, in many successions of ages, by long and continual experience.²⁰

The judicial careers of Coke and Denning, although separated by nearly four hundred years, were identical in their dedication to preserving the unbroken chain of English law, by which the juridical past might be linked to the present.²¹ The venerable sages of the English legal profession, the appellate judges, profess to protect and propound the timeless reason of common law for the benefit of its subjects.²²

The themes of time and timelessness, and the sense of past deeds acting upon the present, pervade the autumnal tone of *Henry IV, Part 2*. Not only is the English countryside the nostalgic idyll of Lord Denning’s poetic imagination; it is also the home of Shakespeare’s Justice Shallow, whose Gloucestershire home and its surrounding orchard provide the setting for much wistful reverie. In Justice Shallow, Shakespeare gives the legal profession its nostalgic counterpoint to the unsentimental pragmatism of his Lord Chief Justice, whose “bold, just, and impartial spirit”²³ is in sharp contrast to the discursive meanderings of Shallow: the “poor esquire of this county, and one of the King’s justices of the peace.”²⁴ These two facets of the English legal tradition, what might be termed the pragmatic and the nostalgic, were united in the person of Sir John Fortescue, Lord Chief Justice and Lord Chancellor in the turbulent reign of King Henry VI.²⁵ The preface to John Selden’s edition of Fortescue’s *De Laudibus Legum Angliae* informs the reader that “He lies buried in the Parish Church belonging to *Ebburton*, (now written more frequently *Ebrington*,) where in the Chancel there is a Monument erected for him.” Ebrington was Fortescue’s home, “where he was settled: Which Manor

and Lands he had by Sale from Sir *Robert Corbett*, as by Deed declared 35 *Hen. VI.*²⁶ The monument to a descendant of Sir John Fortescue, Denzil George (6th Earl Fortescue, 1893–1977), stands in the grounds of the same church as that of his illustrious predecessor; a testament to the immutable continuity of English law.

Ebrington Manor and its orchards may or may not have been the inspiration for the Gloucestershire scenes in *Henry IV, Part 2*, but it is extremely likely that *De Laudibus* influenced the depiction of the English legal institution in *Parts 1 and 2*. In particular, Fortescue's portrayal of the paternal relationship between the young Prince and "a certain grave old Knight, his Father's Chancellor,"²⁷ finds echoes in the three models of fatherhood presented in the two plays: between Hal and his actual father, King Henry IV, and with his two surrogate fathers, the Lord Chief Justice and Falstaff. Written in or around 1470, and published in Latin in 1545,²⁸ *De Laudibus* "was first translated and published, together with its English Version, by Robert Mulcaster" in 1599.²⁹ Shakespeare may have read it in Latin or obtained a translation in manuscript form, prior to its first publication in English;³⁰ indeed, a probable translator during the reign of Elizabeth I was another Sir John Fortescue, a descendant of the author of *De Laudibus*, who served as Chancellor of the Exchequer and Privy Councillor. Significantly, he was also a language tutor to the Queen, "being a great Master of the Greek and Latin Tongues."³¹

I consider later the paternal theme and its reflection of belief in an ultimate source of legitimate authority. For now, I remain in the orchards of Gloucestershire to analyze the central importance of rural England to Shakespeare's (and Fortescue's) comprehension of the English state and its governance. In his discussion of the Gloucestershire scenes in *Part 2*, E. M. W. Tillyard refers to them as "the symbol of the undefeated operating of the country life."³² Tillyard does not elaborate on this assertion, but it is reasonable to infer from his comment the belief that, in the midst of upheaval and rebellion, the timeless values of rural existence, based on respect for custom and man's congruency with nature, will prevail and flourish.

The role of Justice of the Peace was crucial in establishing the authority of the monarch, in absentia: he was the legitimate image in the shires of the King's law. The office of Justice of the Peace was established by statute in the reign of Edward III (*1.Ed.3.cap.15*), although William Lambarde (writing in 1579) noted that "before the tyme of K. Edward the third, there were sundry

persons, that hadde interest in the keeping of the Peace.”³³ As prescribed by *34.E.3.cap.1*, “in everie Shire, one Lorde, and with him three (or foure) of the Best in the Countie, and some learned in the Lawes” were appointed by the King’s Commission to keep the peace and restrain offenders.³⁴ In the reign of Richard II, two statutes were passed to restrict the number of justices in any county to five (*12.R.2.cap.10* and *14.R.2.cap.11*): the post brought with it power and payment, and “ambition so multiplied the number of those Iustices, that it was afterward high time to make a contrarie law to diminish them.”³⁵ Centralization of government and expansion of administration under successive Tudor monarchs necessitated large increases in the numbers of Justices of the Peace; as Lambarde notes, “the growing number of the Statute laws committed from time to time to the charge of the Iustices of ye Peace, hath bene the cause that they also are nowe againe increased to the overflowing of each Shire.”³⁶

It is noteworthy from Lambarde’s analysis that he interprets the primary role of the Justice of the Peace, from its earliest statutory inception in the reign of Edward III, as that of conducting vigilant surveillance of the king’s subjects: “in every Shire, the king himself should place speciall eyes and watches over the common people, that shoulde bee bothe willing and wise to foresee, and bee also enabled with meete auctoritie to repress al intention of uproare and force.”³⁷ This stark and oppressive interpretation of justice in the shires calls into question the efficacy of the ancient constitution, which was purported by Fortescue and other early modern jurists to protect the liberty of subjects and their inalienable rights, irrespective of social status. It is instructive briefly to consider the depiction of “the common people” of the shires in *De Laudibus*. In a chapter entitled “The Inconveniencies in France by Means of the Absolute Regal Government,” Fortescue is forthright in his condemnation of an unjust political system in which “the Peasants live in great Hardship and Misery.” The Chancellor leaves the Prince in no doubt that a major cause of “this cruel oppressive Treatment” is an inequitable system of taxation under which the French peasantry bear a disproportionate fiscal burden, while “The Nobility and Gentry are not so much burthened with Taxes.”³⁸ At no point in *De Laudibus* does Fortescue refer specifically to the English peasantry. Rather, he describes in general terms “the Advantages consequent from that Political Mixt Government which obtains in England.” He alludes to a hierarchic social structure in which “Every one, according to his Rank, hath all Things which conduce to make Life Easy and Happy.” Above all else,

the England of *De Laudibus* is an agrarian society, “constantly governed by the same Customs,” and the social “rank” of any English subject was the immutable product of those customs.³⁹

It is over the issue of customary law that J. G. A. Pocock has identified a central flaw in the deductive argument employed by Fortescue in *De Laudibus*. If laws are to be accounted rational and therefore just, then they should be deduced from principles of natural justice, rather than being predicated upon national or local customs.⁴⁰ But Fortescue is adamant that the laws of England are better than those of any other nation-state or of any empire (notably those of the Venetians and the Romans) on grounds of their antiquity alone; on which basis “the Laws and Customs of England are not only Good, but the very Best.”⁴¹ As Pocock observes, logic such as this can hardly be described as rational, based as it is on a “technical and traditional” interpretation of customary law;⁴² but the justification that is offered by Fortescue for the superiority of English law over all rival legal systems is perhaps closest to the distinction, later to be made by Sir Edward Coke, that “causes which concern the life . . . of [the King’s] subjects, are not to be decided by natural reason, but by the artificial reason and judgment of law.”⁴³

What then is the essence of this artificial reason, which makes the common law unique among western legal systems and renders it better than any of its rivals? Fortescue’s Chancellor informs the Prince that the laws of England are “excellent in their Nature and Reason” and describes a process of metamorphosis, by which “use transform the Person into its very Nature.” Fortescue is elaborating a metaphysical conceit whereby a living person becomes the embodiment of an intangible ideal: perfect justice. Especially notable is Fortescue’s insistence that this transformative process can occur only through “use” or adherence to custom. Only when the Chancellor’s young charge has “transcribed the Law” into his “very Habit and Disposition” will he “deservedly obtain the Character of a Just Prince.”⁴⁴ In his definition of nature, Fortescue implies the indivisibility of custom and the Law of God; and further to his thesis that the laws of England are primarily *leges non scriptae*, he argues that statutes represent nothing more than the reduction “into Writing” of the laws of nature and custom. Selden notes of Fortescue’s assertion that human laws are derived from nature, customs, or statutes that the law of nature is “the Law of all Places, Persons and Times, without Alteration, One and the same Inscription of GOD’s Power, and Goodness.”⁴⁵

