

**RICHARD II: SHAKESPEARE'S LEGAL BRIEF
ON THE ROYAL PREROGATIVE AND THE
SUCCESSION TO THE THRONE**

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Richard II: Shakespeare's Legal Brief on the Royal Prerogative and the Succession to the Throne

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The resolution of legal problems can affect not only the lives of the parties involved, but also the structure of society, and indeed its intellectual and literary climate. Legal arguments thus often transcend their time and become models for future thought and action. William Shakespeare understood the importance of law and its effect on human history. In this article, Dr. Gohn examines the legal arguments in Richard II, demonstrating how Shakespeare used the historical overthrow of King Richard II to justify the absolute power of the monarch and also provide for a method of choosing the monarch's successor when the rules of succession failed. According to Dr. Gohn, Shakespeare advocated this theory to resolve the problem of succession that was developing under the current monarch, Elizabeth I, as well as to justify absolutist political theory. In so doing, Shakespeare also depicted a nation in a time of constitutional crisis, vividly demonstrating the enormous practical consequences of a breakdown of the legal order.

It is principally at moments of social crisis that artists are found dealing with laws and constitutions. Elizabethan England was entering one such crisis in 1595. The land was settling into a ten years' period of anxiety over the royal succession. The Queen, Elizabeth, unmarried and past her childbearing years, had no logical successor or close relative. Moreover, the revival of the ancient debate concerning the royal prerogative¹ complicated this anxiety. Elizabeth and her predecessors in the House of Tudor had maintained for a century the position that the Monarch had the right to rule without check, and that the courts, the Parliament, and the Privy Council exercised power in subordination to the monarch.² The days of such royal absolutism, however, were num-

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1. The royal prerogative was the right of the King to take any action at his own discretion, regardless of whether it violated customary norms. See 3 B. WILKINSON, *THE CONSTITUTIONAL HISTORY OF MEDIEVAL ENGLAND, 1216-1399*, at 30-32 (1958) (discussing evolution of royal prerogative). The concept had been resisted by the English nobility during the Middle Ages, as evidenced by the Magna Carta and its subsequent reissues. See A. HOGUE, *ORIGINS OF THE COMMON LAW* 50-51 (1974) (discussing Magna Carta as limitation on arbitrary royal action).

2. Robert Burkhart has collected a number of Tudor-era homilies urging obedience and non-resistance to lawfully-constituted authorities, regardless of the quality of the authorities' actions. Burkhart, *Obedience and Rebellion in Shakespeare's Early History Plays*, 55 *ENG. STUD.* 108, 108-09 (1974). For example, *An Homilee agaynst disobedience and wyful rebellion* notes that "Kinges, Queenes, and other Princes . . . are ordeyned of God" and that rebellious subjects therefore "disobey GOD and procure theyr own damnation." *An exhortation* notes that "we must referre all judgement to god, to kynges and

bered. The Puritans, who would briefly overthrow the Crown in the next century, were gaining influence, and they were in the vanguard of those who believed that Parliament, Courts, and Council exercised an independent power beyond the Monarch's reach.³

It was at this juncture that William Shakespeare wrote *Richard II*,⁴ attempting to explore the succession and the royal prerogative in an unusually legal and theoretical way. Although this was not of course Shakespeare's sole intent in writing *Richard II*, it was in many ways the heart of the play. For Shakespeare saw in the events of the years 1398-1400 a compelling crystallization of these two grave constitutional issues in action. His dramatization of these events provides a striking instance of how a consummate artist can capture the essence of legal thinking in dialogue and action—to the extent that his work may even be regarded as a brief submitted to the court of public opinion.

I. THE HISTORICAL CONSTITUTIONAL PROBLEM

Historians generally attribute the downfall of Richard II in 1399 to the ordinary run of factional politics.⁵ According to the usual historians' consensus, Richard, after succeeding to the throne in his youth, had undergone a lengthy protectorship, during which a council conducted government affairs. This protectorship became for Richard an object of lifelong resentment. Upon achieving majority, Richard reacted by surrounding himself with a small faction of friends and supporters, which comprised the royal household.⁶ Together they tried to concentrate power in the Crown, rendering the magnates of the realm less influential.⁷ The members of the royal household quarreled with the magnates, who periodically contrived to force Richard to abandon his circle of favorites. Richard, in turn, tried to dilute the power of the magnates by taxing them heavily, by creating many new titles, and finally by trying to undermine the nobility's chief weapon, Parliament, through a puppet Parliamentary Com-

rulers, and judge under them, which be gods officers, to execute justice." *Id.* at 109. Elizabeth clearly encouraged such views. See L. SMITH, *ELIZABETH TUDOR* 60-64 (1975) (Elizabeth believed without reservation in divinity of kings and recognized ruler's concomitant responsibility to God).

3. See generally P. COLLISON, *THE ELIZABETHAN PURITAN MOVEMENT* (1967); P. MCGRATH, *PAPISTS AND PURITANS UNDER ELIZABETH I* (1967); L. STONE, *THE CAUSES OF THE ENGLISH REVOLUTION, 1529-1642* (1972).

4. *Richard II* may be dated to 1595 with a considerable degree of certainty. Wilson, *Introduction to KING RICHARD II*, at vii, vii-x (J. Wilson ed. 1939).

5. Most prominent recent historians adopt the following account of Richard's fall from power. See R. JONES, *THE ROYAL POLICY OF RICHARD II: ABSOLUTISM IN THE LATER MIDDLE AGES* 179 (1968) (King's government could not endure because of loss of support of influential classes); R. TUCK, *RICHARD II AND THE ENGLISH NOBILITY* 209-19 (1973) (Richard's fall attributed to loss of political supporters in Parliament and dubious legality of Bolingbroke's disinheritance and banishment). See generally A. STEEL, *RICHARD II* (1941). Historian Bernard Wilkinson is most emphatic that Bolingbroke's practical problems in 1399 were far greater than his theoretical ones. Wilkinson, *The Deposition of Richard and the Accession of Henry IV*, in 1 *HISTORICAL STUDIES OF THE ENGLISH PARLIAMENT* 329, 330 (F. Fryde & E. Miller eds. 1970).

