

THE RIGHT TO RESIST THE GOVERNMENT: TYRANNY, USURPATION, AND REGICIDE IN SHAKESPEARE’S PLAYS

C.M.A. McCauliff*

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* A.B. Bryn Mawr College, M.A., Ph.D. University of Toronto, J.D. University of Chicago, James Madison Fellow, 2005-06, Dept’t of Politics, Princeton University and Professor of Law, Seton Hall University School of Law. Versions of this article were presented at the James Madison Program in American Ideals and Institutions, Dept’t of Politics, Princeton University, the Columbia University Seminar in Law and Politics and at the Shakespeare Theater of New Jersey, Drew University. The author wishes to thank Matt Holland, Paul Kerry, Paul Sigmund, Paula Fichtner, George Conk, Phyllis Rackin, Dan Solove and Andrew Bennett and her excellent research assistant Sean Burke.

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William Shakespeare explored in his plays the ideal of stability and harmony between the governed and the governor. The reins of government and personal royal ethics lay at the core of Shakespeare's concerns discussed in this article. These are the public and private aspects of the issue that may have inspired Shakespeare to dramatize conflicts over the reins of government. Shakespeare centered several plays on the ruler's failure to do justice before his people which often fueled a usurper's desire to seize the throne. Incompetent, weak or tyrannical kings caused long-term discontent and often provoked ambitious, junior members of the royal family who dared to think that they could inspire, capture and keep the loyalty of the people after seizing the throne from the not-very-popular incumbent. Shakespeare's vision of good government contemplated the king's broad consultation among the people, including Parliament as well as the king's council, to serve the public interest and the common good. Shakespeare's plays, together with widespread European examination of the nature of monarchy during the 1590s, afterwards proved to be an important step in the development of constitutional monarchy which was ultimately the achievement of a later century. Neither examples of classic Aristotelian natural law nor yet individualistic Lockean rights, these transitional works have proved to be enduring examples and warnings for politicians seeking to leave their mark on history when constitutions provide leaders with a set of norms for their behavior. Indeed, by the time John Locke wrote, the ideas were in place for a new nation to use as a blueprint the natural law insights refined and adapted to the needs of the late seventeenth century. Both Locke and Shakespeare were as important in the United States of America as they were in England.

I. INTRODUCTION

William Shakespeare (1564-1616) lived in turbulent times. In the guise of examining what the Romans had done, political authority was being challenged seriously from various points along the political spectrum, from communal to individual demands and absolutist stances to the Diggers of the mid-17th century. The threats of violence were not far from the surface. Queen Elizabeth (who ruled from 1558-1601) was growing older without an heir to succeed her. Religious and political groups of English people were becoming more divergent, including those who thought that churches should be independent from government sponsorship, later known as Congregationalists. Elizabeth's failure to declare a successor produced much intrigue at court, mostly among the multitude of political adventurers and religious dissenters who hoped to reshape the government in their own image. Shakespeare's plays suggest that the character of the ruler is a determining factor which can ensure stability or trigger unrest. In the search for greater political stability, history is important for the lessons it discloses about royal behavior, actions and psychology. Shakespeare's contemporaries used their knowledge of the many events and lessons of history to understand the mistakes of the past and their own time better. Shakespeare presents various sides of the political debate through his characters and the dramatic interaction between them. He did not advocate the overthrow of the monarchy, as indeed he could not openly do under the censorship laws of the time. Even Locke's espousal of revolution in the 1680s was not publicly advanced but pursued very much in backroom political meetings for the overthrow of James II, should that have become necessary.

Thus the plots of many of Shakespeare's plays revolve around royal actions, omissions and mistakes in the affairs of state, thereby giving us greater insight into the political and ethical norms of Elizabethan society. He paid particular attention to the character and psychology of kings, the problems they faced and how they ruled. Shakespeare noticed whether they were attentive to or aloof from the concerns of their subjects and whether they shared the common moral values of the people, including social justice. Royal incompetence, weakness or tyrannical behavior had often caused long-term discontent and hardship for the people. Unethical royal choices had continually lent hope to the ambitions of new seekers of the crown who plotted to inspire, capture and keep the loyalty of the people after seizing the throne from the not-very-popular incumbent. In Shakespeare's dramatization of the histories of several rulers, we will explore approaches to the legal and moral crises arising from the numerous conflicts about change of leadership and sharing political power.

Shakespeare modeled different types of monarchy for the English people. As succeeding generations became familiar with their own history and government in part through watching the ethical struggles of such kings as

Macbeth (THE TRAGEDY OF MACBETH, [hereinafter MACBETH]),¹ Richard II (TRAGEDY OF KING RICHARD II, [hereinafter RICHARD II])² and the fourth and fifth Henries (King Henry V [hereinafter HENRY V])³ portrayed on the stage, they made their wishes plain that the monarchy be circumscribed with constitutional safeguards. In that sense, Shakespeare's plays about kingship are relevant to politicians and government today as we see our own leaders struggling with the ethical challenges that face them. In these plays, Shakespeare created a body of work that speaks out against poor rulers and their equally poor ethical choices. The plays proved to be an important step in the development of constitutional monarchy later achieved in England.

Shakespeare lived at a time when the problems of monarchy were becoming more and more apparent. The classic conceptions of government, drawn from the experience of the ancients and later reflected in the writings of Plato and Aristotle, start with the small Greek city state in which the character of the ruler was crucial to the quality of the government.⁴ Therefore, the questions of virtue, the purpose of life and the best kind of life were centrally practical concerns of political philosophy. In Aristotle's time and after, the politicians were fundamental to the success of the regime in a way that modern rulers of representative democracies with many institutional checks, balances and administrative agencies are not. As Professor Francis Slade stated, in ancient political society, "rule cannot be detached or separated from the kind of people who exercise it."⁵ Shakespeare's plays show the difficulties from this entanglement and make the audience wish to be able to decouple government from such abject dependence on the ruler. More recent political theorists have been able to conceive of government apart from its rulers. Professor Slade notes that because of this conceptualization of rule, our founding fathers could say "all human beings are created equal, no one by nature is [the] ruler of any other human being."⁶

1. WILLIAM SHAKESPEARE, MACBETH, *in* 2 THE COMPLETE WORKS OF WILLIAM SHAKESPEARE 792 (1960) [hereinafter MACBETH]. Throughout this article, the quotations from Shakespeare's works are from the one volume, widely available unabridged paperback edition of the "Cambridge Shakespeare" of 1864, revised in 1911 but without the variant manuscript reading in the notes. THE UNABRIDGED WILLIAM SHAKESPEARE (William G. Clark & William A. Wright, eds. Courage Books 1989) (Originally published as the Globe Edition under the title THE COMPLETE WORKS OF WILLIAM SHAKESPEARE 1911). Many excellent editions with separate volumes for each play exist and any classic notes cited from these editions are acknowledged.

2. WILLIAM SHAKESPEARE, RICHARD II *in* 1 THE COMPLETE WORKS OF WILLIAM SHAKESPEARE 278 (1960).

3. WILLIAM SHAKESPEARE, HENRY V, *in* 1 THE COMPLETE WORKS OF WILLIAM SHAKESPEARE 414 (1960) [hereinafter HENRY V].

4. ARISTOTLE, POLITICS *in* 21 ARISTOTLE IN TWENTY-THREE VOLUMES 625 (G.P. Gould ed., H. Rackam trans. Harvard University Press, 1990) (1932).

5. Telephone Interview with Francis Slade, Professor Emeritus, Saint Francis College (Feb. 6, 2006).

6. *Id.*

Usurpation, regicide and treason were familiar concepts during the Middle Ages, as well as to Shakespeare's audience. Shakespeare often warned against tyranny in his portrayal of Kings Richard II and Henry IV. He previewed the dangers the realm faced in attempting to overthrow tyranny. The plays serve as a warning to make the point that eternal vigilance is the price of liberty but more than that, they explored the nature of government at a very dangerous and exciting time when people looked back to the order and stability Aristotle posited for government but were also beginning to yearn for greater personal fulfillment which a better-honed concept of government might give them. Natural law, as Aristotle had envisioned it and Aquinas had interpreted it, no longer proved a sufficient blueprint to allow for the variety of people who wished to contribute to, and be accommodated in, the governing of the realm. This article shows Shakespeare exploring in his plays the struggles to forge the links between the old balance of powers and another view of the world, between the natural law verities of Aristotle and what later became the individualistic vision of the constitution for able entrepreneurs under a limited government. The ethical choices of the individual rulers are therefore integral to the structure of these plays politically as well as dramatically. Shakespeare's plays contributed to our journey from the first to the second concept of government and were thus politically important during the 18th century in both England and the United States of America.

Surprisingly, despite all the interest in Shakespeare and the many books and articles I have been able to cite in reaching my own conclusions, there is no one received view about Shakespeare's attitude toward kingship. The foundations of political theory and constitutional government were long available in England, however, and provide background for some of the notions about government explored in the plays. This article will show that Shakespeare's plays fit between a classical Aristotelian notion of natural law integrating the individual into a larger society and the later concept of individual rights in a limited, liberal constitutional state.

A. A government unresponsive to the will of the people breeds its own violence: "If you do sweat to put a tyrant down, You sleep in peace the tyrant being slain"⁷

England has a long tradition of discussing tyrants and tyranny. As early as the 12th century, John of Salisbury (c. 1115-80) was discussing in *Policriticus* the slaying of tyrants, about which he drew "only one conclusion: tyrants come to a miserable end. And he passes only one moral judgment on

7. WILLIAM SHAKESPEARE, RICHARD III, in I THE COMPLETE WORKS OF WILLIAM SHAKESPEARE 244, act 5, sc. 3, ll. 255-56 (1960).

this fact: they are really deserving [of] it.”⁸ During the next century, the lawyer and royal judge Henry de Bracton revised a legal treatise entitled *De Legibus et Consuetudinibus Angliae* which discussed the role of the king in making and upholding the law.⁹ In Book I of *De Legibus*, the law is treated with great importance and the king whose office is simultaneously under the aegis of the law and also above the law. This may have been due to the need to subject the king to natural law (the moral principles for judging government) without interfering in his control of positive, or man-made, law and his governance of the realm.¹⁰ Although the king was subject to the law, the process of the law could not be brought against the king. As Kantorowicz summarizes the position, the ruler “is bound to the Law that makes him king; but the Law that made him king enhances also his royal power and bestows upon the ruler extraordinary rights which in many respects placed the king, legally, above the laws”—because the people transferred their power and authority to the king.¹¹ What pleased the prince had the force of law but to fashion a law, the prince received counsel from the magnates.¹² Already in the 13th century, the emphasis was on fettering the king’s discretion with the consultation of his council. The composition of the king’s council often times determined whether the king was deemed a good or unsatisfactory ruler, as Shakespeare’s plays demonstrate. Further, in Bracton and in RICHARD II, the king may claim “similitude with Jesus Christ in whose stead he governs on earth.”¹³ If the king were not law-abiding, he would be merely a tyrant and not a king.

In terms of political theory, Sir John Fortescue (c. 1395-1477), Chief Justice of the King’s Bench, described England in *De Laudibus Legum Anglie* (1470) “as a ‘dominion political and royal,’ ruled by common law.”¹⁴ The people of England intended their government to pursue the common good, and

8. Jan van Laarhaven, *Thou Shalt not Slay a Tyrant! The So-Called Theory of John of Salisbury*, in *THE WORLD OF JOHN OF SALISBURY* 319, 328 (Michael Wilks ed., 1994).

9. 2 BRACTON ON THE LAWS AND CUSTOMS OF ENGLAND 25 (G.E. Woodbine ed., S.E. Thorne trans. 1968–77). Bracton and his mentor Judge Ralph Pattishull were familiar with Roman law through the writings of Azo. *Id.* at 25. The treatise therefore set the discussion of English kingship and law in the context of Roman law. See also Ewart Lewis, *King Above Law? “Quod Principi Placuit” in Bracton*, 39 *SPECULUM* 240 (1964).

10. ERNST H. KANTOROWICZ, *THE KING’S TWO BODIES: A STUDY IN POLITICAL MEDIEVAL THEOLOGY* 145 (1997). The king was above the law (*rex supra legem*) and the law was above the king (*lex supra regem*). *Id.* at 149.

11. *Id.* at 150.

12. *Id.* at 152.