Fortescue uses a metaphor, drawn from his knowledge of the orchards of Gloucestershire, with which to illustrate how privileged access to artificial reason transforms the recipient of such knowledge from being a “Stranger” to the common law into a personification of “the Rule of Justice.” The Chancellor likens the young Prince to “an Apple-Stock,” onto which a scion from a pear tree is grafted, with the felicitous result “that both become a Pear-Tree, and are called so from the Fruit which they produce.” The imagery employed by Fortescue is intended to suggest that the fusion of “nature” (the apple tree) with the artificial reason of law (the grafted pear tree) will transform the host body into a manifestation of law itself.⁴⁶ The image of the ancient constitution, evoked throughout *De Laudibus*, is predominantly rural. For Fortescue, the customs of the shires represent the unity of human reason and natural or divine law. This much is apparent from the metaphor of the grafted pear tree, above, and in the more general (but no less symbolic) and idealized description of the English subject of law: “Every Inhabitant is at his Liberty fully to use and enjoy whatever his Farm produceth, the Fruits of the earth, the Increase of his Flock, and the like.”⁴⁷

Justice Shallow’s Gloucestershire orchard is a theatrical distillation of Fortescue’s bucolic imagery. Fortescue’s vision of England is prevented from subsiding into pastoral sentimentality by the violent historical context in which *De Laudibus* is set: the dynastic civil wars between the Houses of Lancaster and York. It is the same in Shakespeare’s Gloucestershire: populated though it is by “good varlet[s]” and “lusty lads,”⁴⁸ the violent civil unrest beyond its borders reminds the audience of the fragility of ancient and immutable custom and of the need to be vigilant in defense of the ancient constitution. Like Fortescue’s Chancellor, Justice Shallow is a true countryman, skilled in the horticultural techniques described above: he invites Falstaff to “see my orchard, where, in an arbour, we will eat a last year’s pippin of mine own grafting.”⁴⁹

In *The Justices of the Peace in England, 1558–1640*, subtitled *A Later Eirenarcha*, in homage to William Lambarde, J. H. Gleason provides a valuable analytical insight into the local administration of justice in early modern England. Gleason’s expansive claim, in his first sentence, that “[t]he justices of the peace symbolize the polity of England”⁵⁰ finds dramatic resonance in the three Gloucestershire scenes of *Part 2*. Justice Shallow is neither jurist nor judge. Indeed, from a strict reading of Shakespeare’s play, it seems unlikely that he was a member of one of the Inns of Court. “I was once of Clement’s

Inn, where I think they will talk of mad Shallow yet,"⁵¹ he boasts to his fellow justice, Silence. Clement's Inn was one of the Inns of Chancery in London, at which attorneys-at-law were trained.⁵² Fortescue's Chancellor informs the Prince that in each of these (there were ten Inns of Chancery when *De Laudibus* was written):

[T]here are an Hundred Students at the least; and, in some of them, a far greater Number, tho' not constantly residing. The Students are, for the most part, young Men; here they Study the Nature of Original and Judicial Writs, which are the very first Principles of the Law: After they have made some Progress here, and are more advanced in Years, they are admitted into the Inns of Court.⁵³

If Shallow had not progressed from Clement's Inn to one of the four Inns of Court, his knowledge of English law would have been rudimentary. He misses no opportunity to remind Falstaff and Justice Silence of his youthful experiences in London; therefore it seems unlikely that he would have failed to mention adventures that befell him while a student at one of the Inns of Court. Characteristically, Shallow boasts to Silence of his acquaintance with young men from the "superior" Inns of Court: "There was I, and little John Doit of Staffordshire, and black George Barnes, and Francis Pickbone, and Will Squele, a Cotsole man—you had not four such swinge-bucklers in all the Inns o' Court again."⁵⁴ While a student at Clement's Inn, Shallow almost certainly would have had friends and drinking companions at one of the nearby Inns of Court; but he never goes so far as to claim that he was a member himself. The four "swinge-bucklers" of the Inns of Court were John Doit, George Barnes, Francis Pickbone, and Will Squele: the fifth member of the gang (if his reminiscence is accurate)⁵⁵ was Robert Shallow, of Clement's Inn.

The traditional educational route for an aspiring common lawyer was to study for a degree at Oxford or Cambridge prior to a prolonged period as a student at one of the Inns of Court. After seven or eight years as an inner barrister, during which time he would participate in twelve "grand moots" at his Inn and twenty-four "petty moots" at an Inn of Chancery, the student was called to the Bar and elevated to the status of utter barrister. Utter barristers from the Inns of Court gave readings on particular statutes or cases at the Inns of Chancery, and students there participated in moots, similar to those at the Inns of Court.⁵⁶ If as a young man Robert Shallow had attended only Clement's Inn, then (according to Dugdale) his education would have been sporadic and less than satisfactory. There was no tutorial system and, aside

from the provision of readings and moots, students were left to their own devices. Dugdale contrasts the cloistered calm of the Inns of Court with the noisy commerce of the Inns of Chancery:

[I]n the Terme time they are so unquieted by Clyents and servants of Clyents, that resort to such as are Attorneys and practysers, that the Students may as quietly study in the open streets, as in their Studies. Item, they have no place to walk in, and talk and confer their learnings, but in the Church.⁵⁷

Among J.P.s, the paucity of Shallow's formal education would have been by no means unusual. Gleason records that in Worcestershire, of the fifty-two J.P.s extant in the year 1584, only thirteen had attended Oxford or Cambridge as undergraduates and only sixteen had been called to the Bar. Twenty of the fifty-two Worcestershire justices had attended neither Oxford nor Cambridge, nor one of the Inns of Court.⁵⁸ Shallow refers in passing to Oxford, when he says to Silence: "I dare say my cousin William is become a good scholar; he is at Oxford still, is he not?"⁵⁹ But there is no textual evidence that Shallow himself was a student there. The only statutory qualification for appointment to the post of J.P. (beyond the vague requirement, expressed in *34.E.3.cap.1*, that they should be "learned in the Lawes") was that "None shall bee assigned Iustice of the Peace, if he have not landes or tenements to the value of twentie pounds by the yeare."⁶⁰ Of far greater importance than formal education or social status (beyond the requirement that a J.P. must be a landowner) was the more nebulous requirement that he should be "of the Best in the Countie."⁶¹ As Tillyard observes of Shallow, it matters not that at times (particularly when recalling his rumbustious youth as a student at Clement's Inn) he appears ridiculous; the crucial point about his embodiment of unwritten law is that he "is a good countryman."⁶² Although as a J.P., Shallow is an important functionary in the administration of justice, his knowledge of statutes and case law is less relevant to the execution of his duties as one of the King's Justices of the Peace than his affinity with the unchanging customs of the English countryside.

The powers attached to the role of J.P were not inconsiderable; as Lambard states, they had powers of jurisdiction and "[c]oertion," including the lawful authority to pass capital sentences, "as by hanging, burning, boyling, or pressing."⁶³ But it is in the informal enforcement of unwritten law, as reflected in the dialogue between Shallow and his servant Davy, that the role of J.P. as guardian of the ancient constitution is more accurately represented. Tillyard describes Davy as "both administrator and politician"⁶⁴ and his

questioning of Shallow, concerning the sowing of wheat, the shoeing of horses and the payment “of William’s wages”⁶⁵ suggests that his role is more akin to that of estate manager than that of a mere servant.

The professional relationship between Shallow and Davy appears to be similar to that of an attorney (which Shallow would have been, had he completed his education at Clement’s Inn) and his clerk, or noverint. Davy’s first lines to Shallow, after greeting him, are “Marry, sir, thus: those precepts cannot be served; and again, sir—shall we sowe the hade land with wheat?”⁶⁶ A. R. Humphreys makes the plausible suggestion that “precepts” refers to one of the *praecipe* writs:⁶⁷ a form of action in which a right to enjoyment of property by a plaintiff was asserted over a defendant. In *The Interpreter*, John Cowell notes that *praecipe* “is a writ of great Diversity, both in its Form and Use.” Such a writ “properly signifies the Taking Possession of Lands or Tenements”; for example, “where a Man demands Lands or Tenements of his own Seisin after the Term expired.” The relevance of *praecipe* to the continuation of antique custom in the shires of England and therefore, in more general terms, to the perpetuation of the ancient constitution is that (as Cowell elaborates): “The Writs of Entry favour much of the Right of Property; As for Example: Some are to recover Customs and Services, in which are contained these two Words (*Solet & Debet*).”⁶⁸ The symbolic importance of “Solet” and “Debet” to the claim of a higher, moral law and supreme constitutional status could not be more apparent, suggestive as they are of that which is customary and that which ought to be.