6. Richard gave members of the royal household land grants, endowments, offices, and titles, thereby securing their support. In effect, he created another class of nobles who, unlike the magnates of the realm, were loyal to him.

7. The magnates were the men with the rank of Earl or Duke. They were the wealthiest landowners, the traditional leaders in war, and influential advisers to the king, often being closely related to him. For example, John of Gaunt (Duke of Lancaster) and Thomas of Woodstock (Duke of Gloucester), two of the most influential magnates (and opponents of Richard), were the King's uncles. The magnates of the realm, with the support of the Commons in Parliament, were a formidable political force.

mittee.⁸ Eventually, Richard's support among the nobility was so slight that a coup d'état occurred during his convenient absence in Ireland in March of 1399. The coup succeeded simply because those subjects who did not participate were unwilling to oppose it. When Richard returned, the coup already was complete. Richard's cousin Henry Bolingbroke, the leader of the coup, had effectively concentrated power in his own hands.

But this sad story had its constitutional ramifications as well. Bolingbroke, the leader of the rebellion, personified the constitutional breakdown occurring under Richard.⁹ Two years before Bolingbroke's uprising, Richard had ordered his and Bolingbroke's mutual uncle, Thomas of Woodstock, Duke of Gloucester, seized and transported to Calais. There, Thomas Mowbray, Duke of Norfolk, one of Richard's trusted henchmen, had held Gloucester in custody. During this imprisonment Gloucester mysteriously died, almost certainly at Richard's behest.¹⁰ Richard was thus accomplice to a murder. Unlike most royal involvement in dark deeds, this act was neither well concealed nor easily forgivable nor properly glossed over with legal formalities. Gloucester had been popular and guilty of no conspicuous wrongdoing, and there had been no formal legal procedures in his arrest, deportation, or killing.¹¹

Yet it was not possible to bring Richard to trial even if there had been proof against him. Bringing the King to the bar would have been, in medieval eyes, something akin to splitting him into two personalities. The King *personified* the law. He was the source of all legislative power;¹² a crime was considered to

8. Richard's detractors charged that Richard used the Committee, set up by Parliament, to further his personal objectives, and that the Committee exceeded its delegated powers. See note 18 *infra* (discussing parliamentary committee).

9. Actually, the constitutional breakdown under Richard was but one example of the inability of the medieval English political system to deal with unlawful actions by the King. Earlier examples included the Barons' Revolt against King John that resulted in the Magna Carta, Simon de Montfort's revolt against Henry III in 1264, and a succession of revolts against Edward II in the 1320s. Bolingbroke's rebellion was significant because it was the first successful rebellion that resulted in an outsider being placed on the throne. In 1327, rebels did capture and murder Edward II, but they placed his son, Edward III, on the throne.

10. Contemporary accounts clearly connected Richard with the death. See L. DULS, RICHARD II IN THE EARLY CHRONICLES 71-79 (1975) (Saint Alban chronicles contend Richard ordered Mowbray and four henchmen to suffocate or strangle Gloucester).

11. Although some accounts conclude that Richard arrested Gloucester for insurgency, see *id.* at 88-90 (several chronicles suggest that Gloucester had conspired to overthrow Richard), modern historians do not so justify Richard's actions. See A. STEEL, *supra* note 5, at 231-39 (even if Gloucester conspired to overthrow the Crown, Richard did not follow established procedures in securing his arrest and execution). In truth, Gloucester was probably murdered for his popularity, for his leadership of the faction supporting a continuation of the war with France, and perhaps for plotting against his nephew Richard. See B. TUCHMAN, A DISTANT MIRROR 579 (1978).

12. The legislative relationship of the King and the Parliament in 1398 was not so theoretically clear as the relationship between the King and the courts. See note 13 *infra* (discussing relationship between the King and the courts). From the Norman Conquest onward, the King and Council together conducted the nonjudicial lawmaking, though initially the King's role was clearly predominant. See W. McKECHNIE, MAGNA CARTA 253-54 (2d ed. 1914) (lawmaking not part of Council's function at first; institution grew to become Parliament). Chapter 14 of the Magna Carta fixed the composition of the *commune concilium* and Chapter 12 gave it power to consent to or veto taxation. Magna Carta chs. 12 & 14, reprinted in McKECHNIE, *supra*, at 248; see 1 H. TAYLOR, THE ORIGIN AND GROWTH OF THE ENGLISH CONSTITUTION 387 (1896) (Magna Carta clearly established right of national assembly to join with King in ordaining taxes). As the history of Richard's later years makes clear, however, Parliament remained largely an instrument of the royal will. Edwards, *The Parliamentary Committee of 1398*, in 1 HISTORICAL STUDIES OF THE ENGLISH PARLIAMENT 316, 327-28 (E. Fryde & E. Miller eds. 1970); see also B. WILKINSON, *supra* note 1, at 84-94 (discussing ebb and flow of parliamentary independence).

be a breach of the King's peace. The King also was the chief magistrate and source of all judicial power.¹³ Finally, the King was the head of the State; to say anything against him was likely to be treason.¹⁴

Bolingbroke, whether from motives of familial loyalty, partisanship, or personal ambition, chose what was probably the best course within these imposing legal constraints to expose Richard's complicity in Gloucester's death. He accused Richard's *agent*, Mowbray, of treason for his hand in Gloucester's death, and forced the issue to be settled through trial by combat in the Court of the Constable and the Marshal.¹⁵ The beauty of this scheme was that a trial in this court involved no giving or weighing of evidence. If Bolingbroke had won the

during period before Richard). See generally G. SAYLES, *THE KING'S PARLIAMENT OF ENGLAND* (1974) (providing history of Parliament until Richard's reign).