13. *Id.* at 156. Bracton’s comparison of the king to Christ was based on the assumption that the servant of the law could become the lord of the law and that “all royal prerogatives depended on the king’s acknowledgment of being bound to the Law which granted to him those very prerogatives.” *Id.* at 157.

14. SIR JOHN FORTESCUE, *ON THE LAWS AND GOVERNANCE OF ENGLAND* xv (Shelley Lockwood ed., 1997). See also J.H. BURNS, *LORDSHIP, KINGSHIP AND EMPIRE: THE IDEA OF MONARCHY 1400–1525* (1992).

the king undertook to embody the country politically. A king had to do justice through the laws; law is “the sacred bond of human society.”¹⁵ Fortescue saw justice as the means to overcome tyranny because each person was to enjoy what was due to him through natural and human laws. Justice is “the touchstone for the legitimacy and proper functioning of political authority.”¹⁶

As had been accepted throughout the Middle Ages, kings, in accordance with their coronation oath, had to observe the laws and customs of England. The king could not change the laws without the people’s consent, although nothing other than public pressure and tradition ensured that the king did so. Interestingly enough, for the circumstances in Shakespeare’s play RICHARD II, one theory of the cause of tyranny was the king’s poverty, which made him seek funds beyond what Parliament appropriated to accomplish what he thought had to be done.¹⁷ Politically, the king needed the wherewithal to reward his followers in order to prevent rebellions. To Fortescue, recognition of the existence of the public good served as the greatest protection against tyranny. On a more practical level, the king’s council similarly provided protection for government. The composition of the council had changed between Bracton’s and Fortescue’s time. The nobles continued to think that they should be the natural councilors for the king, as they had been in Bracton’s time. Fortescue suggested instead that men of merit rather than birth alone could serve the king’s government better. In the tradition of natural law, they could channel the king’s discretion to shape good government in accordance with the intent of the people.¹⁸ Richard Hooker (1553–1600) developed some of these ideas building on Aquinas in the *Laws of Ecclesiastical Polity* (1593). The law of reason and notions of consent and equality in Hooker’s treatise were important themes present in Shakespeare’s time. Nearly a century later, John Locke (1632–1704) drew on these themes from Hooker. By Locke’s time, natural law principles of limited government and duties and rights of both governed and governor became more focused and pronounced in the theoretical language of political science. Shakespeare’s history plays had presented the factual evidence of how and why greater numbers of groups within the commonwealth wanted to express their views and participate in its government. Other aspects of Locke’s theories of government, such as the state of nature or a focus on individual rights, cannot be anticipated in Shakespeare’s plays, which reflect a hierarchical society and an emphasis on the common good rather than on individual political and economic rights. Whether Shakespeare drew on Hooker’s book for his

15. FORTESCUE, *supra* note 14, at xxiii, 127–36.

16. *Id.* at xvii.

17. *Id.* at 92–93.

18. *Id.* at 114. On the transmission of this natural law tradition to later ages, see THE SELECTED POLITICAL WRITING OF JOHN LOCKE 222 (2005) (citing RICHARD HOOKER, OF THE LAWS OF ECCLESIASTICAL POLITY, BOOK I (1593) (tracing Locke’s use of Hooker)). Further references will be to the section number of the *Second Treatise of Government*.

plays or derived them from earlier presentations, there is little doubt that these governmental values appear strongly in Shakespeare's plays and that these plays later had an important role in developing a better governmental system in the succeeding centuries.

*B. The role of the usurpers: "[W]hen blood is their argument:"¹⁹
"[U]surpation is the exercise of power, which another hath a right to."²⁰*

Shakespeare's plays on English kingship focus on moments of moral choice in royal decision-making about the care of the kingdom. In the soliloquies, Macbeth, for example, is portrayed in moments of self-examination and doubt. His thought process is revealed as he gropes toward a decision. Once the audience sees the characters in Shakespeare's plays interact, it can draw conclusions about tyranny versus mercy, ambition versus justice and courage versus bad character, as well as strong, weak, tyrannical or good government, based on the type of ruler Shakespeare portrays in the play.

In the attempt to discern the common good in a hierarchical society, one main problem to address is who speaks for the public interest. In troubled times and troubled reigns, both the king and his usurper often ignored the common good in favor of poor or overly selfish or ambitious decisions with dire and often violent consequences. Both kings and those vying to usurp the throne used political unrest to seize the political initiative and impose their own views and interests on the realm. These kings and their usurpers had a range of decisions to make about foreign relationships, taxation and domestic policies. The realm of ethical kingship can be seen as the point of intersection of natural law, that is, the over-arching moral perspective, and positive, that is, human, law embodied in legislation. Royal legislation, was considered reason enough to depose the king if the law were deemed fundamentally immoral and unfair. The public judged the results of their rulers' choices after the decisions were made but the ethical choices themselves came from the people with political power to bring about change in England for good or ill. The decision makers in Shakespeare's plays (often the ambitious, royal rebels committing treason to obtain the throne for themselves) proved that their actions were every bit as important as the kings' decisions. Tudor political theory held that the monarch was divinely ordained. Indeed, the king had long been crowned in a ceremony set forth in a coronation *ordo*, or service, with passages from the Bible selected for Charlemagne's coronation. In addition, the monarch is anointed with holy oil, as even the second Queen Elizabeth was in 1953. Only a minority of passages in the Bible treated "the king as a provisional rather than absolute

19. WILLIAM SHAKESPEARE, HENRY V, in THE COMPLETE WORKS OF WILLIAM SHAKESPEARE *supra* note 3, at 432, act 4, sc. 1, l. 143.

20. LOCKE, *supra* note 18, § 199.

authority” and absolute authority normally required “the subject’s duty of unqualified obedience.”²¹ The Bible attested to the legitimacy of kings. The passage on legitimacy most frequently cited in Shakespeare’s time came from St. Paul’s Epistle to the Romans. “Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God. Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation.”²² Legitimacy according to the Bible, however, did not by itself make a king powerful or effective.

As a form of government, monarchy had inherent drawbacks, not least how to avoid a weak or bad ruler when his term of office was for life. This problem recurred whenever the anointed king could not deliver the peace, security and justice the people expected. If kings either exercised tyrannical powers or had a weak government, debates about whether a tyrant could be removed from office or whether the law instead required the tyrant’s subjects to await his natural death became very popular.²³

Historians have long argued without possibility of resolution about Shakespeare’s views on whether a king could be deposed.²⁴ Prudence demanded that Shakespeare in his plays, though confident enough to use his work to air notions of political reform, never cross the line to advocate revolution even through his characters. In order to evade the censor and bring his work before the public, Shakespeare had to be careful enough to draw lessons on government without open criticism. How much harder for us than the contemporaneous censor it is to discern Shakespeare’s opinions on Elizabethan political problems. Shakespeare showed in his plays the deposition, or removal, of rulers in different periods of Roman²⁵ and English history.

21. C.W.R.D. MOSELEY, *SHAKESPEARE’S HISTORY PLAYS* 55 (1988).

22. *Romans* 13:1–2 (King James). Garry Wills reminds us that Shakespeare quoted the Bishop’s Version of the Bible. GARRY WILLS, *WITCHES and JESUITS: SHAKESPEARE’S MACBETH* 95 (1995). *See also* RICHMOND NOBLE, *SHAKESPEARE’S BIBLICAL KNOWLEDGE* 69–75 (1970).

23. *See also* J.G.A. POCOCC, *THE MACHIAVELLIAN MOMENT: FLORENTINE POLITICAL THOUGHT AND THE ATLANTIC REPUBLICAN TRADITION* (1975).

24. History proved attractive not only because those reading history could learn what others had done in analogous circumstances but also because the existence of censorship made it easier to discuss current political problems using as code language what had happened in earlier times. *See* M.M. REESE, *THE CEASE OF MAJESTY: A STUDY OF SHAKESPEARE’S HISTORY PLAYS* 12–14 (1961), *cited in* PHYLLIS RACKIN, *STAGES OF HISTORY: SHAKESPEARE’S ENGLISH CHRONICLES* 11 (1990).

25. *THE TRAGEDY OF JULIUS CAESAR* (c. 1600) deals with the assassination of the most popular politician in Rome, because he appears too king-like for the republic he wishes to lead. *See generally* WILLIAM SHAKESPEARE, *THE TRAGEDY OF JULIUS CAESAR*, in 2 *THE COMPLETE WORKS OF WILLIAM SHAKESPEARE* 571 (1960). In *THE RAPE OF LUCRECE*, published in 1594, Shakespeare shows the expulsion of the Roman royal family from their seat of power in 510 B.C. after committing many bad deeds. *See generally* WILLIAM SHAKESPEARE, *THE RAPE OF LUCRECE*, in 2 *THE COMPLETE WORKS OF WILLIAM SHAKESPEARE* 106 (1960). This expulsion ushered in the Roman republic which survived almost 500 years with a weak central executive, checked by a term of office of only one year and balanced by the Senate.

During the 1590s, Shakespeare was studying several different historical attempts to kill tyrants or bad rulers. Earlier Elizabeth had had her own legitimacy problems when her father, Henry VIII, had Parliament declare his daughters illegitimate after his son was born in order to prevent them from succeeding to the throne but now one of her major problems was her failure to provide for her own succession. The law attempted to protect the monarch from revolts by providing dire penalties for treason.

The disobedience and rebellion against the king shown in Shakespeare's play *RICHARD II* were therefore treated as treason. In brief, poets and politically active nobles alike considered Richard's taxes and wars unfair. As will appear in Section II, when Richard confiscated his cousin Henry's lands on the death of his father, Richard lost his political initiative and was deemed a tyrant in some powerful circles. It is appropriate to assess Richard's ethical choices, described above, in terms of the natural law theory of human acts. This approach had not yet been replaced in Shakespeare's time. A natural law analysis pinpoints Richard's shortcomings at that point of intersection between natural law and positive law, in short in his ethical choices about the governing of the realm. The teleological theory of ethics makes the idea of the good paramount.²⁶ Human acts derive their moral quality from their relation to the final end of human beings. Thus in regard to moral law, reason sees that some acts are necessary for the attainment of the good of man. The final end of humans is activity and reason has an important function in moral conduct by enabling humans to act deliberately in view of a consciously apprehended end. In natural law philosophy, deliberate choice is crucial according to the *SUMMA THEOLOGIAE*. Every act of free choice is elicited by the will and is materially or substantially an interior act of the will brought forth under the command or judgment of reason for a particular end. Human acts are therefore moral acts. Moral life is founded on the will's movement toward the good. Virtues are good operative habits. Moral virtues incline sensitive appetite to act in accordance with right reason. Human desire naturally wants to achieve the end or purpose. Firm or good will wants to fashion the means to the end. Election, or choice of will, tries to get to the end and decision or judgment follows.

In his portrayals of Kings Richard II and Henry IV, Shakespeare warned his audience against the tyranny of an oppressive ruler and previewed the many dangers the realm faced in attempting to overthrow a weak or tyrannical ruler, including the large problem of a troubled succession. The king's individual decision-making about government, together with the constitutional and

During the Middle Ages, the fear of tyranny and dictatorship from the experience of the early Roman kings and then during the Roman Empire was so great that Italian City States left their political executives too weak to provide necessary protection, as Shakespeare knew from his Italian sources. See generally PAUL A. CANTOR, *SHAKESPEARE'S ROME: REPUBLIC AND EMPIRE* (1976).

26. See ROBERT S. WHITE, *NATURAL LAW IN ENGLISH RENAISSANCE LITERATURE* (1996).

political considerations of sharing the powers of government, form the core of Shakespeare's concerns discussed in this article. The private and public aspects of government inspired Shakespeare to dramatize conflicts over the reins of government and the desire to seize the throne: how can we approach the ideal of stability and harmony between the governed and the governor? Shakespeare's plays show that good government encompassed the consultation of the king's council and Parliament because it would serve the public interest and the common good.

We do not know whether Shakespeare believed that a ruling monarch could be deposed by right. We do know, however, that Elizabethans in general feared that the deposition of a monarch would lead to disastrous consequences for the realm, including civil war. While Shakespeare's plays presented reformist views through different characters, they also equally reflected his audience's trepidation about the practical realities of revolution in the trepidation other characters in the plays expressed about the social horrors that followed in the wake of revolution. Elizabethans presumed that ethical rulership and truthful behavior might prevent political and social unrest and that having weak or tyrannical rulership could plunge England into a political crisis. This fear of chaos perhaps translated into a simple distinction between a good king and a bad king rather than calling into question the viability of monarchy itself as a form of government.