J. H. Baker compounds the idea that Shakespeare was referring in this scene to the rectitude of ancient and immutable custom, by describing the writs of *praecipi* as “the oldest and most solemn of actions.”⁶⁹ The action was concerned with exercising the right of the plaintiff over property currently in use by the defendant, rather than with compensation for a wrong committed by the defendant. Therefore, it is possible that Davy’s question concerning the sowing of wheat on the “hade land” refers to his preceding statement that the “precepts” could not be served. In other words, the defendant was denying the plaintiff access to the “hade land,” thereby preventing the sowing of wheat. Davy had consequently attempted to serve a writ of *praecipe* on the defendant, demanding that the plaintiff be allowed to sow wheat, but had failed. As Baker remarks, defendants often ignored the initial serving of the writ, requiring several stages in the process before the plaintiff successfully claimed his right over the land.⁷⁰

In response to Davy's inquiry about whether they should sow wheat, Shallow replies: "With red wheat, Davy,"⁷¹ referring to the "red Lammis" variety, grown locally in Gloucestershire since time immemorial.⁷² For all his boastful and possibly fictitious reminiscences about his lusty youth, Shallow is at one with nature and the customs of rural life. Whether choosing the best variety of wheat or grafting "pippins" onto rootstocks, he fulfills Tillyard's definition of a "good countryman." Like his judicial descendant, Lord Denning, Shallow's interpretation of law is predicated upon his respect for the customs of rural life.⁷³ Such respect extends to knowing the personalities and characteristics of individual members of the rural community; many of whom would be subjects of litigation, which the local J.P. would be expected to resolve. Hence, Davy asks Shallow to "countenance" or support his friend, "William Visor of Woncot against Clement Perkes a'th'Hill."⁷⁴ Shallow knows Visor to be an "arrant knave,"⁷⁵ but Davy pleads for him on the grounds of amity: "at his friend's request" and because "The knave is mine honest friend."⁷⁶ Swayed perhaps by Davy's touching loyalty towards his friend, Shallow declares that "I say he shall have no wrong."⁷⁷

The system of justice described here by Shakespeare is Aristotelian, in the sense that it is dependent on the recognition that community, association, or friendship is central to the creation and maintenance of the *polis*. In Book I of *The Politics*, Aristotle uses the microcosm of the village community with which to demonstrate the interdependency of the various constituent members of the state. They are "homogalactic": literally, they suckle from the same source of milk.⁷⁸ Of even greater relevance to the scene between Davy and Shallow (and to the sense that this scene alludes to the fractious state of England in the reign of Henry IV) is the political importance that Aristotle attaches to friendship in Books VIII and IX of *The Nicomachean Ethics*. For Aristotle, friendship is the bond of communities and is, he claims, more important to lawgivers even than justice; the primary objective of lawgivers is the attainment of concord and the elimination of faction, and concord is synonymous with friendship.⁷⁹

In *The Book Named the Governor*, Sir Thomas Elyot's seminal work on governance, the commonweal, and the education of a prince, the Aristotelian notion of friends is interpreted in the context of advisers or counselors to the prince: *amici principis*. According to Elyot, those rulers who refuse the counsel of advisers are subject to "most pernicious danger." Discussing the best form of governance, Elyot quotes from Plutarch of Theopompus, King of

Lacedaemonia: “‘If’ (said he) ‘the prince give to his friends liberty to speak to him things that be just, and neglecteth not the wrongs that his subject sustaineth.’”⁸⁰ I shall return to Elyot in connection with the education of Prince Hal, with particular reference to the exchange between Hal and the Lord Chief Justice in *Part 2*, concerning Hal’s committal to prison for publicly striking him.⁸¹ For now, I conclude my discussion of Shallow’s Gloucestershire idyll with the observation that the Aristotelian notion of friendship was an essential component of common law principles of fairness, equability, and social cohesion, forming the basis of community at a local and national level.⁸²

Left alone, when Shallow and Davy retire to prepare for dinner, Falstaff reflects on “the semblable coherence of his [Shallow’s] men’s spirits and his.” But he misinterprets the exchange between Shallow and Davy, making the mistaken observation that Shallow’s servants, “by observing of him, do bear themselves like foolish justices; he, by conversing with them, is turned into a justice-like servingman.”⁸³ Far from acting foolishly, as Falstaff surmises, what has occurred between them is akin to the grafting process described by Shallow in Act 5, Scene 3, and by Fortescue in *De Laudibus*. Whether by serving the writ of *praecipe* on their intransigent neighbor or by Shallow’s “countenancing” of Davy’s friend, William Visor, the artificial reason of the law has been grafted onto ancient custom: the writ will enable the “hade land” to be sown with “red wheat,” as it has been since time immemorial;⁸⁴ the countenancing of William Visor against Clement Perkes will allow Davy’s honest friend to carry on his agrarian business (whatever it may be) as he always has. In their unity of purpose, which Falstaff mistakes for foolishness, Shallow and Davy display fidelity to the land and to ancient custom.⁸⁵ In their brief, preprandial dialogue the two honest countrymen, Shallow and Davy, have amply demonstrated that the common or customary laws of England are, as Fortescue stated, “deduced from the Law of Nature.” Citing Aristotle as authority for his claim that the law of nature is the ultimate source of English law, Fortescue quotes approvingly from Book V of *The Nicomachean Ethics*: “‘The Law of Nature is the same, and has the same Force all the World over.’”⁸⁶ The quotation from Aristotle might stand as a suitable subtitle for the three Gloucestershire scenes in *Part 2*.

In his delineation of the various functions of J.P.s, Lambarde ascribes to them a spiritual role, not dissimilar to the description by Fortescue of the judiciary as “sacerdotes.” Defining the word “Peace,” Lambarde argues that the word “hath sundry significations in the holy Scripture: For there is an

inwarde, and an outward Peace. . . . Out of this proceedeth an other inwarde Peace, named ye Peace of Conscience, for that our conscience is (by faith in Christ) at Peace, both with God and itself.”⁸⁷ For Lambarde, Elizabethan J.P.s played a central role in the maintenance of the customary laws of England and the protection of the ancient constitution. They were the provincial guardians of the nation’s conscience, considered by Gleason to be leaders of English society and, more portentously by G. M. Trevelyan, “of the utmost significance for the future of our constitution and our law.”⁸⁸

The Education of a Prince and “the rusty curb of old Father Antic the law”

Critics of *Part 2* have consistently noted the play’s themes of time and timelessness. Indeed, Humphreys goes so far as to argue that in the course of the play, time becomes a “picture of the nation.”⁸⁹ There is a sense in much if not all of the play (not least in the Gloucestershire scenes discussed above) that the action might be set in the early fifteenth century, the late sixteenth century, or somewhere in between (or after). In the context of precedent in common law—of past decisions acting upon and directly affecting the present case—the observation of Lord Hastings that “[w]e are time’s subjects”⁹⁰ is an accurate and concise description of every litigant who ever appeared before an English court. Each plaintiff and defendant is subject to time, in the sense that the present decision of the court is contingent upon past judgments.

In a recent historicist study of the plays, Tom McAlindon notes that the dynastic conflicts of late medieval England were interpreted by Shakespeare “through the lens of Tudor experience.”⁹¹ It is certain that the issue of the succession to Elizabeth provided an underlying and general theme for the plays. Of more particular relevance is that the Tudor rebellions of 1536, 1547, and 1569 (especially given the involvement of the Percys in the 1569 Northern Rebellion) provided Shakespeare with recent and resonant simulacra of the rebellions against the rule of Henry IV. Indeed, the judge who, in the spring of 1570, attended the assizes in York, Carlisle, and Durham for the trial of the Northern rebels was to become known to Shakespeare’s family for presiding over the trial in 1583 of two of their relatives, John Somerville and Edward Arden, charged with plotting to kill the Queen.⁹² By then the judge in question, Sir Christopher Wray, had been appointed Lord Chief Justice, a post that he held from 1574 until his death in 1592.⁹³

The phantasms of leading members of the judiciary inhabit the two parts of *Henry IV*, casting long shadows over Shakespeare's depiction of the English legal institution. I have commented on the powerful influence of Sir John Fortescue and *De Laudibus* over the Utopian representation of the English countryside and its symbolic status as the embodiment of the ancient constitution. The guidance offered by *De Laudibus* is palpable also in the variations on the paternal relationship that exist respectively between Hal and Henry IV, the Lord Chief Justice and Falstaff. Fortescue (like Bracton before him) was insistent that the model prince should be as familiar with the laws of England as he should with martial skills. Fortescue's Chancellor is pleased to see his young charge "employ your self in such Manly and Martial Exercises," but he does not shirk from reminding the Prince, in a chapter entitled "An Exhortation to the Study of the Laws," that:

it is the Duty of a King to Fight the Battles of his People, and to Judge them in Righteousness. (1 *Kings* VIII.20) Wherefore, as You divert and employ your self so much in Feats of Arms, so I could wish to see You Zealously affected towards the Study of the Laws: because, as Wars are decided by the Sword, so the Determination of Justice is effected by the Laws.⁹⁴