Although the King's accountability to the Parliament was questionable as a theoretical or practical matter, he was still viewed as being subject to *the law*. Bracton, writing in the thirteenth century, a hundred years before Richard's reign, said:

The king must not be under man, but under God and under the law, because law makes the king, [Let him therefore bestow upon the law what the law bestows upon him, namely, rule and power.] for there is no *rex* where will rules rather than *lex*.

2 BRACTON ON THE LAWS AND CUSTOMS OF ENGLAND 33 (G. Woodbine ed., S. Thorne trans. 1968) [hereinafter BRACTON]. Bracton himself notes, however, that a King who fails to rule or judge wisely is subject only to divine sanction:

If it be asked of him, since no writ runs against him, there will [only] be opportunity for a petition, that he correct and amend his act; if he does not, it is punishment enough for him that he await God's vengeance. No one may presume to question his acts, much less contravene them.

Id. In medieval theory, therefore, the King was thus above all earthly sanctions to enforce his submission to Parliamentary lawmaking.

13. The King was the chief judge and the fountainhead of judicial power. This was not disputed either in the Middle Ages, BRACTON, *supra* note 12, at 304, or in the highly anti-Royalist period of the Seventeenth Century, following Shakespeare's age. HALE'S PREROGATIVES OF THE KING 179 (D. Yale ed. 1976). See generally 1 W. HOLDSWORTH, *A HISTORY OF ENGLISH LAW* 32-38 (7th ed. 1956); B. WILKINSON, *supra* note 1, at 152-62.

14. A crime against the King, lese-majesty, was the most serious of all crimes. See BRACTON, *supra* note 12, at 334 ("The crime lese-majesty takes many forms, one of which is where one rashly compasses the King's death or does something or arranges for something to be done to the betrayal of the lord king or of his army"). A person committed treason by inciting remedy or reform in any matter touching the King's person, his government, or his regality in a manner the Lords declared treasonous. 3 ROTULI PARLIAMENTORUM 408 (J. Strachey ed. 1767) (medieval record of Parliament) [hereinafter ROT. PARL.].

It is not clear whether mere words spoken against the King constituted treason during Richard's reign. In this respect, the historical Bolingbroke may have had a less daunting body of legal authority to face than Shakespeare's Bolingbroke. In putting all of Bolingbroke's accusations in heavy periphrasis in the first two acts, Shakespeare seems to recognize a new judicial doctrine of treason that includes treasonous words. Bolingbroke, in fact, helped to develop this doctrine when he became Henry IV. See J. BELLAMY, *THE LAW OF TREASON IN ENGLAND IN THE LATER MIDDLE AGES* 107, 116-20 (1970) (Henry IV executed several men for uttering treasonous words).

Although treasonous words probably were not technically punishable at the end of the fourteenth century, they frequently were penalized. Richard had his henchmen falsely accuse of treason those who said critical, abusive, or scandalous things about him. The Court of Chivalry had jurisdiction over these disputes, and trials in the Court of Chivalry were trials by combat. The indictments issued by Henry's Parliament against Richard specifically noted this practice. 3 ROT. PARL., *supra*, at 420b (Item No. 44).

15. The Court of the Constable and the Marshal, also called the High Court of Chivalry, primarily tried treasons and homicides the defendant allegedly committed abroad, when no remedy at common law existed. If the appellant could not prove his case by producing evidence, he offered to support his accusation in combat. The punishment for defeat varied with the crime. If the appeal was treason, "the vanquished party was disarmed . . . and drawn behind a horse to the execution site, where he was beheaded or hanged." G. SQUIBB, *THE HIGH COURT OF CHIVALRY* 22 (1959).

combat, he would have proved Mowbray guilty in the eyes of the law and secured a spectacular and bloody execution for him.¹⁶ He would have obtained the medieval equivalent of declaratory relief.

When the combat was about to begin, however, Richard stopped the contest and banished both the combatants. Richard acted within his rights¹⁷ in stopping the combat. Nevertheless, that he did so with the advice and consent of the Parliamentary Committee, which exercised highly questionable powers, added a taint of illegality to the proceedings.¹⁸ Further, although Richard used a customary prerogative in banishing the combatants, he certainly was not implementing a recognized judicial penalty.¹⁹ His actions therefore frus-

16. For the original version of the rules of combat, see *The Ordenaunce and Fourme of Fyghting within Listes*, 1 BLACK BOOK OF THE ADMIRALTY 300, 325 (T. Twiss ed. 1871) [hereinafter *The Ordenaunce and Fourme of Fyghting*].

17. Such regal interference is also recorded as having occurred during the reign of Bolingbroke's grandson, Henry VI. See [Talbot v. Ormond,] 4 ROT. PARL., *supra* note 14, at 199. The "Ordenaunce" provided for this:

And yif it happen so that the Kyng wolde take the quarell in his hande and make them accordid withoute more fytting, than the conestable takyng the toon partie, and the merchall the toothir, and lede them afore the Kyng. . . . they shalbe ledde oute of the gate of the listes evenly. . . .

The Ordenaunce and Fourme of Fyghting, *supra* note 16, at 325-27.

18. For an account of the Committee's brief history, see the relevant passages from the Rolls of Parliament, reprinted in SELECT DOCUMENTS OF ENGLISH CONSTITUTIONAL HISTORY 1307-1485, at 175-78 (S. Chrimes & A. Brown eds. 1961). The Committee's original membership of eighteen included Bolingbroke's father, John of Gaunt, as well as Richard's henchmen Bushy and Green. The scope of its authority at the date of its inception, 31 January 1398, was to consider various petitions to the King. Edwards, *supra* note 12, at 317. Richard had the Rolls fraudulently altered to expand the powers of the Parliamentary Committee. *Id.* at 317-20. An example of the Committee's overreaching was its revocation of Bolingbroke's and Mowbray's powers of attorney to receive any inheritances during their exile. *Id.* at 322.