Shakespeare's JULIUS CAESAR became very popular once England set out on the road to becoming a constitutional monarchy at the end of the 18th century while the English were figuring out the nature of the new monarchy. The office of king was preserved but the monarch's powers were shared with a broader spectrum of the people. In popular opinion, Shakespeare was deemed to have sided with Brutus against Caesar. Then public-minded activists thought that every school child and member of Parliament had to read the play to learn about good government. The play JULIUS CAESAR was familiar to Americans as part of the intellectual furniture of their lives in the years before and during the War of Independence as Americans thought about what a republic means. Margaret Cavendish, Duchess of Newcastle (c. 1625-73), a woman of letters, praised the play during the Restoration.²⁷

II. THE DOWNSIDES OF USURPATION: MACBETH, JULIUS CAESAR AND RICHARD III: "[O]UR DUTIES ARE TO YOUR THRONE AND STATE CHILDREN AND SERVANTS"²⁸

In MACBETH, it appears likely that Macbeth, an excellent warrior and general, who has served the Scottish King Duncan loyally, will be elected king

27. Letter 123 from Margaret Cavendish, in *CXXI SOCIABLE LETTERS* 129 (1997).

28. WILLIAM SHAKESPEARE, *MACBETH*, in *THE COMPLETE WORKS OF WILLIAM SHAKESPEARE*, *supra* note 1, at 795, act 1, sc. 4, ll. 24-25 (Macbeth speaking to King Duncan).

himself one day. He betrays his promise by growing impatient to reign immediately. Macbeth breached his duties of loyalty to King Duncan because of his desire to displace the king and assume his throne. *MACBETH* shows the need for a king with the legitimate right to rule. Shakespeare wrote *MACBETH* after the Scottish King James's accession to the English throne in 1603 upon the death of Queen Elizabeth who had no children. Indeed, Shakespeare reflected the contemporaneous supposition that the line of King James VI of Scotland descended from Banquo after Malcolm Canmore's line ran out. Later historical research proved that genealogy to be inaccurate. The supposed succession, however, may have sparked some of Shakespeare's interest in Macbeth. The subject matter of the play is kingship but focuses on Macbeth's ambition to become king.

In actuality, Macbeth lived in a Scotland invaded during the great movement of the Scandinavian peoples. Selection of a king among the male members of the royal family depended on whether there was a vacancy and on the ability of the candidate to protect the country from invasions and during wartime. The major quality sought in a candidate for the Scottish kingship at this time was military capability and judgment.²⁹ Often times during that very unsafe age, battle demonstrated the would-be leader's capability and worth. So it was with the historical Macbeth, a skilled war leader, who started a kind of civil war against King Duncan. Both Macbeth and Duncan were grandsons of the previous king, Malcolm II who had come to the throne by murdering his cousin, King Kenneth III, the grandfather of Lady Macbeth. After Duncan's death in the battle, Macbeth reigned some fifteen years until the English general Siward's winning battle in 1054 at Dunsinane and Macbeth's final defeat in 1057. Duncan's son Prince Malcolm Canmore, after having returned from exile in England with Siward's army at his side, became king. In the play *MACBETH*, Shakespeare used the real life murder of a tenth-century king while he was a house guest as the murder of Duncan in order to portray Macbeth's usurpation more dramatically and graphically. Shakespeare further telescoped Macbeth's reign into one evening, thereby leaving the impression that the people rose up quickly to throw off Macbeth's illegal rule.

29. Shakespeare referred to Scotland as an elective monarchy. *THE OXFORD SHAKESPEARE, THE TRAGEDY OF MACBETH*, act 2, sc. 4 n.30 (Nicholas Brooks, ed. 1990). See also Elizabeth Neilsen, *Macbeth: The Nemesis of the Post-Shakespearean Actor*, 16 *SHAKESPEARE Q.* 193, 195 (1965) (discussing the elective alternating between branches of the royal family explains the repeated murders within the Scottish royal family by members of the opposite branch attempting to forestall their cousins from ascending the throne). As Locke later remarked, without a clear method of appointing a ruler, anarchy follows. See *LOCKE, supra* note 18, § 198.

A. *No political way out for the usurper: "Macbeth shall sleep no more!"*³⁰

Shakespeare's departure from the historical facts about the death of King Duncan in battle underlines the playwright's desire to focus on illegal succession to office through usurpation as the central issue in *MACBETH*. Macbeth, the Shakespearean character, comes to a point of crisis when he considers killing the king.³¹ The murder of King Duncan is accompanied by the killing of Duncan's drunken guards who had no information that Macbeth had murdered Duncan. The sense of violation of natural law, which presumably the audience feels from watching the play, increases as the play unfolds with more murders in store.

Shakespeare depicts the image of bad government in Macbeth's decision to commit additional murders to retain the throne he obtained by murdering King Duncan. This chain of murders starts with the Witches' prediction that the descendants of Macbeth's friend Banquo will come to rule Scotland. Macbeth therefore hires two assassins to eliminate Banquo. (He later adds a third assassin).³² Banquo's ghost then appears to Macbeth at dinner, disturbing the banquet and scattering the attending nobles who do not perceive the ghost but who clearly see Macbeth's horror.³³ Although Macbeth did not achieve happiness as king, he continued to kill in order to protect his position as king of Scotland.

Shakespeare dramatizes the horror of having a king like Macbeth who seizes the throne through regicide, by showing the audience more examples of Macbeth's evil rule. Macbeth's next act is to have the wife and children of Macduff murdered, when he finds out that Macduff opposed him. When Macduff escapes to England to join Prince Malcolm, Macbeth orders the destruction of Macduff's property and the murders of Lady Macduff and their children.³⁴ Like the story of King Herod, who slew all the male children under two years old because a future ruler was predicted to be among them, Macbeth's murder of Macduff's children shows how tyrannical his rule is;

30. WILLIAM SHAKESPEARE, *MACBETH*, in *THE COMPLETE WORKS OF WILLIAM SHAKESPEARE* *supra* note 1, at 799, act 2, sc. 2, l. 43.

31. In order to put Macbeth's moral choices into bold relief for his audience, Shakespeare reinvented the historical Macbeth and turned him into a caricature of raw ambition. Shakespeare carefully explored both Macbeth's conscience and reasoning process to help the audience realize that Macbeth does have a choice. See WILLIAM SHAKESPEARE, *MACBETH* in *THE COMPLETE WORKS OF WILLIAM SHAKESPEARE*, *supra* note 1, at act 1, sc. 2, ll. 7–16, 25–28. See act 1, sc. 7, ll. 1–28 for the entire speech.

Paul Cantor contrasts the certainty in Brutus's soliloquy, "It must be by his death," in act 2, scene 1, line 10 of *Julius Caesar* with the "perplexing moral dilemma" gripping Macbeth in his soliloquy, "If it were done when 'tis done." CANTOR, *supra* note 25, at 113–114.

32. WILLIAM SHAKESPEARE, *MACBETH*, in *THE COMPLETE WORKS OF WILLIAM SHAKESPEARE*, *supra* note 1, at 803, act 3, sc. 3.

33. *Id.* act 3, sc. 4.

34. *Id.* act 4, sc. 2.

Macbeth will kill even innocents to achieve his ambition and protect his ill-gotten crown.

The dramatization of the murder of Macduff's children brings the audience to feel the depth of harm Macbeth's course of action causes the realm. Robert S. White states that "the principle of moralizing from empathetic suffering is enormously important to the moral patterning of Shakespearian tragedy. The basis of these effects is natural law presupposed as being within the consciousness of members of the audience, an in-built desire to follow virtue and 'murmur at vice.'³⁵ The focus of *MACBETH* is the violence to innocent lives, both public and private, which comes to the realm because of their king's illegitimate ascent to the throne. Shakespeare's decisive departure from historical facts in *MACBETH* from allows Shakespeare to portray in bold relief the horror of usurpation and regicide. Macbeth's illegitimate ascent to the throne freed Shakespeare to delineate in audacious detail the potentials for monarchical abuse. Only under the cover of the despicable actions of an unlawful king could Shakespeare approach a presentation of revolution through the arrival of Siward's army from England with the motive of restoring the arguably legitimate line of King Duncan. To echo Hamlet, something is literally rotten in the state (Scotland or Denmark) when the ruler achieves his position through crime and cunning.

*B. "The king-becoming graces" of the true ruler test his adherents: "What I am truly, is thine and my poor country's to command"*³⁶

How does Shakespeare create a contrast from Macbeth's murderous rule with images of good government? While Macbeth is killing, the English king is literally healing his subjects. Shakespeare praises Macbeth's English contemporary, King Edward the Confessor (1042-65) in act 4, scene 3, lines 140-159, for curing the physical ills of his people (such as the skin disease scrofula).³⁷ The contrast in the ethical actions of Edward and Macbeth could not be starker. At every step, Macbeth put his own interest before the interests of his people. Macbeth's repeated murders to retain and secure the usurped throne outline the disparity in bold relief. The murders of Lady Macduff and her children symbolize how far Macbeth has removed himself from his community and the law. He is willing to endanger his people and the realm to further his own ambition and retain the crown he usurped. First committing the treason of usurping Duncan's throne and regicide, Macbeth then stooped to the

35. WHITE, *supra* note 26, at 86.

36. WILLIAM SHAKESPEARE, *MACBETH*, in *THE COMPLETE WORKS OF WILLIAM SHAKESPEARE*, *supra* note 1, at 810, act 4, sc. 3, ll. 131-32.

37. BERTIE WILKINSON, *HISTORICAL ASSOCIATION PAMPHLET, THE CORONATION IN HISTORY 9-10* (1953). See also MARC BLOCH, *THE ROYAL TOUCH: SACRED MONARCHY AND SCROFULA IN ENGLAND AND FRANCE* (1973) (discussing tuberculosis lymphadenitis, or the king's evil).

murder of little children. The son of the slain King Duncan, Prince Malcolm Canmore, in testing Macduff, listed the qualities, or graces, becoming to a king as a synthesis of mercy, justice and courage.³⁸ Those are the qualities of Edward the Confessor. Malcolm in both the play and in life lived at the court of Edward who ruled a country which arguably enjoyed a settled, hereditary monarchy.³⁹

The fact that Duncan wanted to be a king like Edward the Confessor rather than retain the arguably still elective kingship of Scotland may bear some analogy to the situation in JULIUS CAESAR. Duncan was ahead of his people in moving too quickly from a fluid elective kingship to a more settled, hereditary kingship.⁴⁰ Duncan attempted to make the kingship of Scotland hereditary when he was too weak militarily to bring this about or even to hold onto the throne. Duncan lacked political judgment. He over-reached to make the kingship exclusively dynastic rather than shared among the wider royal family. Duncan gambled with his own life for a hereditary monarchy. The Scottish election for life without any necessary hereditary component helped the nobles of the kingdom blow off steam. They otherwise might have engaged in more assassinations if outlets for their own ambitions had been blocked by hereditary kingship.⁴¹ In other plays, Shakespeare dramatized legal and moral crises arising from conflicts about change of leadership and sharing political power. For example, Shakespeare depicted the assassination of Julius Caesar, who was murdered for the same reason as Duncan, attempting to make the government hereditary.

Macbeth also paid for his ambition with his own life in the battle after Duncan's son Prince Malcolm Canmore returned to Scotland with his uncle Siward's army. The English army represents the Scottish people's will to ensure that the legitimate heir is placed on the throne. By the time of Richard II's deposition in 1399, the English people had assumed a more direct role in how the country was to be ruled. From his play, it is clear that Shakespeare was keenly aware of this development and used its example to engage in a dialogue with his fellow Englishmen about the nature of good government and the level of participation in government by the various orders of English society.

38. WILLIAM SHAKESPEARE, *MACBETH*, in *THE COMPLETE WORKS OF WILLIAM SHAKESPEARE*, *supra* note 1, at 809, act 4, sc. 3, ll. 93–94.

39. In the wake of Edward's death, William the Conqueror tested that stability. *THE HOUGHTON MIFFLIN DICTIONARY OF BIOGRAPHY William the Conqueror 1615* (2003).

40. The weaknesses of King Duncan are treated in GRAHAM BRADSHAW, *SHAKESPEARE'S SKEPTICISM* 244–49 (1987). *See also* MICHAEL MANNHEIM, *THE WEAK KING DILEMMA* (1973).