If Shakespeare reached back to the late fifteenth century and *De Laudibus* for the model of a paternal relationship between "old Father Antic the law"⁹⁵ and the heir to the throne, he had recourse also to the early life of the extant Lord Chief Justice, Sir John Popham. In *Part 1*, the robbery scene at Gadshill, Kent, derives from anecdotal reportage of Popham's alleged criminal past. John Aubrey writes that Popham "for several [years] addicted himself but little to the study of the laws, but [to] profligate company, and was wont to take a purse with them."⁹⁶ In his biography of Popham, Douglas Rice argues that, as a young man, Popham and his criminal associates gathered at a hostelry in Southwark, whence they set out to ambush travelers on the coach road to Kent, at Shooter's Hill, a notorious haunt for highwaymen.⁹⁷ Prevailed upon by his wife "to lead another life, and to stick to the study of the law," Popham transformed himself from criminal to lawyer, becoming "eminent in his calling,"⁹⁸ to the extent that George Keeton asserted that "[t]he rugged personality and upright character of Popham must have been in Shakespeare's mind during the composition of the plays."⁹⁹

Another narrative, culled by Shakespeare from the repository of legal anecdote, concerns the exchange between the uncrowned Henry V and the Lord Chief Justice in *Part 2*. The new King asks his Chief Justice:

How might a prince of my great hopes forget
 So great indignities you laid upon me?
 What! Rate, rebuke, and roughly send to prison
 Th'immediate heir of England?¹⁰⁰

The Lord Chief Justice reminds the King that he was imprisoned justifiably, for the offense of contempt of court:

Your Highness pleased to forget my place,
 The majesty and power of law and justice,
 The image of the King whom I presented,
 And struck me in my very seat of judgment.¹⁰¹

Holinshed records as fact an incident in which Prince Henry “had with his fist striken the cheefe iustice for sending one of his minions (upon desert) to prison.”¹⁰² The earliest account of this story is in Elyot’s *The Book Named the Governour*, first published in 1532. Elyot does not record the Prince striking the Lord Chief Justice, merely that he “all in a fury, all chafed, and in a terrible manner, came up to the place of judgment.” Elyot quotes the Lord Chief Justice’s public rebuke of the Prince, in the Court of King’s Bench, as follows:

I keep here the place of the King, your sovereign lord and father. To whom ye owe double obedience, wherefore eftsoons in his name I charge you to desist of your wilfulness and unlawful enterprise, and from henceforth give good example to those hereafter shall be your proper subjects. And now for your contempt and disobedience, go you to the prison of the King’s Bench, whereunto I commit you.¹⁰³

In a treatise entitled “The Story of Prince Henry of Monmouth and Chief-Justice Gascoign,” Sir Frederick Solly-Flood argues that the “quotation” by Elyot is fictitious. He states that spoken English “was not used on the Bench” during the reign of Henry IV, implying that judges would have addressed the court in law-French or Latin.¹⁰⁴ Solly-Flood provides no authority for his claim, and as early as 1363, a statute was enacted (*36.E.3.cap.15*) that decreed

that henceforth court proceedings should be conducted in English rather than law-French. Baker has indicated that the proceedings of the court were formally recorded in Latin text;¹⁰⁵ but *ex tempore* oral interventions from the Bench, such as that claimed by Elyot, would probably have been in English. More convincing is Solly-Flood's argument that, during Sir William Gascoigne's tenure of the office of Chief Justice (1400–1413), there was no "prison of the King's Bench": convicted prisoners were committed to the custody of a marshal of the court ["*Committitur marescallo*"], who was responsible for their safekeeping. The prisoner was thus "*in custodia marescalli*" rather than "*in prisiona Domini*."¹⁰⁶

Solly-Flood plausibly suggests that Elyot derived the story from a written judgment in the Court of King's Bench, during the reign of Edward I (34 *Ed. I*: more than eighty years before Prince Henry of Monmouth was born). The relevant paragraph records that the then Prince of Wales, in contempt of the Court of King's Bench, had used gross and bitter language ["*verba grossa et acerba*"] against the Chief Justice, for which offense the King (rather than, in Elyot's account, the Chief Justice) banished his son from his presence for six months ["*et hospicio suo fere per dimidium annum amovit*"].¹⁰⁷ There is no record in the above account of the Prince of Wales striking the Chief Justice. Apart from Shakespeare's acquaintance with the story from Elyot's *The Governor*, he would have seen a dramatized version of the altercation in the anonymous *The Famous Victories of Henry the Fifth*, entered in the Stationers' Register in May 1594, but performed in the mid-1580s by The Queen's Men.¹⁰⁸ In that play, the Prince "giveth him [the Lord Chief Justice] a boxe on the eare," for passing sentence on one of his thieving companions, Cutbert Cutter. The Lord Chief Justice commits the Prince to Fleet Prison and Cutter to Newgate Prison, "until the next Sises";¹⁰⁹ there is no reference to Elyot's "prison of the King's Bench."

I have dwelt on the origins of the story in order to emphasize the importance of its source to Shakespeare. Holinshed's *Chronicles of England, Scotland and Ireland* and Hall's *The Union of the Noble and Illustre Famelies of Lancaster and York* were both sources for the historical content of *Henry IV, Parts 1 and 2* (Hall's work begins with the accession of Henry IV in 1399 and includes a chapter entitled "The unquiet time of King Henry the Fourth"). But with reference to the education of a prince and the impact of this upon his capacity to govern in the best interests of the commonweal, Elyot's *The Governor* was obviously the greater influence. While Solly-Flood is almost certainly correct

in doubting the veracity of Elyot's "quotation" from Sir William Gascoigne, C.J., his statement that *The Governor* "has no claim whatever to be considered anything but a story book" is a major interpretive error.¹¹⁰ As John Guy has noted, the humanist literature of the Tudor era (heavily influenced as it was by the writings of Plato, Aristotle, and Cicero) was republican in theme, to the extent that it displayed a preference for limited monarchy. Guy notes that *The Governor* was interpreted by many commentators of the early modern period as a critique of the Henrician *Imperium*.¹¹¹

In view of its republican tone, it is unsurprising that *The Governor* gained considerable critical attention after the abolition of the monarchy in 1649. Indeed, in *Leviathan*, Thomas Hobbes explicitly criticized the type of humanist education advocated by Elyot in *The Governor*. Hobbes was forthright in his condemnation of the classical texts to which Elyot refers, claiming that they instilled in those who read them a range of subversive and violent republican sentiments.¹¹² His contemporary (and an apologist for the theory of the divine right of kings), Robert Filmer, disagreed fundamentally with Hobbes's theory of the social contract but was similarly dismissive of the classical sources of *The Governor*; describing Plato, Aristotle, and Cicero as "heathen authors, who were ignorant of the manner and creation of the world."¹¹³ At the core of Hobbes's opposition to humanist literature and its origins in the classical world was the distinction he made between *lex* and *ius*. For Hobbes, liberty of the citizen had been mistakenly elevated by the Athenians and the Romans to the harmful status of a formal right, thus threatening the sovereign power of the supreme magistrate. Hobbes made the identical observation of Sir Edward Coke, in *A Dialogue Between a Philosopher and a Student of the Common Laws of England*, accusing him of failing to recognize that a right is a liberty only to do that which a law does not forbid.¹¹⁴

"You shall be as a father to my youth": Symbolism and the Common Law

The historical inaccuracy of the reported altercation between Prince Henry and Sir William Gascoigne, C.J. is less important than its allegorical status as an illustration of the subjugation of the crown to the sovereignty of common law. Shakespeare's Chief Justice informs Hal that he was imprisoned not for the assault upon his person, but for his assault upon the institution that the office of Chief Justice represents: the law itself, embodied by the office of Lord

Chief Justice. The Chief Justice is conscious of the persuasive power of legal iconography, reminding Hal that the office he holds is “[t]he image of [the King’s] power”¹¹⁵ and that it is “[t]he image of the King”¹¹⁶ that he embodies when he sits in judgment. He poses Hal the hypothetical question whether, if he had a son, he would allow him to “spurn at your most royal image.”¹¹⁷ He is mindful too of the symbolism inherent in the role of the father, using the words “father” and “son” seven times in the same speech. His relationship with Hal is one of several variants on the paternal relationship that Shakespeare incorporates into the two plays.