The Parliamentary indictment of Richard alleged that he intended the Committee to replace Parliament. 3 ROT. PARL., *supra* note 14, at 418b. Historians, however, have debated this issue. See IV T. TOUT, CHAPTERS IN THE ADMINISTRATIVE HISTORY OF MEDIAEVAL ENGLAND 35-41 (1928) (Richard's willingness to rely on Committee of Parliament for authority partially rebuts prevailing view that extension of Committee's powers indicated Richard's desire to abolish Parliament); Edwards, *supra* note 12, at 325 (Richard may have used Parliamentary Committee only as instrument of vengeance, not to replace Parliament).

19. Although the Magna Carta recognized the judicial penalty of exile, MAGNA CARTA, ch. 39, reprinted in MCKECHNIE, *supra* note 12, at 375, the sanction had fallen into disuse by Richard's time and was used only against criminals who had taken sanctuary. 11 W. HOLDSWORTH, *supra* note 13, at 569. Moreover, even the Magna Carta mandated legal proceedings prior to the pronouncement of exile. See MAGNA CARTA, *supra*, ch. 39 ("no freeman shall be . . . exiled . . . except by the lawful judgment of his peers"). For a discussion of sanctuary and exile, see BRACTON, *supra* note 12, at 382-83; L. PIKE, A HISTORY OF CRIME IN ENGLAND 253 (1968) (reprinted from 1873-76 edition); 3 W. HOLDSWORTH, *supra* note 13, at 303-06; Reville, L' "Abjuratio Regni": Histoire D'une Institution Anglaise, 50 REVUE HISTORIQUE 1-42 (1892). Neither Bolingbroke nor Mowbray, however, was a "sanctuary-man." Although a series of statutes starting in 1529 abolished the penalty of abjuration, 22 Hen. VIII, c. 2 (1530), it was revived in Shakespeare's day, 35 Eliz., c. 1, §§ 2-3; c. 2, §§ 8-10 (1593) (imposing abjuration on Roman Catholics); see 11 W. HOLDSWORTH, *supra* note 13, at 569-71 (discussing revival of punishment of exile). Shakespeare's audience clearly was aware of the novelty of the penalty.

Nonetheless, exile was somehow a customary, though technically illegal, part of the nonjudicial royal prerogative. Edward I, by edict, banished the Jews from England in 1290. Cal. Close Rolls, 1288-1290, at 95-96 (1904); see L. SALZMAN, EDWARD I 94-96 (1968) (Jews remaining in England after November 1290 faced execution). In practice, therefore, the Magna Carta did not entirely abolish exile without trial. Nevertheless, the exiles of Bolingbroke and Mowbray appear to be an abuse of the royal prerogative. The articles of indictment tendered by Henry's Parliament, which should be viewed skeptically, charged that Richard banished Bolingbroke "without the slightest legitimate cause . . . against all justice, and the laws and customs of his kingdom, according to the military law in this case." 3 ROT. PARL.,

trated the limited justice Bolingbroke was seeking.

And there was worse to come. In February of 1399, Bolingbroke's father, John of Gaunt, Duke of Lancaster, the richest and most powerful of the English nobility, died. The exiled Bolingbroke was to have been his heir.²⁰ Together with the Parliamentary Committee, Richard revoked Bolingbroke's powers of attorney. At the same time, Richard committed custody of Bolingbroke's lands to the Parliamentary Committee,²¹ which in turn made a number of grants of the Lancastrian possessions to Richard's favored supporters, "until Henry . . . shall have sued the same out . . . according to the law of the land."²² Although these grants supposedly terminated when Bolingbroke reclaimed possession, Richard had effectively disinherited Bolingbroke.²³

Having done so, Richard had put himself into a position in which his rivals could accuse him of a theoretical contradiction of immense precedential danger. His own claim to monarchy rested, under one construction, on the principle of Inheritance. The Crown was not real property, but it usually descended the same way.²⁴ By undermining the principle of Inheritance of real property, Richard effectively undermined the principles upon which his own prerogative and monarchy arguably rested. To the extent Richard considered such matters, he might have considered his royal claims to rest on Divine Designation rather than Inheritance.²⁵ But others might well, and dangerously, perceive an inconsistency.

Conventional English political theory of both the Middle Ages and the Renaissance ordinarily condemned all attempts to overthrow a Monarch as treasonous.²⁶ Richard's actions, however, now raised the truly extraordinary situation that might have permitted revolt.²⁷ Society's social contract with the Monarch obligated the Monarch to defend and supervise social institutions,

supra note 14, at 419a (translation). This accusation may mean simply that Richard was unjust "in this case," or that he should not have imposed such a sentence without a complete trial.

20. For a reprint of John of Gaunt's will, see S. ARMITAGE-SMITH, *JOHN OF GAUNT* 420-36 (1964) (in Anglo-Norman). Although the will contained specific bequests to Bolingbroke, the bulk of the estate passed to him through a residuary clause. *Id.* at 435.

21. 3 ROT. PARL., *supra* note 14, at 372b.

22. Cal. Pat. Rolls, 1396-1399, at 563. Similar grants are to be found in the following: Cal. Close Rolls, 1397-1399, at 448-506; Cal. Fine Rolls, 1391-99, at 293-97, 303. See R. JONES, *supra* note 5, at 99 & n.22 (holders of Lancastrian estates retained them as long as land in King's hands).

23. Richard strayed just outside the bounds of the law. Parliament never authorized the Parliamentary Committee to parcel out the Lancastrian estates. The Committee, however, achieved apparent authorization by simple forgery and alteration of the parliamentary records. See note 18 *supra*. These actions violated the forms of procedure more than the substantive law of property and inheritance.