41. Paul Cantor, *Macbeth and the Gospelling of Scotland*, in *SHAKESPEARE AS A POLITICAL THINKER* 315, 319 (2000).

III. MONARCHY IS WEAK: RICHARD II'S LEGITIMATE SUCCESSION TO THE THRONE WAS INSUFFICIENT TO GOVERN WELL. ("NOT ALL THE WATER IN THE ROUGH RUDE SEA CAN WASH THE BALM OFF FROM AN ANOINTED KING")⁴²

According to medieval political and religious thought, even deposition from the throne cannot change the mark imposed on the king during his anointment at the coronation ceremony. The king is legitimate in two ways, by proper accession to the throne and by doing justice to his people. Unlike Macbeth, Richard's ascent to the throne was unquestionably legitimate but he failed to do justice to his cousin Henry Bolingbroke. Richard refused to allow Bolingbroke to take possession of his lands upon the death of his father. Thus provoked, Bolingbroke committed his own wrongs by deposing Richard, usurping his throne and causing Richard's murder, which led to instability for England during Bolingbroke's coming reign as Henry IV.

The plots and conflicts in Shakespeare's English history plays from *THE TRAGEDY OF KING RICHARD II* through *THE LIFE OF KING HENRY V*, all follow from Bolingbroke's usurpation of King Richard II's throne.⁴³ Unlike Macbeth, Bolingbroke's usurpation did not end on the battlefield and his dynasty continued on the throne until Henry VI was deposed. Richard was the last of the Plantagenet dynasty, directly descended from William the Duke of Normandy who invaded and conquered England in 1066. Richard's most important royal feature is his undoubted legitimacy as ruler. King Richard II (1377-99) ascended to the throne of England in 1377, as a ten year-old when King Edward III, his grandfather, died. (His father, the Prince of Wales, was already dead.) Richard began his reign as "a weak rather than a wicked human being, prone to irresponsibility rather than malevolence," necessarily dependent on guardians and councilors, never fully escaping their net of intrigue and control.⁴⁴ "A chronically weak king was as much of a threat as a tyrant because he would lack that constant and perpetual will to justice which was the sworn duty of his office."⁴⁵

42. WILLIAM SHAKESPEARE, *RICHARD II*, in *THE COMPLETE WORKS OF WILLIAM SHAKESPEARE* *supra* note 2, at 292, act 3, sc. 2, ll. 54-55.

43. "The central issue for Bolingbroke's rule, and one to which every play in the rest of the second tetralogy will return, is the threat to the realm when the king is not legally titled." Donna B. Hamilton, *The State of Law in Richard II*, 34 *SHAKESPEARE Q.* 5, 15 (1983).

44. Harry Levin, *Sitting upon the Ground (Richard II, IV, i)*, reprinted in *SHAKESPEARE'S UNIVERSE: RENAISSANCE IDEAS AND CONVENTIONS* 3, 3-4 (1996). An example of the later political use of the protectorate of the realm during the minority of the king is the argument made during the 1590s that the royal person and the royal function are separable. MARIE AXTON, *THE QUEEN'S TWO BODIES* 98 (1977).

45. FORTESCUE, *supra* note 14, at xvii. The minor heir as ruler is not a problem we face in our republican, as opposed to monarchical, form of government today since by law our president must be at least 35 years old.

In practical terms, ethical leadership for the common good often involves decisions about the finances of the country, its wars, and other aspects of international relations. The people in Shakespeare's time wanted to have a plain-speaking monarch whose word could be trusted. Commitment to public law and order was the major test of a just king. Relying on councilors whom the other members of the royal family and their noble retainers disapproved indicated unethical kingship, as we see in the play *RICHARD II*. Richard's perceived failure to communicate well and be honest had contributed to the loss of political harmony during his reign. Richard was certainly not the ethical, trustworthy leader the English had envisioned. In a nutshell, "a king who flouted the law lost all title to rule."⁴⁶ The choice of wise councilors was the essence of domestic royal government. Beginning with Henry IV, usurpers could claim to be "saviours of society."⁴⁷ By the end of Elizabeth I's reign, several anti-royal members of the "squierarchy" as well as the nobility, lawyers and politicians in Parliament had worked to secure their own influence and power in government and limit the power of the monarch.⁴⁸ Shakespeare reflected these anti-monarchical views in *RICHARD II* during the first half of the play. On balance, Shakespeare's "general tone [toward Richard] is really hostile."⁴⁹

Bolingbroke, who usurped Richard II's throne, was the son of the Duke of Lancaster, John of Gaunt, in turn the third son of King Edward III, the grandfather of King Richard. Despite his great faults, Gaunt remained loyal to his nephew, King Richard II, during the later part of the reign. The duke of Gloucester was the youngest surviving son of Edward III. Thus, Gloucester was the uncle of King Richard and Bolingbroke. Unlike Gaunt, Gloucester and Bolingbroke had already opposed Richard II in 1388 and impeached the royal favorites in Parliament. After these royal favorites were eliminated, relative peace in a hostile atmosphere prevailed in England until 1397 (in part because Bolingbroke was frequently abroad). Whatever Gloucester did, and this remains unclear, he was arrested and died in custody in 1398, before his trial

46. Gerald L. Harriss, *Introduction: The Exemplar of Kingship*, in *HENRY V: THE PRACTICE OF KINGSHIP* 11 (1985).

47. ANTHONY STEEL, *RICHARD II 2* (Bradford & Dickens 1962). For a different view, see NIGEL E. SAUL, *RICHARD II*, 1-5, 465-67 (1997). Saul acknowledges "the anti-Ricardian tone of Acts I and II." *Id.* at 4.

48. *Id.*

49. *Id.* "Thus only the last three years of the reign, the most difficult to defend of all, figure in the play, and Richard is depicted as a weak-kneed tyrant, alternately unmanned by misfortune and drunk with success; [Shakespeare's] unpleasantness in the early stages is not atoned for by the pathos of the later scenes." *Id.* at 3, In *RICHARD II*, Shakespeare's approach to the inviolate nature of private real property was almost that of C.B. Macpherson's assessment of Locke's position on property in §§ 25-51 of the *Second Treatise*. JOHN LOCKE, *SECOND TREATISE OF GOVERNMENT* xv-xvi (C.B. Macpherson ed., 1980). Rebellion, which is sometimes attributed to a tyrannical king, introduces force without authority, that is "a state of war." See *id.* § 149, §§ 226-227 (on the right to rebel).

was completed. Bolingbroke apparently accused Thomas Mowbray, later the duke of Norfolk, of killing the Duke of Gloucester during his pre-trial detention. Both Bolingbroke and Mowbray were exiled when the king could not figure out what to do with them, even after establishing a parliamentary commission designed to deal with the quarrel between Bolingbroke and Mowbray. Despite Gloucester's real life nastiness, his ghost appears in Shakespeare's play to suggest that Richard was culpable in his uncle's murder. Our sympathy for Richard is thereby lessened when Richard is deposed from his throne and murdered later in the play.

A. Legitimacy does not prevent tyranny: "The commons hath he pill'd with grievous taxes, And quite lost their hearts"⁵⁰

Meanwhile King Richard moved Parliament to appropriate money for him, through such taxes as the customs on wool and leather. Richard spent at least some of the money on extravagant living and was always short of money even before the expedition to Ireland.⁵¹ When John of Gaunt died, Richard had the commission (which was previously established to deal with the quarrel between Gaunt's son Bolingbroke and Mowbray) remain involved in Bolingbroke's affairs, including his claim of John of Gaunt's estate. The commission prevented the application for his inheritance, thus leaving the land free for the king to take in order to finance his coming war with Ireland. Richard's expediency and the illegality of the commission's action alarmed all landowners in England. This short-sighted maneuver brought Bolingbroke back to England with an army to claim his inheritance. Soon Bolingbroke wanted more than his inheritance. In act 3, scene 2, line 47, Richard pronounced Bolingbroke a "traitor." After he heard of the execution of his favorites, rather than take actions to fight Bolingbroke, Richard gave up.⁵² The king foresaw what would take place next, and thereupon let his followers go rather than face certain death from the usurper Bolingbroke.⁵³

50. WILLIAM SHAKESPEARE, RICHARD II, *in* THE COMPLETE WORKS OF WILLIAM SHAKESPEARE, *supra* note 2, at 287, act 2, sc. 1, ll. 246–48.

51. The English started wars of subjugation in Ireland during the reign of Henry II (1154–1189). They were still heavily engaged in these very expensive and destructive wars during the reign of Elizabeth (and beyond). The significance of Richard's taxes to finance the Irish expedition was not lost on Elizabeth, the censors or those plotting to revolt against her because by analogy this was ammunition for their argument that her government was tyrannical, illegal and corrupt. 'WILLIAM SHAKESPEARE, KING RICHARD II, *in* The Arden Edition of the Works of William Shakespeare 39–40 (Peter Ure ed., Methuen & Co. 1966).

52. WILLIAM SHAKESPEARE, RICHARD II, *in* THE COMPLETE WORKS OF WILLIAM SHAKESPEARE, *supra* note 2, at 293, act 3, sc. 2, ll. 144–77.

53. WILLIAM SHAKESPEARE, RICHARD II, *in* THE COMPLETE WORKS OF WILLIAM SHAKESPEARE, *supra* note 2, at 293, act 3, sc. 2, l. 217. The poet Samuel Daniel, Shakespeare's contemporary, emphasized the wrongdoing in deposing a king, rather than the character issues personal to Richard and Bolingbroke because he believed that the later civil war grew out of this illegal act. ROBERT ORNSTEIN, A KINGDOM FOR

By the time of Richard's reign, "the concept of the *communitas regni* [the commons of England] [had] developed greatly."⁵⁴ Royal alliances with interests in Parliament did circumscribe the powers of the king and force coalition-building. Shakespeare is at some pains to comment on the ethics of this situation because he invented a living, adult queen for Richard who rejected royal coalition building. Shakespeare thereby indicated not only the king's exclusionary views of political choice but also the growing isolation of the king. In general, while the English king was not yet the constitutional monarch we know today with little political power, the voice of the commons had grown much stronger. As in Bracton's time, the king could only rule in accordance with the law after consulting with his subjects.

Shakespeare juxtaposes the royal family's exclusionary view of government with the claim of the commons of England to have more of a voice in governance. The fictional character of the Queen (Richard II was in fact a widower, engaged to an underage foreign princess) emphasizes the importance to Shakespeare of presenting the different views about which groups might have a voice in governing England, if only to satisfy the demands of censorship by including the royal position. This scene in the garden may also demonstrate Shakespeare's recognition of the later growth of the role of the commons in government in the two centuries following Richard's reign. Since Richard performed the duties of government irresponsibly, is pruning what should now be done to Richard? "Richard's failure in stewardship to God and the law presages his expulsion from the sea-walled garden that is John of Gaunt's other Eden."⁵⁵

In accordance with natural law and Shakespeare's portrayal of Richard II's style of governing, Richard has failed in his ethical obligations to run England

A STAGE: THE ACHIEVEMENT OF SHAKESPEARE'S HISTORY PLAYS 119 n.18 (1972). Drayton exemplifies the traditional, hierarchical approach. Shakespeare's concentration on the king's ethical choices is at a transitional point between the traditional approach and Locke's later emphasis of constitutional limitations on the monarch.

54. FORTESCUE, *supra* note 14, at xx. The "addition of a fourth clause to the coronation oath, binding the king to keep the laws which he and the people 'will have chosen'" provides evidence for this development of government as public interest. *Id.* The garden in act 3, scene 4 allegorically represents the powers of government in an analogy to the tasks of gardeners in an idealized garden, suggesting that the government should be grown with the same care. MOSELEY, *supra* note 21, at 106. The Gardener and his two assistants speak about having to weed the ground, prune the overgrowth and support the plants which need a stake, or trellis, to uphold them. *Id.* See also WILLIAM SHAKESPEARE, RICHARD II, in 1 THE COMPLETE WORKS OF WILLIAM SHAKESPEARE 294, at act 3, sc. 3, ll. 61–66 (1960). (Using the language of growing living plants in a garden, Shakespeare sets forth in ideal terms the duties of ethical kingship.) Norbrook points out the role of the commons in contributing to the overall health of the social order in the great garden of England: "the gardeners insist on the predominance of public over private interest, and on the need for active intervention to remedy abuses even at the cost of violence." David Norbrook, 'A Liberal Tongue': Language and Rebellion in Richard II, in SHAKESPEARE'S UNIVERSE: RENAISSANCE IDEAS AND CONVENTIONS 37, 47 (1996), (citing act 3, sc. 4, ll. 32–36).