The symbol of fatherhood, of an imaginary father to whom all true subjects of law owe allegiance and from whom all law originates, is a metaphysical conceit to which judges and jurists of the early modern period made allusion. Hence Coke refers variously to Moses, Brutus, the Druids, and King Arthur as definitive founders and authors of English law.¹¹⁸ The intention was to locate the ultimate source of legitimate constitutional authority, an issue of immense practical significance as successive Tudor monarchs sought, through increased use of the royal prerogative, to wrest jurisdiction from the courts of common law and relocate it in the person of the monarch. The mysterious authority of an invisible power, vying for sovereignty with the tangible presence of a physical actuality, is the theme of the *Case of the Duchy of Lancaster* (1561), reported by Plowden in *The Commentaries or Reports*. Plowden’s comment that “the king has in him two bodies, *viz.* a body natural and a body politic” provided the historical and intellectual foundation for Ernst H. Kantorowicz’s magisterial study of medieval kingship and theology, *The King’s Two Bodies*. Kantorowicz places appropriate emphasis on the relevance of Plowden’s statement to Shakespeare’s *Richard II*, which Kantorowicz describes as “the tragedy of the King’s Two Bodies.”¹¹⁹ That Shakespeare was familiar with Plowden is evident from his informed allusion to *Hales v. Petit* (1562) in the graveyard scene in *Hamlet*. The report in *Hales* of the suicide by drowning of Sir James Hales, “not having God before his eyes, but seduced by the art of the Devil,”¹²⁰ was a profound influence over Shakespeare’s treatment of the burial of Ophelia.

The primary relevance of the *Case of the Duchy of Lancaster* to the present study of Shakespeare’s *Henry IV* is that it concerns a contested lease, of land originally belonging to the House of Lancaster:

[T]he dutchy of Lancaster came to the said king Henry 4. by descent on the part of his mother, and in this case if he had not afterwards been king, his

possessions should have passed by livery and seizin, and attornment, &c. in the same manner as the possessions of other subjects ought to pass. But after he had deposed king Richard 2. and had assumed upon him the royal estate, and so had conjoined to his natural body the body politic of this realm, and was become king, then the possessions of the dutchy of Lancaster were in him as king.¹²¹

The legitimacy of succession lies at the heart of the case. By virtue of the mysterious, binding power of the body politic, the land subsequently passed from the House of Lancaster to successive monarchs, until Edward VI made a lease of it during his minority. Plowden succinctly records the issue before the court: “[I]f the present queen shall be bound by this lease made by king Edward 6 or if she shall avoid it by reason of the nonage of the said king.” The lease was binding, because of the supernatural authority of the body politic:

[A]lthough he has or takes the land in his natural body, yet to this natural body is conjoined his body politic, which contains his royal estate and dignity, and the body politic includes the body natural, but the body natural is the lesser, and with this the body politic is consolidated.¹²²

A vision of good governance, the body politic, is held to be of greater legitimacy than a corporeal entity, the body natural. Although it is at least arguable that the judgment was based upon an equitable interpretation of the relevant legislation,¹²³ the decision in the *Case of the Duchy of Lancaster* (in particular its reference to the subsumption by the body politic of the body natural) marks the triumph of metaphysics over reason, and demonstrates also the importance of the image as a persuasive tool in early modern forensic rhetoric.

In strict, Roman legal terminology, the image or *imago* was the social representation of the father, in symbolic terms the ultimate lawgiver. As *paterfamilias*, the Roman father had power that mirrored that of the emperor.¹²⁴ His authority was absolute; he was *lex loquens*—the living, speaking law. In historical terms, the decision of Henry IV to govern in accordance with the power inherent in his personal, royal authority as *parens patriae* was the cause of much of the civil unrest that Shakespeare dramatized in the two plays. Simon Walker has identified several instances of rebellion in the early years of Henry’s reign, when local populaces rebelled against the authority of the King; not on the basis of his questionable dynastic right to the crown, but rather because they resented the assertion of a monarchic power that quashed their “communal preference for self-regulation.”¹²⁵ It is the conflict between

the *Imperium* of the monarch and the desire for communal self-regulation that Elyot addresses tangentially and allegorically in *The Governor*, and that Shakespeare confronts more directly in the two parts of *Henry IV*. I have attempted to demonstrate that the Gloucestershire scenes of *Part 2* offer a dramatic representation of a community governed by customary law, in accordance with the rights guaranteed English subjects by the ancient constitution. The Lord Chief Justice also upholds the law at a local, communal level, making his authoritative presence felt on the streets of London (where he first encounters Falstaff) and in the Boar's Head tavern, tempering the rigor of law with humanity, humor and equable judgment.

Of the three paternal relationships that Hal experiences (with King Henry, Falstaff, and the Lord Chief Justice), his association with the Lord Chief Justice is the only one to survive until the end of *Part 2*, by which time Henry IV is dead and Falstaff banished. Norman Sanders makes the important observation that both Falstaff and King Henry are kings of misrule: the former, for contriving to corrupt the heir to the throne, "like his ill angel,"¹²⁶ the latter for usurping the throne.¹²⁷ Both must be sacrificed before the moral and legal order can be restored.¹²⁸ In their dealings with Hal throughout the two plays, Falstaff and King Henry appear as distorted representations of the same image of decay: the aged father, vying for the attention of his errant son.¹²⁹ In the end, Hal chooses to bind the body politic of the king to the only legitimate paternal model: the symbolic father of law, the Lord Chief Justice.

Stephen Greenblatt has observed that the emphatic character trait of Hal in *Part 1* is his skill at improvised role-playing.¹³⁰ Hal loves to act and he plays numerous roles, for his own and others' enjoyment. He continues to improvise in *Part 2*, disguising himself again in order to entrap Falstaff and prove him "a globe of sinful continents."¹³¹ If the playacting in *Part 2* is less spontaneous and exuberant than in *Part 1*, it has greater emotional impact for the serious intent with which Hal invests it. Hal's impersonation of the "drawer" [tavern-boy] in *Part 2* lacks the comic vitality (and the inventive dialogue) of his impressions of Hotspur, Lady Percy, and the King in *Part 1*; but his purpose in the Boar's Head tavern of *Part 2* is to draw Falstaff "out by the ears,"¹³² thereby to incriminate him as a defamer of royalty. The Star Chamber punishment for defamation of the crown would have been to "have his ears cut off,"¹³³ in light of which Falstaff's eventual (and temporary) banishment by the King, "Not to come near our person by ten mile,"¹³⁴ is an unusually lenient sentence.¹³⁵

As Greenblatt notes of *Part 1*, theatricality is the essential means through which power is expressed.¹³⁶ This is no less true of *Part 2*, particularly when Hal is playing his most challenging role to date, that of King Henry V. The theatre of kingship is expressed by Hal in his first line as monarch, when he compares his regal status to a costume: “This new and gorgeous garment, majesty, / Sits not so easy on me as you think.”¹³⁷ Despite his initial nervousness, Hal immediately demonstrates that his aptitude for and experience of improvised theatricality have prepared him for the royal stage, which he must now inhabit as king. He is astutely aware that the power of the king is dependent upon belief by his subjects in the particular image of kingship that he reflects.¹³⁸ Without hesitation, he modestly presents himself as a king, not only under God but under law; no absolute monarch this: “Not Amurath an Amurath succeeds, / But Harry Harry.”¹³⁹ Twice in the last act, we are reminded that Henry V will govern as a king in Parliament¹⁴⁰ and not, like Richard II, as “The deputy elected by the Lord.”¹⁴¹

Promises of symbolic fatherhood abound; after announcing to the Princes that “I’ll be your father and your brother too,”¹⁴² he offers his hand to the Lord Chief Justice, proclaiming that “You shall be as a father to my youth”:¹⁴³ the new King casts himself as both symbolic father and son of the law. Falstaff, “that reverend Vice, that grey Iniquity, that father Ruffian,”¹⁴⁴ has been exposed as an idol: in strict classical terms, he is nothing more than the reflection of a lie. In binding himself to the icon and father of English law, the Lord Chief Justice, Henry V embraces truth and rejects falsehood. He is the true image of majesty, a model of accountable kingship and limited monarchy, as proposed across the centuries by Bracton, Fortescue and Coke:

[T]he King is under no man, but only God and the law, for the law makes the King; therefore let the King attribute *that* to the law, which from the law he hath received, to wit, power and dominion: for where will, and not law doth sway, there is no King.¹⁴⁵

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1. For a psychoanalytic interpretation of law, see Peter Goodrich, ed., Peter Goodrich, Alain Pottage & Anton Schütz, trans., *Law and the Unconscious: A Legend Reader* (Basingstoke: Macmillan, 1997); see also David Carlson & Peter Goodrich, eds., *Psychoanalysis and Jurisprudence: Essays in Law and the Postmodern Mind* (Ann Arbor: Michigan University Press, 1997).
 2. Sir John Fortescue, *De Laudibus Legum Angliae*, ed. J. Selden (Savoy: R. Gosling, 1737), ch. III at 4–5.