24. Exceptions existed, however. See notes 30-42 *infra* and accompanying text (discussing five competing theories of how Crown descended: Divine Designation, Inheritance, Conquest, Acclamation, and Parliamentary Designation). William the Conqueror's strongest claim, for example, was not Inheritance, but Conquest. Edward II's accession to the throne during the lifetime of his father, Edward I, could not have been by Inheritance but was by Parliamentary Designation or Acclamation.

25. Of course, if Richard had been picked by God to rule, it had been through the mechanism of Inheritance. Richard was the son of Edward, the "Black Prince," the eldest son of King Edward III. The Black Prince died before his father did, and thus Richard became Edward III's heir.

26. See J. BELLAMY, *supra* note 14, at 11-14 (treason against King most serious crime); Burkhart, *supra* note 2, at 108 (Tudor view required obedience to King).

27. Revolts themselves were not uncommon, see note 9 *supra*, but to the medieval mind they were aberrations; the entire political structure rested on the presumption that the King would govern wisely and well.

such as inheritance and succession.²⁸ When the Monarch actively and grossly perverted those institutions and processes instead of protecting them, society's consideration failed, and it might have the right to rescind. This was particularly true if the Monarch's actions undermined the very principles that, under the social contract, gave the royal prerogative legitimacy. By disinheriting the powerful Bolingbroke, Richard perverted the principle of Inheritance, arguably justifying revolt.

As a practical matter, these actions finished Richard. They prepared the way for Bolingbroke's return to England and his capture, deposition, and murder of Richard. Yet Richard's actions did not provide Bolingbroke an obvious *theoretical* justification for his inevitable insurgency. A theoretical justification was so essential that Bolingbroke appointed a lawyers' committee to consider the problem.²⁹ The committee justified the insurgency through the promulgation of an official account of events.

In order to be even marginally persuasive, the official account had to legitimize Bolingbroke's return in arms, Richard's deposition, and Bolingbroke's own ascendancy. It was this last issue that was both the most important and most troubling problem. The English Crown historically has been claimed on the basis of at least one of five legal theories: Conquest, Divine Designation, Inheritance, Acclamation, or Parliamentary Designation.³⁰ It was from these five alternatives that Bolingbroke and his committee were forced to choose.

The facts of Bolingbroke's accession most strongly called Conquest to mind, but Bolingbroke's committee rejected this theory as a matter of course. Conquest as a theoretical basis not only lacked the legitimacy Bolingbroke sought, but also could be used by future rebels as justification for their own actions—an intolerable situation. Thus, neither the Parliamentary record nor the writings of the Lancastrian apologists presented Bolingbroke's ascendancy as Conquest or rebellion.³¹ They could not entirely obscure Bolingbroke's contempt of exile, but they avoided this problem by declaring the exile illegal and thus a nullity.

Absence of Conquest meant that Henry could not have taken the Crown directly from Richard. But if not from Richard, then from whom? The hand of God, so conspicuous in bestowing the Crown on Richard, who had received it by direct succession, was conspicuously absent here, primarily because Bolingbroke had preempted God's role by helping himself. Although Bolingbroke did assert that God was one of his guarantors when he formally claimed

28. See L. SMITH, *supra* note 2, at 60-64 (Elizabeth understood that along with royal prerogative, ruler bore many responsibilities).

29. See 2 W. STUBBS, *CONSTITUTIONAL HISTORY OF ENGLAND* 528 (1883) (committee carefully elaborated articles of deposition and drew up statement of resignation for Richard).

30. See generally W. STUBBS, *supra* note 29; Galbraith & Clarke, *The Deposition of Richard II*, 14 BULL. OF JOHN RYLANDS LIBRARY 125 (1930); Lapsley, *Richard II's "Last Parliament"*, 53 ENG. HIST. REV. 53 (1938); Lapsley, *The Parliamentary Title of Henry IV*, 49 ENG. HIST. REV. 423-49, 577-606 (1934) [hereinafter Lapsley, *The Parliamentary Title*]; Richardson, *Richard II's Last Parliament*, 52 ENG. HIST. REV. 39 (1937); Wilkinson, *The Deposition of Richard II and the Accession of Henry IV*, in *HISTORICAL STUDIES OF THE ENGLISH PARLIAMENT* 329 (E. Fryde & E. Miller eds. 1970).

31. In claiming the Crown, Bolingbroke hinted of this doctrine. See text accompanying note 50 *infra* (Bolingbroke's speech).

the throne,³² Divine Designation could not serve as his major justification.

Nor did the ordinary rules of Inheritance reach the proper result for Bolingbroke. Edmund Mortimer, the infant Earl of March, stood nearer in inheritance to the Crown than did Bolingbroke.³³ Although "the strict rule of hereditary descent had not yet received positive and formal recognition,"³⁴ Inheritance was nevertheless a meaningful, powerful concept. Therefore, because he could not be Richard's heir by intestate succession, Bolingbroke arranged to become Richard's heir by devise.

Bolingbroke and his committee visited Richard in the Tower of London, where he was imprisoned, and presented him with a series of indictments of his misbehavior in office. Upon reading them, according to the official account,³⁵ Richard declared himself ready to resign. He then stripped off his regalia, a symbol of extreme importance,³⁶ and freely resigned his office, calling upon the nation to accept Bolingbroke as his successor.³⁷

Scholars have debated fiercely whether Parliament in Richard's time was

32. 3 ROT. PARL., *supra* note 14, at 422-23; see text accompanying note 50 *infra* (Bolingbroke's speech).