55. Hamilton, *supra* note 43, at 14.

well. This accounts for Shakespeare's hostility in the first two acts and his sympathy for Richard in the events leading up to the regicide because by then Richard was no longer making moral decisions about the care of the community. Instead, Bolingbroke made the bad moral choices which led to Richard's illegal and untimely end which also accounts for Shakespeare's cool reception toward Henry IV who began his reign a usurper already suspected of a role in regicide. The king's pleasure which could be embodied in positive law exempted him from the strictures of the law. But he did not escape the consequences to himself and the realm if his decisions failed to approach the morally acceptable threshold of natural law.

Shakespeare conveys the personal anguish of Richard the king, who can be analyzed as occupying a middle position between a God and the courtly fool. But in Richard's case, the divine promise of the coronation did not work, due to Richard's personal failure. Kantorowicz's interpretation illuminates, not the king's role in the nation, but Richard's degradation from his position as the Lord's anointed king of England, ending as an ordinary man.⁵⁶ When the king is deemed not to be an acceptable ruler, do his subjects have a right to revolt? Shakespeare could not write directly about Elizabeth's government because of the government censors who approved plays for publication or production. This right to revolt, assumed by the people holding political power, sparks an interest in the deposition of the king.

In addition to bringing his own strength to his rule (so that powerful lords did not tyrannize ordinary subjects), a king had to keep the domestic peace and prevent attacks from outside his borders. But Richard's assumption of Gaunt's lands precluded domestic peace and brought armies to England under Bolingbroke's command. All of this can in some sense be blamed on the bad council Richard had in the form of the commission dealing with Mowbray and Bolingbroke's quarrel.

*B. The usurper's rule may not bring good government back: [T]his unthankful king, . . . this ingrate and canker'd Bolingbroke . . . "[T]his vile politician . . ."*⁵⁷

Bolingbroke states in act 4, scene 1, ll. 113, "In God's name, I'll ascend the royal throne."⁵⁸ The bishop of Carlisle is horrified and prophesies in ll. 136-148

56. KANTOROWICZ, *supra* note 10, at 24, 35 n.19. See also Margaret L. Ranald, *The Degradation of Richard II: An Inquiry into the Ritual Backgrounds*, 7 ENG. LIT. REN. 188, 191-94 (1977). Norbrook, *supra* note 55, places Kantorowicz's work in the context of the scholarship of his own day. *Id.* at 38, 49 nn.3-4.

57. WILLIAM SHAKESPEARE, THE FIRST PART OF KING HENRY THE FOURTH, in THE COMPLETE WORKS OF WILLIAM SHAKESPEARE, *supra* note 2, at 361, act 1, sc. 3, ll. 136-37, 241.

58. WILLIAM SHAKESPEARE, RICHARD II, in THE COMPLETE WORKS OF WILLIAM SHAKESPEARE,

that “if you crown” Henry, “The blood of English shall manure the ground / And future ages groan for this foul act; / Peace shall go to sleep with Turks and infidels, / And in this seat of peace tumultuous wars / Shall kin with kin and kind with kind confound; / . . . Prevent it, resist it, let it not be so.”⁵⁹ Did Thomas Jefferson make a similar point about tyrants and rebels in his letter of November 12, 1787, when he wrote “The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is its [sic] natural manure.”⁶⁰ Bolingbroke’s later difficult times were frequently attributed to his usurpation of the throne. To some of the nobles who supported him when he returned to England with an army, Bolingbroke appeared ungrateful, and his reign was plagued by repeated attempts to revolt against him.

In Shakespeare’s play, *THE TRAGEDY OF KING RICHARD II*,⁶¹ the royal rebel, Bolingbroke, soon to become King Henry IV, halted the damage from Richard II’s rule only by treasonously deposing the legitimate king himself. In act 5, scene 6, Bolingbroke is said to be a plant fertilized by the blood of Richard II.⁶² He was thus guilty of shedding the king’s blood and the murder of Richard’s supporters. The dukes who sided with Bolingbroke tried to justify their rebellion as proper in order to cloak their actions with some semblance of legitimacy but legitimacy alone had not satisfied them.

In *MACBETH*, the major defect is that the usurper is not the legitimate king; when the right ruler (King Duncan’s son Malcolm Canmore) is restored, the play ends.⁶³ The concept of royal legitimacy does not, however, explain *RICHARD II*

supra note 2, at 297, act 4, sc. 1, l. 113.

59. *Id.* act 4, sc. 1, ll. 136–48.

60. See Letter from Thomas Jefferson to William Stephens Smith (Nov. 13, 1787) in *THE PAPERS OF THOMAS JEFFERSON: 7 AUGUST 1787 TO 31 MARCH 1788*, at 356 (Julian P. Boyd ed., 1955). Tudor homilies on good order and obedience to magistrates and against disobedience and rebellion “linked order in the state with divine orderings of the universe and the laws of nature.” JAMES I. CALDERWOOD, *METADRAMA IN SHAKESPEARE’S HENRIAD: RICHARD II TO HENRY V* 20–21 n.6 (1970). The homily against rebellion was issued as a “propagandistic response to the Northern Rebellion of 1569.” *Id.* at 21.

61. See WILLIAM SHAKESPEARE, *RICHARD II*, in *THE COMPLETE WORKS OF WILLIAM SHAKESPEARE*, *supra* note 2, at 278. The play dates from the mid-1590s and was published in 1597. A performance of another play, Sir John Heyward’s *Life and Reign of Henry IV*, published in 1599, was probably paid for by Sir Charles Percy, a member of Essex’s circle, to be given the evening before Essex’s revolt (Feb. 7, 1601) in an effort to drum up popular support. Heyward’s work dealt with the deposition of Richard II and Henry Bolingbroke’s part in the deposition. See Mervyn James, *At a Crossroads of the Political Culture: The Essex Revolt, 1601*, in *SOCIETY, POLITICS AND CULTURE STUDIES IN EARLY MODERN ENGLAND* 416 (1986), cited in *THE ARDEN EDITION OF THE WORKS OF WILLIAM SHAKESPEARE: RICHARD II*, l xi (Peter Ure ed., 1966). See also MURIEL C. BRADBROOK, *SHAKESPEARE: THE POET IN HIS WORLD* 103 (1978) (citing G.V.P. AKRIGG, *SHAKESPEARE AND THE EARL OF SOUTHAMPTON* 262–63 (1968)).

62. See WILLIAM SHAKESPEARE, *RICHARD II*, in *THE COMPLETE WORKS OF WILLIAM SHAKESPEARE*, *supra* note 2, at 305, act 5, sc. 6.

63. See WILLIAM SHAKESPEARE, *MACBETH*, in *THE COMPLETE WORKS OF WILLIAM SHAKESPEARE*, *supra* note 1, at 815, act 5, sc. 8.

completely because the play also compares the political virtues and defects of both the anointed King Richard II and the usurper Henry Bolingbroke. The efficiency of Henry or the legitimacy of Richard is the reality of the choice the royal dukes and other powerful political actors have to make.⁶⁴ Bolingbroke's more effective, if more unpleasant, rule follows Richard's mistakes but Bolingbroke as Henry IV proved no more than barely acceptable to the English people. In contrast with the character of Macbeth, the usurper Henry Bolingbroke presents a more nuanced picture with his harsh efficiency. As king, Bolingbroke was not much better than Richard at building a wide basis of support, and continued to suffer the prospect of rebellions throughout his reign.

One difference in tone from *MACBETH* occurs because Henry IV, unlike Macbeth, was succeeded by his son and grandson. These and other events in the history of English government provided the background for later theories about government. Locke's *Second Treatise* recognized that both the governed and the governor have duties and rights, including the justifiable resistance to the governor's commands when they should not be followed. In our terms, the notion of consent and withdrawal of consent embedded in Lockean thought underlies the resistance to tyrants in Shakespeare's plays. Although we can see revealed in his work some of the raw ingredients Locke would later use, Shakespeare never went so far as Locke in locating a large measure of political power particularly in the wealthy middle class. Nor were patrons and audience ready to balance the constitution in favor of the growing entrepreneurial interests who later invoked individual economic rights so successfully to their own advantage. Shakespeare's close study of the history of English government shows the tradeoffs between some concerns involved in good government such as efficiency and legitimacy. Once these principles were absorbed into the fabric of the constitution, later royalists could openly look back at King Charles I, a victim of regicide in 1649, as a martyr.

Neither Richard II nor Henry IV was satisfactory as a ruler in the eyes of their contemporaries, unlike Henry V who soon after proved to be popular with his people weary of bad government. For Shakespeare's time, Richard's reign was too recent to be romanticized. Many people dissatisfied with the inherent flaws of pure monarchy were notably not sentimental about usurpation and even regicide.⁶⁵ This dissatisfaction existed not only in 1399 but also during the 1590s and also continued after Shakespeare's death first at the regicide of King Charles

64. W.B. Yeats presumed that Shakespeare as a poet preferred Richard to the efficient Henry V. W.B. YEATS, *At Stratford on Avon, in IDEAS OF GOOD AND EVIL 154-64* (1903), *reprinted in Levin, supra* note 44, at 138.

65. To much later ages, Richard II symbolized by the beauty of the Wilton Diptych (painted c. 1396-98), represented the values and legitimacy of government during the Middle Ages. Eleanor Scheifele, *Richard II and the Visual Arts, in RICHARD II: THE ART OF KINSHIP 255, 259* (Anthony Goodman & James L. Gillespie eds., 1999).

I and then during the repudiation of the monarchy itself in the 1640s and 50s under the Protectorate.⁶⁶

*C. Monarchy is a fragile form of government: "Tell thou the lamentable tale of me and send the hearers weeping to their beds"*⁶⁷

In the play, King Richard II's legitimacy allowed him to make a showing of paternal concern for the land of England, comparing himself to the sun, despite his mis-steps. Richard, however, forfeited moral credibility through his alleged complicity in Gloucester's death, financial credibility through his extravagant spending and legal credibility by his seizure of Bolingbroke's estates without due process. Richard upset the natural order of English society and suffered Bolingbroke's usurpation of his throne.

One great defect of medieval monarchy (only solved much later by constitutional monarchy) was the dependence on the personal rule of the king. Whether the king was unusually capable or less than satisfactory, his personal qualities were not transmissible to a succeeding heir since the institutions of the court could not channel the energies of ministers or the king himself to meet the administrative needs of the government. In the cases of both Richard II and Henry IV, their political insights were episodic and not always translated into effective action which satisfied the nobles and commons. The pathos evoked by watching Richard come to terms with his deposition is emotionally wrenching because it encompasses the personal tragedy of one man as well the disruption to the kingdom from contesting nobles and unsettled government.⁶⁸ Because in this scene we witness Bolingbroke's treason in deposing Richard, "the violation of his office" is very raw: "its manner of doing so is slow, gruelling and merciless; this time the authorities must have caught the smell of gunpowder. The unthinkable is happening before our eyes, and Richard ensures that the audience (on stage and off) knows it is unthinkable."⁶⁹ This dangerous drama and discourse attracted the attention of the censors and the disapproval of the Queen (and no doubt also moved audiences).⁷⁰

66. The Epilogue warns of achievements being undone, those of Henry V and possibly those of Shakespeare's own time. WILLIAM SHAKESPEARE, HENRY V, in THE COMPLETE WORKS OF WILLIAM SHAKESPEARE, *supra* note 3, at 444, Epilogue.

67. WILLIAM SHAKESPEARE, RICHARD II, in THE COMPLETE WORKS OF WILLIAM SHAKESPEARE, *supra* note 2, at 300, act 5, sc. 1, ll. 44-45.

68. See WILLIAM SHAKESPEARE, RICHARD II, in THE COMPLETE WORKS OF WILLIAM SHAKESPEARE, *supra* note 2, at 298, act 4, sc. 1, ll. 155-215.