3. William Fulbecke, *A Direction or Preparative to the study of the Lawe* (London: T. Wight, 1600), 2v.
4. Sir John Doderidge, *Describing a Method for the Managing of the Lawes of this Land* (London: I. More, 1631), 4.
5. John Day, *Law-Trickes or, Who Would Have Thought It. As it hath bene divers times Acted by the Children of the Revels* (London: R. More, 1608), A4v.
6. Sir William Dugdale, *Origines Juridiciales, or Historical Memorials of the English Laws* (London: F. & T. Warren, 1666), 193. On law-French, see Wilfrid R. Prest, *The Rise of the Barristers: A Social History of the English Bar, 1590–1640* (Oxford: Clarendon, 1986), 108–09; J. H. Baker, *Manual of law-French* (Amersham: Avebury, 1979).
7. Dugdale, *supra* note 6, at 160. For a discussion of educational exercises at the early modern Inns of Court, see Paul Raffield, *Images and Cultures of Law in Early Modern England: Justice and Political Power, 1558–1660* (Cambridge: Cambridge University Press, 2004), 20–22.
8. Fortescue, *supra* note 2, ch. XLIX at 112.
9. Abraham Fraunce, *The Lawiers Logike, exemplifying the precepts of Logike by the practise of the common Lawe* (London: T. Gubbin & T. Newman, 1588), q.4r–v.
10. Fraunce, *supra* note 9, at q.2v, q.4r. For a discussion of Fraunce and the “failure” of common law, see Peter Goodrich, *Languages of Law: From Logics of Memory to Nomadic Masks* (London: Weidenfeld & Nicolson, 1990), 15–52.
11. John Marston, *Histrion-Mastix Or, The Player Whipt!* (London: T. Thorp, 1610), D1v. J. L. Hotson argues that *Histrion-Mastix* was written and performed in response to Shakespeare’s *Troilus and Cressida*, which (he claims) received its first performance, by law students, at the Middle Temple in 1598; see J. L. Hotson, “Love’s Labours Won,” in *Shakespeare’s Sonnets Dated* (London: R. Hart-Davis, 1949), 37–56.
12. *New Windsor Corp. v. Mellor*, (1975) 1 Ch. 380 at 386 (C.A.). It is appropriate here to quote from Coke on the etymology of Albion: “I omit the name Albion, at the first Ollbion, the happy island in Greek,” in Part 3 of *The Reports of Sir Edward Coke, Knt. In English*, ed. George Wilson, 7 vols. (London: Rivington, 1777), 2:xb.
13. Dennis R. Klinck, “‘This Other Eden’: Lord Denning’s Pastoral Vision,” 14 *Oxford Journal of Legal Studies* 25, 29, 30 (1994).
14. See, e.g., Dugdale, *supra* note 6, at 3: “[T]hat which we call the Common Law is, out of question, no less antient than the beginning of differences betwixt man and man, after the first peopling of this land.”
15. Roger Sales, *English Literature in History 1780–1830: Pastoral and Politics* (New York: St Martin’s Press, 1983), 15.
16. See, e.g., *Corpus Christi College v. Gloucester County Council*, (1983) 1 Q.B. 360. In light of the wistful tone of these judgments, it seems particularly apt that “nostalgia” should be derived from two Greek words: *nostos* (the yearning for a lost home) and *algos* (suffering).
17. Peter Goodrich, “Poor Illiterate Reason: History, Nationalism, Common Law,” 1 *Social & Legal Studies* 7, 8 (1992).
18. *Id.* at 11.
19. Ian Ward, *A State of Mind? The English Constitution and the Popular Imagination* (Stroud, UK: Sutton, 2000), 6.
20. Coke, “Postnati. Calvin’s Case,” *Reports*, *supra* note 12, at pt. 7, 4:3b.
21. The theory of judges as successive authors of a chain novel, adding to an interpretive tradition, is propounded by Ronald Dworkin in *Law’s Empire* (London: Fontana, 1986), 228–32.
22. Coke asserts that “[t]he expounding of laws doth ordinarily belong to the reverend Judges and sages of the realm,” *Reports*, *supra* note 12, at pt. 4, 2:va.
23. William Shakespeare, *The Second Part of King Henry the Fourth*, ed. A. R. Humphreys (Arden ed., 1981), 5.2.116 [hereinafter 2 *Henry IV*].

24. *Id.* at 3.2.56–57.
25. Fortescue describes himself as “*Cancellarius Angliae*.” Selden states that “[i]t seems, being with Henry VI. Driven into Scotland, he was made his Chancellor, the Memory whereof (as it could hardly be otherwise) wants in the Patent Rolls.” See Fortescue, *supra* note 2, preface at *i*.
26. *Id.*, preface at *xlviii*. Fortescue’s family originated in south Devon: according to Selden, “he came out of the House of *Wimondesham*, or *Wimston*, in the Parish of *Modberry* [Modbury], *Devon*; the most ancient Seat of this Name and Family in the Kingdom.” *Id.*, preface at *xlv*.
27. *Id.*, intro. at *lxiv*.
28. “Ex Impress. *Ed. Whitchurch*, temp. *Hen. VIII (Mr. Waterhouse, Pref., Marg.)*.” *Id.*, preface at *liv*.
29. *Id.*
30. 1 *Henry IV* and 2 *Henry IV* were published in 1598 and 1600, respectively. See 2 *Henry IV*, *supra* note 23, at intro., *xi–xii* (editor’s text).
31. Fortescue, *supra* note 2, preface at *lii*.
32. E. M. W. Tillyard, *Shakespeare’s History Plays* (London: Chatto & Windus, 1944), 303.
33. William Lambarde, *Eirenarcha: or of the office of the iustices of the peace, in two books* (London: Assigns of Richard Tottell and Chr. Barker, 1582), bk. 1, 11.
34. *Id.* at 36.
35. *Id.* at 37. During the reign of Elizabeth I, “every Justice of Peace, sitting in execution of the Statute of Laborers and Servauntes, shall have five shillings the day.” [5.*Eliq̄.cap.4*] *Id.* at 277.
36. *Id.* at 37–38. Gleason estimates that between the years 1588 and 1642 there were approximately 15,000 J.P.s in England: J. H. Gleason, *The Justices of the Peace in England, 1558–1640: A Later Eirenarcha* (Oxford: Clarendon Press, 1969), 4.
37. Lambarde, *supra* note 23, at 21.
38. Fortescue, *supra* note 2, at ch. XXXV, pp. 80, 79, 81.
39. *Id.* at ch. XXXVI, p. 83; ch. XVII, p. 30.
40. J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, NJ: Princeton University Press, 2003), 13.
41. Fortescue, *supra* note 2, at ch. XVII, p. 34.
42. Pocock, *supra* note 40, at 16.
43. “Prohibitions del Roy,” *Coke Reports*, *supra* note 12, at pt. 12, 7:65a.
44. Fortescue, *supra* note 2, at ch. V, pp. 10–11.
45. *Id.* at ch. XV, p. 28, n.(a).
46. *Id.* at ch. V, pp. 10–11.
47. *Id.* at ch. XXXVI, p. 83.
48. 2 *Henry IV*, *supra* note 23, at 5.3.12, 20.
49. *Id.* at 5.3.1–2.
50. Gleason, *supra* note 36, at 1.
51. 2 *Henry IV*, *supra* note 23, at 3.2.12–13.
52. On the junior branch of the legal profession in Elizabethan England, see C. W. Brooks, *Pettyfoggers and Vipers of the Commonwealth: The ‘Lower Branch’ of the Legal Profession in Early Modern England* (Cambridge: Cambridge University Press, 2004).
53. Fortescue, *supra* note 2, at ch. XLIX, pp. 109–10.
54. 2 *Henry IV*, *supra* note 23, at 3.2.18–21.
55. As Falstaff observes of Shallow, “This same starved justice hath done nothing but prate to me of the wildness of his youth, and the feats he hath done about Turnbull Street, and every third word a lie” (*Id.* 3.2.298–301).
56. See Dugdale, *supra* note 6, at 144, 158–60, 193–95; also Coke, *Reports*, *supra* note 12, at pt. 3, 2:xxviii.
57. Dugdale, *supra* note 6, at 195.
58. Gleason, *supra* note 36, at 86.