33. Edmund was descended from Edward III's second son, Lionel of Clarence, and thus had a superior claim to that of Bolingbroke, who was descended from Edward's third son, John of Gaunt. 1 H. TAYLOR, *THE ORIGIN AND GROWTH OF THE ENGLISH CONSTITUTION* 513 (1896).

34. *Id.*

35. 3 ROT. PARL., *supra* note 14, at 416-17.

36. For an excellent discussion of the symbolism of divestiture, see Ranald, *The Degradation of Richard II: An Inquiry into the Ritual Backgrounds*, 7 *ENG. LITERARY RENAISSANCE* 170, 170 (1977) (Shakespeare's divestiture represents Richard's reduction in rank from king to knave).

37. The Parliamentary Report, 3 ROT. PARL., *supra* note 14, at 416-17, and the Lancastrian chroniclers agree that a Parliamentary deputation went to Richard while he was in captivity in the Tower. According to them, the committee secured Richard's willing abdication, including a ceremonial divestiture of his regalia and an expression to the Parliament that he wanted Bolingbroke as his successor. Froissart gives a representative account of the Lancastrian position:

Than Kynge Rycharde was brought into the hall, apparelled lyke a Kynge in his robes of estate, his septer in his hande, and his crowne on his heed: than he stode up alone, not holden nor stayed by no man, and sayde aloud: I haue been kynge of Englande, duke of Acquytany, and lorde of Irelande, aboute xxii. yeres, which sygnory, royalte, cepter, crowne, and herytage, I clerely resygne here to my cosyn Henry of Lancastre: and I desyre him here in this open presence, in entrynge of the same possession, to take this septour: and so deliuered it to the duke, who take it. Then Kynge Rycharde toke the crowne fro his heed with bothe his handes and set it before him, and sayd: Fayre cosyn, Henry duke of Lancastre, I gyue and delyuer you this crowne, wherwith I was crowned Kynge of Englande, and therewith all the right thereto dependyng. The duke of Lancastre took it, and the archebyssshop of Caunterbury toke it out of the dukes handes.

2 SIR JOHN FROISSART'S *CHRONICLES OF ENGLAND, FRANCE, SPAIN, PORTUGAL, SCOTLAND, BRITANY, FLANDERS AND THE ADJOINING COUNTRIES* 751-52 (J. Bouchier & Lord Berners trans. 1812) (reprinted from 1524 ed.).

This story is almost certainly a complete fabrication. Such acquiescence from Richard would have been incredible, given the fierce resentments, rages, and tears attributed to him by Jehan Creton, his friend who was with him in captivity. See Creton, *Translation of a French Metrical History of the Deposition of King Richard the Second, Written by a Contemporary*, 20 *ARCHAEOLOGIA* 1, 149 (J. Webb, ed. and trans. 1824); *CHRONIQUE DE LA TRAISSON ET MORT DE RICHARD DEUX* 216-18 (B. Williams ed. 1846) (Richard so enraged with Bolingbroke's conduct that he scarcely could speak; Richard paced the room, and accused Bolingbroke of treason). The order to keep Richard in the Tower of London might be attributed to the inflammatory effect that his presence could have had on the public. A more realistic explanation, however, is that Richard probably would have repudiated the official account of his supposed abdication. For a more detailed analysis of the accuracy of the official account, see M. CLARKE, *FOURTEENTH CENTURY STUDIES* 76-80 (1937); Lewis, *The Protestation of Richard II in the Tower in 1399*, 23 *BULL. OF JOHN RYLANDS LIBRARY* 151 (1939).

ever thought to have a voice in bestowing the Monarchy on a King.³⁸ The theoretical difficulty with this idea was that Parliament was technically no more than the King's Council. It was called by him and existed only by his authority. If the authority lapsed, then Parliament's authority also lapsed. Thus, if Richard were no longer king, a Parliament called by him would have no authority to grant Bolingbroke the Crown. Nor could a Parliament called by Bolingbroke be valid unless he already was king. Certainly Parliament's power to bestow the Crown was not recognized when Edward II was deposed in favor of his son, Edward III, the only deposition and replacement of a king since the Conquest.³⁹ Although some accounts have recognized Parliament's role in the designation of new monarchs,⁴⁰ Parliament apparently was not in session when the deposition of Richard and installation of Bolingbroke occurred. Thus, the historical Bolingbroke clearly did not base his claim to the Crown on the consent of Parliament *sitting as Parliament*.

It was a different matter, however, when Parliament was sitting *as the estates*.⁴¹ The estates could grant Acclamation, and Acclamation, the voice of the assembled estates, had been used in the past to disenfranchise an outgoing King. The *Lichfield Chronicle* colorfully describes the deposition of Edward II:

in which council, to the cry of the entire people unanimously persisting in the cry, that King Edward should be deposed . . . thus Walter, archbishop of Canterbury, pronouncing words to that effect, with the assent and consent of all, King Edward was deposed.⁴²

Although the Commons actually could not decide such matters, they were thus able to legitimize a deposition and usurpation. Bolingbroke and his committee thus arranged for Parliament to sit as the Estates, depose Richard, and proclaim Bolingbroke King.

To assemble the Commons, Bolingbroke had Parliament called to order in Richard's name.⁴³ Parliament then produced a series of indictments that detailed all the abuses of Richard's reign.⁴⁴ After Bolingbroke's supporters conveyed the news of Richard's supposed abdication to the Commons on September 30, 1399,⁴⁵ the assembly accepted Richard's "deed of cession."⁴⁶

38. Compare W. STUBBS, *supra* note 29, at 533 (Bolingbroke's accession to throne made validity of parliamentary title indispensable to royalty) with Lapsley, *The Parliamentary Title*, *supra* note 30, at 53 (Parliament that witnessed Richard's deposition not true parliament).

39. See Wilkinson, *supra* note 30, at 337-39 (leaders in rebellion against Edward II attributed official responsibility only to clergy and people, not Parliament).