69. ALEXANDER LEGGATT, SHAKESPEARE'S POLITICAL DRAMA: THE HISTORY PLAYS AND THE ROMAN PLAYS 67 (1988). Therefore, the censors cut the deposition scene. *Id.*

70. Queen Elizabeth, in an interview with the antiquarian William Lambarde, said in August, 1601, "I am Richard II." See JAMES, *supra* note 61, at 419, (citing III JOHN NICHOLS, THE PROGRESSES AND PUBLIC PROCESSIONS OF QUEEN ELIZABETH 552-53 (1823)). James explains that the members of the Earl of Essex's

Bolingbroke started his reign having violated as many moral, ethical and legal principles as Richard had done by the end of his reign.⁷¹ *MACBETH* emphasizes the all-consuming desire for the crown and shows in the course of an evening that neither king nor country can be happy when a ruler is a usurper. On the other hand, does the play *RICHARD II* suggest that despite Bolingbroke's illegal seizure of power in England, the kingdom is better off in his hands and that Richard is so at fault for ruling poorly and unjustly that he must be overthrown for the good of the country? Shakespeare's English history plays together with Ulysses' degree speech in *TROILUS AND CRESSIDA*⁷² reflect the widespread English fear that various horrible consequences such as civil war follow the deposition of a king, much like the description in *MACBETH*. "Underlying Shakespeare's preoccupation with civil strife was a deeper concern for the social order. In the Elizabethans' world view civil discord imperiled the very existence of society. This was essentially the medieval view of the world."⁷³ Nevertheless, Shakespeare also shows Bolingbroke (now King Henry IV) grasping the reins of government into his efficient hands.⁷⁴ It will take longer for the injustice to Richard II to be put right than Macbeth's seizure of the Scottish throne did in the play *MACBETH*.

In fact, Shakespeare deemed Richard "worthily depos'd" for his part in the death of his uncle the Duke of Gloucester.⁷⁵ Bolingbroke is similarly situated in an ambiguous moral position. The new king has righted one wrong (the deprivation of his inherited landed estates) by committing an even greater injustice, the treason of deposing an unquestionably legitimate ruler. Richard had more than a personal property right in his inheritance of the throne from his grandfather Edward III. As the Lord's anointed king, Richard had the public right and duty to rule England.

circle saw the Queen as Richard and planned to depose her if their revolt had succeeded. *Id.*

71. "Like Richard in the opening scene, Henry in the closing scene must pretend to judge a henchman for a crime in which he is complicit. . . . Like Richard he has shed a kinsman's blood' like Richard he fears rebellious subjects; and like Richard he banishes the follower who was his hangman." ORNSTEIN, *supra* note 53, at 124.

72. WILLIAM SHAKESPEARE, *TROILUS AND CRESSIDA*, in 2 *THE COMPLETE WORKS OF WILLIAM SHAKESPEARE* at 696, act 1, sc. 3, ll. 109–10 (1960).

73. SAUL, *supra* note 47, at 2–3. For comment on the degree speech of Ulysses, see E.M.W. TILLYARD, *THE ELIZABETHAN WORLD PICTURE* 9–10, 88–89 (1943).

74. It has been suggested that since wily Ulysses lies, his degree speech in *Troilus* should not be taken at face value, much as we discount the truisms of Polonius. Martin Dzelzainis, *Shakespeare and Political Thought*, in *A COMPANION TO SHAKESPEARE* 100, 113 (David Scott Kastan ed., 1999).

75. Patrick Martin & John Finnis, *Caesar, Succession, and the Chastisement of Rulers*, 78 *NOTRE DAME L. REV.* 1045, 1073 (2003) (quoting act 4, sc. 1, l. 223). *RICHARD II* is more complicated than earlier Shakespearean tragedies because of its focus on Richard's fall as "deserved and at the same time terrible and wasteful, an ambiguity which permitted [Shakespeare] to develop the person of Richard so that he *grows* to be 'every inch a king' . . . when he is one no longer." MOSELEY, *supra* note 21, at 85.

In general, the Middle Ages were criticized by immediately subsequent generations who wished to emphasize the contributions of their own times.⁷⁶ Conceivably Shakespeare appreciated the willingness of medieval aristocrats to revolt against kings who provided less than good government.⁷⁷ The facts reflected in this play make it difficult to judge simply according to the law that it is wrong to depose a king rather than waiting for his natural death, hence posing an ethical dilemma. The choice was not really clear between Richard and Bolingbroke, who was shown in a later play, unable to sleep and like Macbeth, conscious of his guilt.⁷⁸ Nevertheless, Bolingbroke forced the issue, making the decision to insert himself into the kingship with mixed results. Faced with the reality of Bolingbroke's actions, England had a new king.⁷⁹ Any nostalgia for the legitimacy of the Plantagenets came much later in English history when the country had a constitutional monarchy which possessed little possibility for creating anew the earlier governmental difficulties. At the time Shakespeare wrote RICHARD II, the immediate political problem was the succession to the English throne upon the demise of Queen Elizabeth who had no children of her own and who was growing old in the 1590s. Those members of the audience who had seen many of Shakespeare's plays had by now become used to seeing many of their doubts about monarchy explored on stage before their very eyes. A veteran playgoer might expect to find many weaknesses even in the reign of the strongest king. Attendance at HENRY V reveals not simply the sufferings of war during a glorious reign but the weakness of kingship itself when a thirty-five year old king is carried away by trench fever, leaving England without a leader.

IV. HENRY V: *BEFORE [THE CITY GATES OF] HARFLEUR*: "CRY 'GOD FOR HARRY, ENGLAND, AND SAINT GEORGE!'"⁸⁰

When Queen Elizabeth was growing ever weaker, Shakespeare wrote about the vital, strong warrior King Henry V. *THE LIFE OF KING HENRY V* was written

76. Norbrook, *supra* note 54, at 37. Nostalgia for the lost social unity of the middle ages only developed on a wide scale in the 18th century. *Id.* at 49 n.2. See also OLIVIA F. ROBINSON, T.D. FERGUS & W.M. GORDON, *EUROPEAN LEGAL HISTORY* 169–86 (3d ed. Butterworths 2000) for the claim to independence from scholastic thought by Renaissance lawyers and thinkers. Some exceptions existed to this general disregard for the achievement of the middle ages, especially in the continued appreciation for the artistic legacy of the middle ages. ORNSTEIN, *supra* note 53, at 102–03.

77. Norbrook, *supra* note 54, at 45–46, 51 n.27. Shakespeare popularized, if not invented, the English history play in the 1590s. ORNSTEIN, *supra* note 53, at 319–27. Beyond that, English people had an interest "in recovering the past and shaping the present by its models." RACKIN, *supra* note 24, at 3.

78. In WILLIAM SHAKESPEARE, *THE SECOND PART OF HENRY THE FOURTH, IN THE COMPLETE WORKS OF WILLIAM SHAKESPEARE*, *supra* note 2, at 397, act 3, sc. 1, ll. 4–8, 26, 30–31, King Henry complained that the cares he faced as king prevented him from sleeping.

79. ORNSTEIN, *supra* note 53, at 123–24.

80. Act 3, sc. 1, l. 34.

in 1599, two centuries after Henry became Prince of Wales at the age of 12 when his father Henry Bolingbroke usurped Richard II's throne to become Henry IV. It is the only Shakespearean history play centered on foreign policy issues and the offensive war Henry V waged in France to claim a title to the French throne. No one waged a civil war against Henry V. Only one dynastic and one religious plot were fomented during his reign. Domestically people were for him, despite the protests of poets.⁸¹ Many of the English people were very willing to accept war which frequently seemed to find approval in the populace, perhaps because it provided jobs and opportunities for advancement and created patriotic pride as well as a sense of wanting to defend against a common enemy.

By the time he was an adult, Henry was very well trained in politics, administration and warfare. Late in 1411, however, King Henry IV disagreed with Prince Henry over French policy and removed the prince and his supporters from the king's council. Prince Henry was later said to have engaged in illegal adventures with his madcap friends during this time. After his father's death, Henry ascended the throne in March 1413, at the age of twenty-five, reigned nine and one-half years, and died in August, 1422, just before his thirty-fifth birthday, cutting short his conquest of France. This play shows, as much as RICHARD II, the inherent weaknesses in the monarchical form of government. Here an apparently strong king cannot assure the continuation of good government and leaves his kingdom unprotected upon his sudden death. This mortality allows the audience to question the king's governance, including his decision to go to war with France in the first place. Here reform appears as an apparently opposite approach to that in MACBETH. In HENRY V, the affirmation of the King's power itself illustrates the need for reform. Substituting Henry V's strength and legitimacy for the corruption of Macbeth, Shakespeare led his audience to the perception of danger and societal vulnerability created by an unrestrained, albeit very popular, monarch.

A. Should Henry V be adjudged a tyrant? "We are no tyrant but a Christian king"⁸² ("the state of war . . . [is] a state of enmity, malice, violence and mutual destruction")⁸³

Despite the French ambassadors' fears about Henry's claims to France, the play HENRY V opens by establishing Henry as a model of conventional Christian

81. The poets Gower, Hoccleve and Lydgate not only treated war as a scandal when waged between Christians, but also wrote against war as a waste of lives and property. Thomas Hoccleve (who lived from 1367 to 1426) listed the ever present purpose of war as only "to win worldly wealth." Harriss, *supra* note 46, at 21. As Gerald Harriss emphasizes, Hoccleve set forth "the sufferings of non-combatants and the destruction of their property . . ." *Id.*

82. Act 1, sc. 2, l. 241 (quoting King Henry V to the French ambassadors).

83. Locke, *supra* note 18, §19.

kingship.⁸⁴ Henry Chichele, the Archbishop of Canterbury, praises Henry for seeking the church's approval to invade France. The archbishop suggested that King Charles VI of France himself may have inherited the throne of France through the female line, thus negating their denial of Henry's claim to the French throne through the female line.⁸⁵

Henry observed all the requirements of the culture of his day, the early 15th century. According to the same criteria of natural law for human actions set up in the discussion of King Richard's shortcomings, Henry for most of the actions he took in the play comported with the requirements of consulting with the proper interested groups and communities. Before going to war with France he carefully sought and obtained the cooperation of the Archbishop of Canterbury in setting forth his claim as just, thereby indirectly using the auspices of the church to state that his war to realize his claim to the French throne was also just. Henry kept the other royals further down the line to succession to the throne and their noble entourages engaged in the war with France and free from plots, rebellions and schemes to control the government at home. Albeit in disguise, the king even consulted with the common soldiers on the evening before battle, refusing to take on guilt for any lives that might be lost in the next day's battle. In this sense, Henry has made his ethical choices in accordance with the expectation of his community. He was quite unlike the character Macbeth but neither was he a saint like Edward the Confessor. Not only did he insist on a war questionable in the first place but he gave the order to kill the French hostages before the battle of

84. Henry V is shown as having an understanding of "what a king is and what a commonwealth should be" when he announces on his first appearance as king that he now accepts the Lord Chief Justice as his "father." Hamilton, *supra* note 43, at 17.

85. As long ago as the time of Charlemagne who conquered Meissen, an area of Germany between the Saale and Elbe rivers, the French were said to distrust a king who claimed the throne through the female line. The Salic law prohibited succession through the female line and got its name from the River Saale. Archbishop Chichele described the ideal commonwealth in abstract terms as a beehive of activity. WILLIAM SHAKESPEARE, KING HENRY V, in THE COMPLETE WORKS OF WILLIAM SHAKESPEARE, *supra* note 3, at 417-18, act 1, sc. 2, ll. 183-204. Henry claimed the French throne through his great-great grandmother, Isabella, the daughter of Philip IV, the king of France, and wife of King Edward II of England. Henry's substantive argument for the French throne was that he sought to restore rights which the French wrongfully denied him. Substantively, the French responded that Henry did not have a right to the French throne at all. In modern terminology, Henry's claim was self-interested or even an illegal war of aggression. See generally WILLIAM SHAKESPEARE, HENRY V, in 1 THE COMPLETE WORKS OF WILLIAM SHAKESPEARE (1960).

Henry did not wait to declare war until it was a last resort but willingly embraced war. Henry's ambassador Exeter told Charles VI to divest himself of his crown and kingdom as borrowed glories. Charles asked the consequences of refusing Henry's demands. Despite Henry's earlier claim to be no tyrant but a Christian king, Exeter answered with the dire consequences of "bloody constraint," WILLIAM SHAKESPEARE, KING HENRY V, in THE COMPLETE WORKS OF WILLIAM SHAKESPEARE, *supra* note 3, at 414, act 2, sc. 4, l. 97. Charles offered his daughter, a dowry and several dukedoms. Henry rejected them as petty attempts to buy him off with unprofitable dukedoms. See generally WILLIAM SHAKESPEARE, HENRY V, in 1 THE COMPLETE WORKS OF WILLIAM SHAKESPEARE (1960).