59. 2 *Henry IV*, *supra* note 23, at 3.2.8–10.
60. Lambarde, *supra* note 33, at 34.
61. *Id.* at 36.
62. Tillyard, *supra* note 32, at 302.
63. Lambarde, *supra* note 33, at 66, 68.
64. Tillyard, *supra* note 32, at 303. Tillyard makes the further claim that in respect of his political and administrative skills, Davy is “perhaps in his little way the double of Henry IV.” *Id.*
65. 2 *Henry IV*, *supra* note 23, at 5.1.21–22.
66. *Id.* at 5.1.11–13.
67. *Id.* at 157, n.11 (editor’s text).
68. John Cowell, *A law Dictionary: or the Interpreter of Words and Terms* (1607) (Savoy: R. Gosling, 1727), 350, 170.
69. J. H. Baker, *An Introduction to English Legal History* (London: Butterworths, 2002), 58; the form of the *praecipue writ* was determined by the year 1150. *Id.*
70. The particular writ would have been one of the following: *praecipue quod reddat* (concerning the performance of a covenant); *praecipue quod permitat* (ordering the defendant to allow the plaintiff to do something); or, *praecipue quod permitat habere* (enforcing an easement or profit). *Id.*
71. 2 *Henry IV*, *supra* note 23, at 5.1.13.
72. *Id.* at 158, n.14 (editor’s comment); see also D. H. Madden, *The Diary of Master William Silence, a Study of Shakespeare and of Elizabethan Sport* (New York: Longmans, Green & Co, 1907), 381.
73. On the description of his upbringing and family background in rural Hampshire and its influence over his life, see the various volumes of autobiography by Lord Denning: *The Due Process of Law* (London: Butterworths, 1980); *The Family Story* (London: Butterworths, 1981); *Leaves from My Library* (London: Butterworths, 1986).
74. 2 *Henry IV*, *supra* note 23, at 5.1.34–35. Woncot is almost certainly the Gloucestershire village of Woodmancote. See *id.* at 159 (editor’s comment); see also Madden, *supra* note 72, at 84–85; Jonathan Bate, *Soul of the Age: The Life, Mind and World of William Shakespeare* (London: Penguin, 2008), 39; Burrow further suggests that “th’Hill” to which Davy refers is the Gloucestershire location of Stinchcombe Hill; Colin Burrow, “Reading Tudor Writing Politically: The Case of 2 *Henry IV*,” 38 *The Yearbook of English Studies* 234, 243 (2008).
75. 2 *Henry IV*, *supra* note 23, at 5.1.37.
76. *Id.* at 5.1.41, 46.
77. *Id.* at 5.1.49.
78. Aristotle, *The Politics*, trans. T. A. Sinclair (London: Penguin, 1992), bk. I.1252b15, 1253a29.
79. Aristotle, *The Nicomachean Ethics*, trans. J. A. K. Thomson (London: Penguin, 2004), bk. VIII.1155a20–30.
80. Sir Thomas Elyot, *The Book Named the Governor* (London: J. M. Dent, 1962), 111.
81. 2 *Henry IV*, *supra* note 23, at 5.2.70–83.
82. Discussing Richard Hooker’s Aristotelian political theory, instanced especially in Book VIII of *Of the Laws of Ecclesiastical Polity*, A. J. Carlyle states that “[t]he authority of the laws is derived not from the king, but from the whole community, as indeed is the authority of the king himself.” A. J. Carlyle & R. W. Carlyle, *A History of Medieval Political Theory in the West*, 6 vols. (Edinburgh: Blackwood, 1903–36), 6:498. On Hooker and Aristotle, see Tod Moore, “Recycling Aristotle: The Sovereignty Theory of Richard Hooker,” 14 *History of Political Thought* 345 (1993). In terms of Aristotle’s influence over common law ideology of the late Elizabethan period, it is noteworthy that Coke refers to him as “nature’s secretary” and that “whatever is necessary and profitable for the preservation of the society of man is due by the law of nature.” Coke, ‘Postnati. Calvin’s Case’, *Reports*, *supra* note 12, at pt. 7, 4:12b.
83. 2 *Henry IV*, *supra* note 23, at 5.1.62–65.

84. On the legal significance of the plough to the jurisdiction of early modern rural communities, and for the argument that “[t]he measurement of Law is the measurement of the productivity of arable land,” see Peter Goodrich, “Eating Law: Commons, Common Land, Common Law,” 12 *Journal of Legal History* 246, 260 (1991).
85. In an essay on the plough as an instrument of both law and faith, Hachamovitch notes that all medieval land was “held in fee, (*fide*) that is to say, faithfully”; Yifat Hachamovitch, “The Ideal Object of Transmission: An Essay on the Faith which Attaches to Instruments (*de fide instrumentorum*),” 2 *Law & Critique* 85, 99 (1991).
86. Fortescue, *supra* note 2, at ch. XVI, p. 29; Aristotle, *Nicomachean Ethics*, *supra* note 79, at bk. V.1134b18–20.
87. Lambarde, *supra* note 33, at 4–5.
88. Gleason, *supra* note 36, at 119; G. M. Trevelyan, *English Social History: A Survey of Six Centuries from Chaucer to Queen Victoria* (London: Longman’s, Green & Co., 1942), 171.
89. 2 *Henry IV*, *supra* note 23, intro. at *liii* (editor’s text).
90. *Id.* at 1.3.110.
91. Tom McAlindon, *Shakespeare’s Tudor History: A Study of Henry IV, Parts 1 and 2* (Aldershot: Ashgate, 2001), at x. On the development of the history play and its unique capacity to reflect continuity of existence, see Benjamin Griffin, *Playing the Past: Approaches to English Historical Drama, 1385–1600* (Woodbridge: D. S. Brewer, 2001).
92. Somerville was son-in-law to Arden, the head of Shakespeare’s mother’s family. For an account of the trial and deaths of Somerville and Arden, see Michael Wood, *In Search of Shakespeare* (London: BBC Worldwide, 2003), 88–96.
93. Of possible relevance to Shakespeare’s portrayal of country justices in *Henry IV Part 2*, in 1590 Wray initiated the revision of Commissions of the Peace, the processes of which had become notorious for their corruption.
94. Fortescue, *supra* note 2, at ch. I, p. 1.
95. William Shakespeare, *The First Part of King Henry the Fourth*, ed. P. H. Davison (New Penguin ed., 1968), 1.2.60 [hereinafter 1 *Henry IV*].
96. John Aubrey, *Brief Lives* (London: Folio Society, 1975), 255.
97. Douglas Walthew Rice, *The Life and Achievements of Sir John Popham, 1531–1607* (Madison: Fairleigh Dickinson University Press, 2005), 22–24.
98. Aubrey, *supra* note 96, at 255, 256.
99. George Keeton, *Shakespeare’s Legal and Political Background* (London: Sir Isaac Pitman & Sons, 1917), 7.
100. 2 *Henry IV*, *supra* note 23, at 5.2.68–71.
101. *Id.* at 5.2.77–80.
102. Raphael Holinshed, *Chronicles of England, Scotland and Ireland* (1577), iii.543/2/10.
103. Elyot, *supra* note 80, at 114–15. Subsequent versions of the supposed altercation between Prince Henry and the Lord Chief Justice are reported in Robert Redman’s *Vita Henrici V*, written between 1536 and 1544, and in Edward Hall’s *The Union of the Noble and Illustre Families of Lancaster and York* [Hall’s *Chronicle*], published in 1548.
104. F. Solly-Flood, “The Story of Prince Henry of Monmouth and Chief-Justice Gascoign,” 3 *Transactions of the Royal Historical Society* 47, 57 (1886).
105. J. H. Baker, “The Three Languages of the Common Law,” 43 *McGill Law Journal* 5, 10 (1998).
106. Solly-Flood, *supra* note 104, at 57. On the King’s Bench of the late medieval and early modern periods, see Marjorie Blatcher, *The Court of King’s Bench, 1450–1550: A Study in Self-Help* (London: Athlone, 1978); see also John G. Bellamy, *Criminal Law and Society in Late Medieval and Tudor England* (New York: St. Martin’s Press, 1984).
107. Quoted in Solly-Flood, *supra* note 104, at 150–51.