40. *Id.* at 339 & n.4 (Lichfield and Lanercost *Chronicles*).

41. Although the "estates" were comprised largely of members of Parliament, the difference between the "estates" and Parliament was that the "estates" represented the *populus*—the entire population of the land. See B. WILKINSON, *THE CONSTITUTIONAL HISTORY OF MEDIEVAL ENGLAND*, *supra* note 1, at 26 (discussing estates' role in deposition of Edward II).

42. *Lichfield Chronicle*, quoted in Clarke, *Committees of Estates and the Deposition of Edward II*, in *HISTORICAL ESSAYS IN HONOUR OF JAMES TAIT* 27, 36 n.3 (J. Edwards, V. Galbraith & E. Jacobs eds. 1933) (translated from Latin). Of course the "right" of the estates to depose the King rested on this one shaky precedent.

43. 3 ROT. PARL., *supra* note 14, at 415a.

44. *Id.* at 422-23. This was the list of indictments allegedly taken to Richard in the Tower.

45. *Id.* at 416-17.

46. *Id.* at 422a. For an account of this session, see 1 J. WYLIE, *HISTORY OF ENGLAND UNDER HENRY THE FOURTH* 9 (1884) ("The question was put whether it was expedient for the parliament and

The articles of indictment were then read.⁴⁷ After the reading, the assembly voted that the indictments formed sufficient ground for deposing the King, although the throne appears already to have been technically vacant.⁴⁸ A commission was then appointed to bear the news to Richard.⁴⁹

At this stage, Henry Bolingbroke, speaking in English before the assembly, claimed the Crown:

In the name of the Father and of the Son and of the Holy Ghost, I Henry of Lancaster, claim the realm of England and the crown, with all the appurtenances, as I that am descended by right line of the blood coming from that good Lord King Henry the Third, and through the right that God of his grace hath sent me, with the help of my kin and of my friends, to recover the same, which was in point to be undone for default of good governance and due justice.⁵⁰

Bolingbroke's claim was thus a generalized and vaguely-worded claim of Inheritance. Although he stated that he was of Henry III's kindred, he did not claim to stand closest to Henry or Richard in the ordinary line of succession. Henry's claim had a nice and no doubt calculated ambiguity: "through the right God of his grace hath sent me, with the help of my kin and my friends, to recover the same, which was in point to be undone . . ."⁵¹ Bolingbroke could have been saying either that God had sent him the right, establishing Divine Designation, or that God had sent him the grace to win the right to the throne by Conquest. In either case, his assertion was followed by the Acclamation of the Parliament.

The Lords spiritual and temporal, and all the estates there present, severally and communally, were asked what they thought of this claim? And the estates with all the People, then without difficulty or delay, consented that the Duke should reign over them.⁵²

Henry had thus achieved the utmost the formalities of succession could allow in legitimizing his coup. Inevitably, his efforts fell somewhat short. He had inherited the Crown only by bending the laws of succession, and by devise under duress. The Parliamentary Designation by Acclamation had operated to ratify, but not to initiate, a change of rulers actually accomplished by Conquest. Bolingbroke might have claimed, but could not demonstrate, Divine Designation because the succession had been tainted by his victory at arms. Conquest, however, was full of shabby implications and alarming precedent. In the midst of the indictment process, the Bishop of Carlisle inconveniently objected that all of Bolingbroke's actions were impious and unconstitutional,

the kingdom that such renunciation should be accepted, and each and all, separately and by acclamation, made answer that it was").

47. 3 ROT. PARL., *supra* note 14, at 417-22.

48. *Id.* at 422a.

49. *Id.* at 422.

50. This is Holinshed's version, HOLINSHED'S CHRONICLES 88 (R. Hosley ed. 1968), but it is almost a literal transcription of Henry's Middle English speech. See 3 ROT. PARL., *supra* note 14, at 422-23 (Henry's speech).

51. *Id.*

52. 3 ROT. PARL., *supra* note 14, at 423a (translation from Latin).

because God chose the King and only God could remove him.⁵³ Carlisle's argument, in theoretical terms, was that Divine Designation overrode all rival claims to Kingship, and that Richard's Divine Designation could not be withdrawn.⁵⁴ Claims of Richard's continuing legitimacy, as evidenced by remarks such as Carlisle's, were so powerful that Henry faced a number of uprisings and plots in the imprisoned Richard's name.⁵⁵

Thus, as evidenced by Bolingbroke's difficulties in legitimizing his coup, the political theory of England in the late fourteenth century could not deal adequately with unlawful actions by a monarch. A King governing unjustly could commit crimes, divest property, and bar victims from access to judicial relief. Although the circumstances called for replacement of the unjust king, all theories, and certainly all processes, connected with usurpation were unsatisfactory.

II. THE CONTEMPORARY URGENCY OF THE PROBLEM

Englishmen were obsessed with a somewhat similar problem of succession in 1595. Queen Elizabeth celebrated her 67th birthday in that year and had no heirs of the body or close relatives. In 1595, the Earl of Essex began his highly conspicuous and long-tolerated flirtation with rebellion, which finally proved his undoing in 1601.⁵⁶ According to an account written in 1600, Essex was only one of a dozen competitors for the Crown.⁵⁷ It was not until later that Elizabeth solved the succession conundrum by naming James Stewart as her heir.⁵⁸ The inescapable truth in 1595 was that the necessity for creating a monarch by human rather than divine agency was near at hand.

This necessity, however, undermined the royal absolutism under which the Tudors thrived. The Tudors had fostered a doctrine of absolutism unprecedented since that of Richard II.⁵⁹ According to this doctrine, God ordained the Monarch as the keystone of the social order, and the merely human substi-

53. Although Shakespeare immortalized the speech, *see* text accompanying notes 125-26 *infra* (Carlisle's speech), its absence from the official record has raised doubts about the authenticity of this brave gesture. Yet it seems certain Carlisle actually made the speech. R. JONES, *supra* note 5, at 107.