Agincourt started. In an England dissatisfied with Richard II and only marginally happier with Henry IV, the young and energetic Henry V did not have to compete against a high ethical standard to satisfy the English people.

Henry V shared the vision and objectives of the Englishmen of his day and proved a popular and successful king. Was he also deemed ethical? Henry V was a busy administrator. Contemporaries considered Henry a seeker after justice, a defender of the church, and the commander-in-chief. Henry V was a war leader in a literal, soldierly sense. He led Englishmen in battle in France and defeated the enemy, as Kings Edward I and Edward III had done in their wars. Despite poetic dissent on the justice of the war with France, Henry V, in providing his subjects with order, efficient administration and military glory, met the English people's "deepest yearnings and won their abiding loyalty."⁸⁶

*B. The spoils of Henry's war: "If, Duke of Burgundy, you would the peace . . . you must buy that peace . . ."*⁸⁷

Indeed, the war with France was the single most important event of Henry V's reign. Although negotiations would not have brought Henry the French throne, they would have resulted in increased territory, marriage to Princess Katherine, the daughter of the French King Charles VI, and a large dowry. "Under Henry V, legalism in negotiations, in propaganda, and in the councils of state, always self-serving and often hypocritical, reached its climax."⁸⁸ In the play, Henry threatened the French town of Harfleur with destruction if it failed to surrender.⁸⁹ "Harry's ability to turn his consciousness of the horror of war into a weapon of coercion is fascinating."⁹⁰ The great English victory at Agincourt which showcased the superiority of the English long-bow over French knights was celebrated by contemporary 15th-century poets, though today we remember Agincourt more because of the famous line, "we few, we happy few, we band of brothers" in Shakespeare's play.⁹¹

86. Harriss, *supra* note 46, at 35.

87. WILLIAM SHAKESPEARE, KING HENRY V, in THE COMPLETE WORKS OF WILLIAM SHAKESPEARE, *supra* note 3, at 441, act 5, sc. 2, ll. 68-70.

88. THEODOR MERON, HENRY'S WARS AND SHAKESPEARE'S LAWS 17 (1993). See also LOCKE, *supra* note 18, § 20 on the state of war.

89. WILLIAM SHAKESPEARE, KING HENRY V, in THE COMPLETE WORKS OF WILLIAM SHAKESPEARE, *supra* note 3 at 426, act 3, sc. 3.

90. ORNSTEIN, *supra* note 53, at 190. See Locke, *supra* note 18, §20 on the state of war. "But when the actual force is over, the *state of war ceases* between those that are in society, and are equally on both sides subjected to the fair determination of the law; because then there lies open the remedy of appeal for the past injury, and to prevent future harm . . ." *Id.*

91. For Henry's whole speech, see WILLIAM SHAKESPEARE, KING HENRY V, in THE COMPLETE WORKS OF WILLIAM SHAKESPEARE, *supra* note 3, at 434-35, act 4, sc. 3, ll. 24-66.

Some, perhaps many, Frenchmen at the time viewed Henry as a conqueror and usurper of the French throne. With bloody constraint, Henry V sold peace at the high price of war. In act 5, scene 2, ll. 24-67,⁹² Philip, the young Duke of Burgundy, and cousin of King Charles VI, gives a powerful speech which makes the case for peace, even today. In Burgundy's speech, Shakespeare continues in HENRY V the garden images he used in RICHARD II. Burgundy asked why "naked, poor and mangled Peace / Dear nurse of arts, plenties and joyful births / Should not in this best garden of the world / Our fertile France put up her lovely visage?"⁹³ Just as the unpruned vineyards of France are dying or growing wild in the wake of the war, so the children do not go to school and "grow like savages—as soldiers will / That nothing do but meditate on blood. . . ."⁹⁴ King Henry answers, "you must buy that peace" by accepting the demands set forth in the Treaty of Troyes.⁹⁵

*C. Reassessment of Henry V's reign: "Cheerly to sea; the signs of war advance: No king of England, if not king of France"*⁹⁶

In Shakespeare's plays, Henry IV had a difficult relationship with his son and worried about whether the prince of Wales was ready to be king. Henry IV had to face the prince's refusal to acknowledge his father's worries about his position as king ("uneasy lies the head that wears a crown") or even his illegal accession to the throne. The prince only confronted these issues after his father's death when he himself became King Henry V and waged a war of conquest in France.⁹⁷ Henry V's motto, "no king of England, if not king of France," reflects the notion that until Henry V became king of France by conquest he was not legitimately king of England.⁹⁸ Even this reality Henry wished to avoid by dressing up his invasion of France with a hereditary claim to the French throne and then in the treaty of Troyes by describing himself as the heir to the king of France.

What did Shakespeare show the audience about Henry V, a king who was the son of a usurper? Henry V seemed bent on perpetuating acts of usurpation in his own reign by seeking to take the weaker French king's crown. Henry V wanted to provide the French with the efficient government they did not have and arguably did not want from Henry. More likely Henry was fulfilling his own

92. WILLIAM SHAKESPEARE, KING HENRY V, in THE COMPLETE WORKS OF WILLIAM SHAKESPEARE, *supra* note 3, at 441, act 5, sc. 2, ll. 24-67.

93. *Id.* act 5, sc. 2, ll. 34-37

94. *Id.* act 5, sc.2, ll. 38-60.

95. *Id.* act 5, sc.2, ll. 70.

96. WILLIAM SHAKESPEARE, KING HENRY V, in THE COMPLETE WORKS OF WILLIAM SHAKESPEARE, *supra* note 3, at 422, act 2, sc. 2, ll. 192-93.

97. See CALDERWOOD, *supra* note 60, at 152, 156.

98. WILLIAM SHAKESPEARE, KING HENRY V, in THE COMPLETE WORKS OF WILLIAM SHAKESPEARE, *supra* note 3, at 422, act 2, sc. 2, l. 193.

imperial ambition to wear more than one crown with the support of the English people. Indeed only the war in France gave ambitious English nobles enough scope for their energies and deflected them from revolting against Henry.

For Shakespeare, Henry may be as efficient and ethical a ruler as the English could expect. He did everything conventionally expected of him and in turn was rewarded with the support of the majority of the English people.⁹⁹ Some Englishmen yearned for more than what Henry could have provided. But the people's quest for certainty and reassurances of peace and stability from their rulers can never be fulfilled because life and death have a way of intruding on the certain plans and ambitions of kings. Those who think that Henry should never have embarked on the glorious but ultimately futile war which caused the deaths of so many people are frustrated by his wishing to spend English money to conquer first France and then they feared (if he had lived) the rest of the world.¹⁰⁰ Much of the time, these sentiments about the king's ambition are only a significant minority position. We can see from the number of times a good leader has gone from ruling justly and in the interests of the people to exploring his own imperial ambitions that the opposition is often too weak to restrain the ambitious king's whims. Given the course of human history, Henry is the expected king with the expected support of the people.

Shakespeare's play is at best ambivalent toward kings, especially Henry V, a warrior king who played by the rules for kings and brought his people glory in battle. His war distracted both people abroad from attempting to attack his country and people at home from rebelling while a war was being waged abroad. The pain of war was felt deeply by the conquered French. Beyond the baggage boys the pain of war was not reflected very much among the English people whose patriots and profiteers were well satisfied. The English common soldiers, however, saw the dismembered, dead and injured bodies on the battlefields. The night before the battle of Agincourt, the fictional, common soldier Williams questioned the justice of the war in a conversation with the king disguised as Harry le Roy.¹⁰¹ On the eve of battle, war was still uncertainly justified in the minds of at least some of the soldiers. Williams hoped that the suffering and death would at least be for a just cause. "Behind the glory of the figure and reign of Henry V, Shakespeare lets us see the shadows. And they will not go away. All

99. Cf. RACKIN, *supra* note 24, at 72, (citing WYLIE SYPHER, *THE ETHIC OF TIME: STRUCTURES OF EXPERIENCE IN SHAKESPEARE* 28 (1976)).

100. Christopher Allmand's assessment of Henry V's kingship is quite favorable, despite his recognition that Henry's war in France was a "serious error of judgment" because Henry failed to take into account French nationalism. CHRISTOPHER T. ALLMAND, *HENRY V* 441 (1997).

101. For a discussion of this passage see WILLIAM SHAKESPEARE, *KING HENRY V*, in *THE COMPLETE WORKS OF WILLIAM SHAKESPEARE*, *supra* note 3, at 432, act 4, sc. 1, l. 143. See also RACKIN, *supra* note 21, at 243-44, 246.

flesh is grass, the grass withereth, and the flower thereof fadeth away. Here is no abiding city, and there will never be peace on earth, for man is fallen."¹⁰²

Henry's death in the spring of 1422 trying to subjugate the rest of France brought to an abrupt end his attempts to rule both England and France. The character called the Chorus intervenes at important points in this play with information for the audience and at least to some extent conveys Shakespeare's viewpoint.¹⁰³ Shakespeare's Chorus assessed Henry's short-lived attempts to rule France differently from the way Henry and his subjects saw the war in France. To Elizabethan England, Henry V was a great king. Shakespeare could not have changed that opinion, even if he had wished to do so,¹⁰⁴ or his play would never have found an audience.

But Shakespeare managed to introduce a fair amount of doubt relating to Henry's legacy. Henry's glory is alloyed with suffering, sorrow and the horrors of war. The question is whether Henry V was a hypocritical adventurer, coldly indifferent to the human costs of war and able therefore to satisfy his own personal and dynastic ambitions while he appeared as the warrior king against England's ancient enemy France? Or did Henry remain that heroic leader of the band of brothers at the battle of Agincourt? Does Shakespeare in his play, *THE LIFE OF KING HENRY V*, set forth all the facts on both sides of the story so that the playgoer can make of the action what he wishes and judge it according to his own moral playbook?¹⁰⁵ Ms. Axton can only conclude that playing out political theory through character is inherently ambiguous.¹⁰⁶

To resolve some of these ambiguities we must listen closely to the Epilogue. The play did not end at Agincourt but the Chorus pointed out the futility of the war for England. Ultimately England lost all the French territory after Henry V's death before he could consolidate his French lands. That later English loss of French territory coupled with the huge French war casualties and great destruction of the countryside woefully arrayed in Burgundy's plea for peace demonstrate Shakespeare's reservations about the government, even of the heroic king who plays by the rules. Perhaps Shakespeare had a "fundamentally tragic view of kingship."¹⁰⁷

102. MOSELEY, *supra* note 21, at 168.

103. "[T]he Chorus is there to give a sense of perspective, to establish the figure against the ground. The Chorus is simultaneously an actor in the play and a privileged voice outside it . . ." Lawrence Danson, *Henry V: King, Chorus, and Critics*, 34 SHAKESPEARE Q. 27, 29 (1983).

104. *Id.* at 36. See also MOSELEY, *supra* note 21, at 98 n.10. "Henry has been convinced his war is just, and we ought to accept that the audience would have agreed, whatever our own feelings." *Id.* at 156.

105. AXTON, *supra* note 44, at 109 (discussing Shakespeare's play *KING JOHN* and its sources). Marie Axton's complex and fascinating assessment of the history plays emphasizes Shakespeare's nuanced portrayals of English kings and their times. *Id.* For example, some of Shakespeare's sources may have been arguing for a nativist (protestant) succession in England upon the death of the Queen when Shakespeare may have been making the different point that the crown does not define England or the king. *Id.*

106. *Id.* at 114.

107. *Id.* at 107.

Shakespeare's play HENRY V shows us that we cannot trust human beings to learn the lessons of the frustrations and disappointments flowing from even a victorious war. As one generation learns that our time on earth is so finite that causing the deaths of others in aggressive wars is simply destructive, another generation grows up to take their elders' place and make the same sorts of mistakes in new circumstances. Even as one generation's wars and ambitions end, life, nevertheless, gives rise to the self-same ambitions in the next generation. The Epilogue tells us that human ambition may have no limits but that God who calls us in death may stop the follies of mortals, one generation at a time.