108. Anonymous, *The Famous Victories of Henry the Fifth*, ed. Chiaki Hanabusa (Manchester: Manchester University Press, 2007), intro. at v, xxi. See Scott McMillan & Sally-Beth MacLean, *The Queen's Men and Their Plays* (Cambridge: Cambridge University Press, 1998), 89, 196; see also G. M. Pinciss, "The Queen's Men, 1583–1592," 11 *Theatre Survey* 50, 54 (1970).
109. *Famous Victories*, *supra* note 108, at 14–15. In *2 Henry IV*, Falstaff's page announces that the Lord Chief Justice "committed the Prince for striking him about Bardolph" (1.2.55–56).
110. Solly-Flood, *supra* note 104, at 55.
111. John Guy, "Tudor Monarchy and Its Critiques," in *The Tudor Monarchy*, ed. John Guy (London: Arnold, 1997), at 81, 85. On *The Governor* as political tract, see Clare Carroll, "Humanism and English Literature in the Fifteenth and Sixteenth Centuries," in *The Cambridge Companion to Renaissance Humanism*, ed. Jill Kraye (Cambridge: Cambridge University Press, 1996), at 261–63.
112. Thomas Hobbes, *Leviathan*, ed. J. C. A. Gaskin (Oxford: Oxford University Press, 1996), 143.
113. Robert Filmer, "Observations upon Aristotle's Politiques," in *Divine Right and Democracy: An Anthology of Political Writing in Stuart England*, ed. David Wooton (London: Penguin, 1986), 110.
114. Thomas Hobbes, *A Dialogue Between a Philosopher and a Student of the Common Laws of England*, ed. J. Cropsey (London: University of Chicago Press, 1971), 73.
115. *2 Henry IV*, *supra* note 23, at 5.2.74.
116. *Id.* at 5.2.79.
117. *Id.* at 5.2.89.
118. See, respectively, Coke, "Postnati. Calvin's Case," *Reports*, *supra* note 12, at pt. 7, 4:12b; *Reports*, *supra* note 12, at pt. 3, 2:viiiā, viiib; *Reports*, *supra* note 12, at pt. 9, 5:ia. On the iconic function of the archetypal lawgivers cited above, see Goodrich, "Poor Illiterate Reason," *supra* note 17, at 10–11.
119. "Case of the Dutchy of Lancaster," in *The Commentaries or Reports of Edmund Plowden*, 2 vols. (Dublin: H. Watts, 1792), 1:212; Ernst H. Kantorowicz, "Shakespeare: King Richard II," in *The King's Two Bodies: A Study in Medieval Political Theology* (Princeton, NJ: Princeton University Press, 1957), at 26. Coke refers to the *Case of the Duchy of Lancaster* in "Postnati. Calvin's Case," *Reports*, *supra* note 12, at pt. 7, 4:10a.
120. Plowden, "Hales v. Petit," *Commentaries*, *supra* note 119, at 1:255. For a recent discussion of *Hamlet* and *Hales v. Petit*, see Andrew Zurcher, *Shakespeare and the Law* (Arden Shakespeare, forthcoming 2010), ch. 7. For the argument that *Hamlet* "is infused with legal matter reported by Plowden," see Carolyn Sale, "'The King Is a Thing': the King's Prerogative and the Treasure of the Realm in Plowden's Report of the Case of Mines and Shakespeare's *Hamlet*," in *Shakespeare and the Law*, ed. Paul Raffield & Gary Watt (Oxford: Hart, 2008), at 137.
121. Plowden, "Case of the Dutchy of Lancaster," in *Commentaries*, *supra* note 119, at 1:214. On events surrounding the deposition of Richard II, see Michael Bennett, *Richard II and the Revolution of 1399* (Stroud: Sutton, 1999); also Nigel Saul, *Richard II* (New Haven: Yale University Press, 1999), 405–34. On political language and literature of the early Lancastrian period, see Jenni Nuttall, *The Creation of Lancastrian Kingship: Literature, Language and Politics in Late Medieval England* (Cambridge: Cambridge University Press, 2007).
122. Plowden, "Case of the Dutchy of Lancaster," *supra* note 119, at 1:213.
123. Lorna Hutson argues convincingly that Kantorowicz's interpretation of Plowden's *Commentaries* was unduly influenced by his reading of F. W. Maitland, who underestimated the influence of renaissance humanism over the development of English law. In particular, she suggests that Kantorowicz ignored the importance of Aristotelian equity (*epieikeia*) to the interpretation of statutes; Lorna Hutson, "Not the King's Two Bodies: Reading the 'Body Politic' in Shakespeare's *Henry IV, Parts 1 and 2*," in *Rhetoric and Law in Early Modern Europe*, ed. Victoria Kahn & Lorna Hutson (New Haven: Yale University Press, 2001), 168, 170–71; see F. W. Maitland, *English Law and the Renaissance* (Cambridge: Cambridge University Press, 1901).

124. The paternal source of law and the Roman origins of the Western legal tradition are major themes in the work of Pierre Legendre; see Goodrich's introduction to *Law and the Unconscious*, *supra* note 1, at 8–12. On the classical law of images, see Pierre Legendre, *Le Désir politique de dieu: Étude sur les montages de l'état et du droit* (Paris: Fayard, 1989). The title of Legendre's work derives from an essay by Lacan, in which he discusses the iconic image and its capacity to "arouse the desire of God." See Jacques Lacan, *The Four Fundamental Concepts of Psycho-Analysis*, ed. Jacques-Alain Miller, trans. Alan Sheridan (London: Pelican, 1979), 113.
125. Simon Walker, "Rumour, Sedition and Popular Protest in the Reign of Henry IV," *166 Past & Present* 50 (2000).
126. *2 Henry IV*, *supra* note 23, at 2, 1.2.162–63.
127. Norman Sanders, "The True Prince and the False Thief: Prince Hal and the Shift of Identity," in *Shakespeare Survey Volume 30: Henry IV to Hamlet*, ed. Kenneth Muir (Cambridge: Cambridge University Press, 1977), at 30.
128. The killing of the "father" evokes the legend of Oedipus: on Freud's re-conceptualization of the story as "a myth of origin in the guise of a killing of the father that the primordial law is supposed to have perpetuated," see Jacques Lacan, "Psychoanalysis and Its Teaching," in *Écrits*, trans. Bruce Fink (New York: W. W. Norton, 2006), 375.
129. Douglas J. Stewart compares Falstaff to Chiron the Centaur, providing the young hero with an alternative "father-model" and offering an experience of humanity that his actual father could never provide. Like Silenus, the centaurs were renowned for their self-indulgence, but also for their wisdom and "near-divine" powers; see Douglas J. Stewart, "Falstaff the Centaur," 28 *Shakespeare Quarterly* 5 (1977).
130. Stephen Greenblatt, "Invisible Bullets: Renaissance Authority and Its Subversion, *Henry IV* and *Henry V*," in *Political Shakespeare: Essays in Cultural Materialism*, ed. Jonathan Dollimore & Alan Sinfield (Manchester: Manchester University Press, 1994), 33.
131. *2 Henry IV*, *supra* note 23, at 2.4.282.
132. *Id.* at 2.4.286–87.
133. *Id.* at 2.4.253–54.
134. *Id.* at 5.5.65.
135. In the 1630s, the M.P. and lawyer, William Prynne, was twice sentenced to "ear-cropping" for the offense of seditious libel; see Raffield, *Images and Cultures*, *supra* note 7, at 190–99.
136. Greenblatt, *supra* note 130, at 33.
137. *2 Henry IV*, *supra* note 23, at 5.2.44–45.
138. For the theory that the king exists only in images, and that belief in his iconic status is a condition of his effectiveness as monarch, see Louis Marin, *Portrait of the King*, trans. M. M. Houle (Basingstoke: Macmillan, 1988), 9.
139. *2 Henry IV*, *supra* note 23, at 5.2.48–49.
140. *2 Henry IV*, *supra* note 23, at 5.2.134, 5.5.103.
141. William Shakespeare, *Richard II*, ed. Charles R. Forker (Arden ed., 2002), 3.2.57. Henry V's immediate decision to "call we our high court of parliament" (*2 Henry IV*, *supra* note 23, at 5.2.134) demonstrates respect for ancient custom and the sovereignty of common law, as approved by St. German: "all the ground and beginning of the said Courts depend upon the Custom of the Realm; the which Custom is of so high Authority, that the said Courts, ne their Authorities, may not be altered, ne their Names changed, without Parliament." Christopher St. German, *Two Dialogues in English, Between a Doctor of Divinity, and A Student in the Laws of England, of the Grounds of the said Laws, And of Conscience* (London: the Assigns of R. & E. Atkins, 1709), 23.
142. *2 Henry IV*, *supra* note 23, at 5.2.57.
143. *Id.* at 5.2.118.
144. *1 Henry IV*, *supra* note 95, at 2.4.441–42.
145. Coke, *Reports*, *supra* note 12, at pt. 4, 2:ixix.