V. CONCLUSION: "[F]OR WITHIN THE HOLLOW CROWN/ THAT ROUNDS THE MORTAL TEMPLES OF A KING/ KEEPS DEATH HIS COURT"¹⁰⁸

These experiences and reflections on English political history in Shakespeare's plays and other works prepared the way for later seventeenth-century writers to emphasize wider participation in government. The notion that the king makes positive law, which should conform to community standards represented by natural law, allowed the king to stand above the law. The king's role as lawmaker did not, however, absolve him from meeting the moral dictates of natural law. In this way, the king was subject to the law in important instances because the validity of his ethical behavior and law-making standards was assessed according to these over-arching moral principles. Henry V, popular warrior king, did not approach the standards of the saintly Edward the Confessor but he only had to meet average requirements to succeed in satisfying the legal and ethical norms of his community. In that way, Henry could be seen to be doing justice before the people of his kingdom. Henry V escaped all these troubles of unstable government because he was a master coalition-builder. Shakespeare's Chorus, however, highlighted one of the major flaws in Henry V's government: kingship was still essentially built on the individual human person of the king. By dying too soon, Henry V doomed his son to endure a variation on the themes of Richard II's reign.¹⁰⁹

In the middle of the 1590s, Shakespeare appeared unsympathetic to Richard II, a weak king distracted by Ireland and dominated by favorites who could not see his over-mighty subjects' dissatisfaction until they raised armies to depose him. Shakespeare emphasized royal unwillingness to recognize the people's right to participate in growing the garden of England. Shakespeare's view of Henry IV who usurped Richard's throne and who is responsible for the murder of King Richard is, as history showed, that we can manage to live with Henry, despite what he did to ascend the throne, although there are consequences which all must

108. WILLIAM SHAKESPEARE, RICHARD II, in *THE COMPLETE WORKS OF WILLIAM SHAKESPEARE*, *supra* note 2, at 293, act 3, sc. 2, ll. 160–62.

109. See generally WILLIAM SHAKESPEARE, HENRY V, in 1 *THE COMPLETE WORKS OF WILLIAM SHAKESPEARE* (1960) the author refers to Henry V throughout the conclusion.

suffer, as HENRY IV, parts I and II dramatize. Neither Richard II nor Henry IV could be said to have satisfied the people's need to see the king doing justice in the interest of England. RICHARD II marked the end of the middle ages with all its ritual and splendid magnificence for the legitimate king. By then, it had become painfully obvious that legitimacy alone did not ensure good government. As the legitimate heir of the Plantagenets directly descended from William the Conqueror, Richard II was unfortunately thrust into the kingship at the age of ten, without the chance to grow up, see the government in operation and form his own opinions about governing. Is it any wonder that the trappings of legitimacy became Richard's trap and that he saw the ceremonies of kingship and government as the only reality of his rule? His dependence on a few advisors made him spend too much of England's resources on them. At the same time, Richard's reliance on his intimate advisers also short-circuited the coalition-building process of government leaving Richard isolated and without a wide-enough base of support to remain king. Richard's isolation permitted Bolingbroke's usurpation of Richard's throne to proceed without any effective opposition.

In MACBETH, electing a king did not prove sufficient to ensure good government without the people's help.¹¹⁰ At the end of the play, the people had to share the power at the moment of the next election when the army came to restore the rightful ruler. In that early medieval conception of the problem of government, legitimacy in government was the central consideration. The people ratified that concern in joining the battle to install the new king, thus representing the major form of the people's sharing in the operation of the government in MACBETH. Before the end of the play, Macbeth, with few events from his reign portrayed in the play, is defeated by a foreign army which restores order to Scotland. Malcolm, the son of the slain King Duncan, becomes the "rightful ruler" of a Scotland now ready for a hereditary kingship. The tragedy of the character Macbeth in Shakespeare's play is that he started out justified as a heroic warrior but because he was not named to succeed King Duncan as his reward for serving Scotland, he made ethical choices seriously beyond the pale and proceeded to behave unjustly. He had to be hunted down for his crimes and removed from power for consistently placing himself above the law and totally failing to do justice. At the beginning of the reign of King James I, Shakespeare's MACBETH showed the people taking decisive action in removing a tyrant from office. The strong inheritance of a natural law tradition of government bequeathed through the ages to Hooker and Shakespeare alike is balanced between the Aristotelian state which was thought to exist for the sake of the good and later Lockean principles of good government through wider participation of the commons together with the right to resist a tyrant. Shakespeare did not reach

110. See generally WILLIAM SHAKESPEARE, *MACBETH*, in 2 THE COMPLETE WORKS OF WILLIAM SHAKESPEARE (1960) the author refers to Macbeth throughout the conclusion.

extreme individualist rights positions in his plays which advocated greater sharing of governmental power and responsibility.

Like the Bible, Shakespeare's works contain principles to support varying and even contradictory conclusions about what Shakespeare may personally have thought or felt about rulers and indeed monarchy itself. In the attempt to determine Shakespeare's views about usurpation, regicide and kingship, we may be deflected from the very important insights to be gained by thinking about the plays themselves. Through Shakespeare's plays, we begin to notice the good and bad qualities and policies of average unpopular rulers (Henry IV), deposed rulers (Richard II) and above average rulers (Henry V) in English history as we watch the actions they took to rule the country and see the moral decisions they made, good or bad. The ruler's failure to do justice for the people brought tangible harms to the realm. The costs of righting the government took a large toll on the people because there was no smooth constitutional method of dealing with consistently unethical governmental decisions short of civil war or usurpation of the throne. The king's failure to do justice was not only a personal ethical lapse but also a crisis of government for the realm itself. Therefore it excites the interest of audiences today.

In his works, Shakespeare demonstrates a keen awareness of the harms to the realm caused by bad rulers, as well as of the risks society had to face from deposing rulers. He clearly articulates how and even why usurpation and regicide come about. Shakespeare recognized how great a temptation tyranny can be to rulers who disregard the boundaries of law. He therefore wrote about tyrants, ancient and modern, in a staggering array of rulers from Julius Caesar to Henry VIII, to acquaint us with the dangers of tyrannical government and illegitimate rule and of attempting to throw off tyranny.¹¹¹ Shakespeare came from an age still steeped in the observance of "degree priority and place," as his character Ulysses put it, and guided by the Aristotelian ethics connecting law, politics and morality in a concept of government for the common good before Locke's loosening of the hierarchical bonds to refocus on the individual. As such, his works have much to say to both those who wanted to keep order and hold chaos at bay and to those who saw opportunities for greater participation of merchant groups and others in parliament in governing the realm.

Looking forward and looking back at a final pageant of Shakespeare's kings, we see that time of transition with parliament and sovereign in a tense balance. Concerns about legitimacy affect the king's ethical behavior in the day-to-day administration of his government at home as well as in international affairs. Whether the king had a right to wear the crown or whether he was a usurper often determined his ability to do justice before his people, as Shakespeare shows us. The ethics of treason, usurpation and regicide casts a pall over monarchy. So many kingships began either in reaction to the tyranny or weakness of the old king

111. Laarhaven, *supra* note 8, at 333.

or in the new king's usurpation of the throne for himself. Tyranny, arising from the king's temptation to use his position of power as the head of state for his own personal interest and gain, figures very prominently in Shakespeare's works. From these works, we can conclude that Shakespeare was desirous of seeing governmental power shared more equitably to include a broader range of people in government and that he also explored whether the form government took (republic or monarchy)¹¹² helped to spread governmental power equitably and more broadly. Some of the same principles were later enshrined in Locke's *Second Treatise*, which advocates a constitutional structure of governmental accountability, although many of the individualist implications of Locke's consent theory cannot be overlaid onto Shakespeare's works without disfiguring, or even destroying, them.¹¹³ It is important to emphasize that Shakespeare did not reach the position of being an advocate. Shakespeare's plays never went so far as Locke who sought to obtain political power for his interest group even by revolution, if necessary. Shakespeare carefully used illustrations of human weakness in his characters to demonstrate the need for reform but he always stopped well short of advocating revolution.

That England was subjected to the vicissitudes of an unstable monarchy surely accounts for some of Shakespeare's ambivalence toward Henry V. It is apparent that monarchy, as Shakespeare surveyed it, did not work. Part of the difficulty is in the nature of monarchy itself: government was too personal and dependent on one man alone to provide continuity for a nation. Additional difficulties arose from the poor judgments and choices of the individual kings. The death of the old queen and dawning of the new reign of James I marked the end of all those public musings about government and the nature of tyranny so popular toward the end of Queen Elizabeth's reign. After his psychological study of the desire to seize the throne in *MACBETH*, Shakespeare expended little more energy on kingship. By 1603, Shakespeare's plays no longer tolerated usurpers or the idea that they may have brought some good and useful change to the country, along with their murderous ways. In the mid-1590s, succession to the throne was a large concern for England because the aged and childless Elizabeth had designated no heir. Then Shakespeare had been willing to portray Bolingbroke, the usurper, as a protector of property rights by recovering his lands which the king had denied him, especially for the great lands owners in England

112. In Shakespeare's *RAPE OF LUCRECE*, the Roman monarchy was already an ineffective form of government, and the people drove out the king when his son raped Lucrece around 510 B.C. See generally WILLIAM SHAKESPEARE, *THE RAPE OF LUCRECE*, in *THE COMPLETE WORKS OF WILLIAM SHAKESPEARE*, *supra* note 25. In *JULIUS CAESAR*, Brutus was willing to die to keep the Roman Republic alive and to kill Caesar to prevent him from killing the Roman Republic. See generally WILLIAM SHAKESPEARE, *JULIUS CAESAR*, in *THE COMPLETE WORKS OF WILLIAM SHAKESPEARE*, *supra* note 25. At the time of Caesar's assassination in 44 B.C., however, the Roman Republic was no longer strong enough to remain alive and Octavian, Caesar's grand nephew and adopted heir, became *princeps*. *Id.*

113. See generally *THE SELECTED POLITICAL WRITING OF JOHN LOCKE* (2005).

during his reign.¹¹⁴ Shakespeare was also willing to show Caesar's murder in the Senate for threatening the continued existence of the once glorious Roman republic. In 1606, still early in James I's reign, however, the new king was given a chance to establish his own relationship with the English people. Shakespeare's plays together with the widespread analysis of the nature of monarchy during the 1590s ultimately proved to be an important step in the development of constitutional monarchy which was achieved in later centuries. By the time Locke wrote after the English Civil War and the Restoration, which extended to the theaters, audiences' knowledge of Shakespeare's history plays figured in the general heritage of the people. They provided some of the background and expertise about how government should be structured. The strong inheritance of a natural law tradition in government bequeathed through the ages allows these plays in the course of their dramatic action to present principles of good government, showing participation of lords and commons together with a reservation of the right to rebel, thus setting forth a conception of constitutional government some three quarters of a century before Locke wrote but Shakespeare's constitution was not so oriented toward the later Lockean individual economic rights. In Shakespeare's plays, the common good of society plays a greater role.

As Louise Halper wrote in her discussion of *MEASURE FOR MEASURE*, Shakespeare "supports neither monarchical principle nor absolutism, but writes . . . a brief for a more communal and collective discourse than that offered by the developing legal rhetoric of the rule of law protecting the rights of the individual market participant."¹¹⁵ Some followers of the late Professor Leo Strauss emphasized in their readings of primary texts that the obvious meaning and interpretation overlays a deeper, secret meaning available to the *cognoscenti* who peer more closely into the meaning of the texts over a long period of study. In terms of Shakespeare's plays, Harold Goddard contrasted the surface meaning of *HENRY V* with the "subversive" ironic interpretation.¹¹⁶ In presenting this personal reading of Shakespeare's views of resistance to governmental tyranny, I hope I have set forth a position for discussion of limits on government power both relevant to us and faithful to the history of Shakespeare's time, though stretching forward to Locke. While there is no "plain meaning" and we are faced with more indeterminacy than might at first be apparent, core values about good government emerge from Shakespeare's plays.

114. See Patrick Collinson, *The Monarchical Republic of Queen Elizabeth I*, in *ELIZABETHAN ESSAYS* 31–57 (1994).

115. Louise Halper, *Measure for Measure: "Law, Prerogative, Subversion,"* 13 *CARDOZO STUD. L. & LIT.* 221, 252 (2001).

116. HAROLD GODDARD, *THE MEANING OF SHAKESPEARE* 215–68 (1951), *quoted in* Richard Levin, *Hazlitt on Henry V, and the Appropriation of Shakespeare*, 35 *SHAKESPEARE Q.* 134, 134 (1984).