54. Bolingbroke had Carlisle arrested for this outburst. *Id.* at 107.

55. For this reason, it became necessary to murder Richard, although the exact circumstances of Richard's death are uncertain. *See* L. DULS, *supra* note 10, at 169-76 (different accounts contend that Richard died either of grief, of voluntary starvation, of starvation by prison guards, or at hands of Sir Peter Exton). The account followed by Shakespeare, that Sir Peter Exton murdered Richard at Henry's request, most likely was correct. *See* CHRONIQUE DE LA TRAISSON ET MORT DE RICHARD DEUX, *supra* note 37, at 248-50 (At Henry's behest, Sir Peter Exton and seven armed men, lances in hand, rushed at Richard while he was dining. Richard valiantly and vigorously defended himself, killing four of his attackers, until Sir Peter struck him a fatal blow to the head).

Opposition to Henry did not cease upon Richard's death, however. Under the leadership of Owen Glendower, the Welsh, who had been loyal to Richard, launched a savage guerilla war that was to last most of the next decade. Other rebellions centered around Henry's earlier supporters, the Percys, the powerful and semi-independent Earls of Northumberland. The legitimacy of the Lancastrian dynasty continued to be a problem even after these rebellions were quashed, and was a focal point of the Wars of the Roses during the reign of Bolingbroke's grandson, Henry VI.

56. For a compact account of Essex's sporadic rebellion and Elizabeth's toleration, *see* S. BINDOFF, *TUDOR ENGLAND 300-04* (1950).

57. Wilson, *The State of England (1600)*, 16 CAMDEN MISCELLANY 2 (F. Fisher ed. 1936) (52 Camden Series 3d).

58. James Stewart was James VI, King of Scotland, heir of the eldest sister of King Henry VIII, who was father to the Queen.

59. *See* note 2 *supra* (discussing Tudor support for strict absolutism).

tution of monarchs threatened the entire social edifice with collapse.⁶⁰ Although the Elizabethan dilemma did not involve the overthrow of a tyrannical monarch like Richard, the human element inevitable in the coming selection of a Monarch still did not square well with absolutism.

Absolutists naturally preferred Divine Designation,⁶¹ because designation by society implied a social contract, and contracts limit rights as well as confer them. If society had bestowed the Crown, the social contract would have limited the royal prerogative. This was unacceptable. Therefore, to safeguard the absolutist doctrine of the royal prerogative, Divine Designation was a desideratum. When a monarch took the throne by Inheritance, Divine Designation could be inferred because no human except the monarch's parents, divinely ordained themselves, had any part in the designation. Conquest, Acclamation, and Parliamentary Designation all suffered from the more perceptible imprint of human hands. If the Monarch were chosen by these means, some might find God's role harder to descry; others might conclude it had been eliminated.

Englishmen of 1595, therefore, had to design and then arrange a succession which, although touched by human hands, still left room for the operation of Divine Designation. The succession from Richard to Bolingbroke, so humanly effected, and yet so carefully crafted to avoid seeming other than Divine, was a precedent of obvious relevance.

Elizabethans clearly saw the parallels between the events of their time and the events in Shakespeare's play. Contemporary records note that Elizabeth's courtiers sometimes compared her predicament to that of Richard II.⁶² Elizabeth's own comment on the play clearly indicates that she saw the analogy: "I am Richard II, know ye not that?"⁶³ Moreover, the only printings of the play during Elizabeth's life did not contain the abdication scene, but the first edition after her death did include it.⁶⁴ Even more remarkable, Essex, on the eve of his rebellion, requested a special performance of the play.⁶⁵

Elizabeth's own words are a testament to the play's popularity: "[T]his tragedy was played 40tie times in open streets and houses."⁶⁶ The audience's ap-

60. The fears underlying this position were not mere chimeras. England had suffered greatly from the struggle over the Crown from the fall of Richard II in 1399 to the accession of the Tudors in 1485, and again during the pretendership of Lady Jane Grey in 1553-54. See generally S. BINDOFF, *supra* note 56.

61. In the next century, the absolutist concept of the royal prerogative came to be called the "Divine Right of Kings."

62. E.K. Chambers writes:

There are many indications of an analogy present to the Elizabethan political imagination between the reign of Richard II and Elizabeth herself. A letter of Sir Francis Knollys on 9 January 1578 excuses himself for giving unwelcome counsel to the queen. He will not "play the partes of King Richard the Second's men"; will not be a courtly and unstatesmanlike flatterer. Clearly the phrase was familiar. Henry Lord Hunsdon similarly wrote at some date before 1588, "I never was one of Richard II's men".

1 E. CHAMBERS, *WILLIAM SHAKESPEARE: A STUDY OF FACTS* 353 (1930) (footnotes omitted).

63. 2 E. CHAMBERS, *supra* note 62, at 326.

64. See Wilson, *supra* note 4, at 107 (first deposition scene published in 1608). There is little question, however, that actual performances of the play did contain the scene. See *id.* at xxxiii-iv (censor clearly endorsed performance with deposition scene as early as 1595).

65. See *id.* at xxxi-ii (Globe performed *Richard II* at express wishes of Essex' supporters, who contributed honoraria for performance).

66. E. CHAMBERS, *supra* note 63, at 327.

preciation of the play's intrinsic merit and the Elizabethan rage for historical spectacles might partially explain the play's popularity.⁶⁷ Some of the enthusiasm for the play, however, undoubtedly was due to obsessive worries about the theoretical aspects of the succession.

Shakespeare had both the legal and the historical sophistication to grapple with these problems.⁶⁸ The source of Shakespeare's legal knowledge might have been his personal background. John Shakespeare, his father, had been a party to over fifty lawsuits, and Shakespeare himself was either a litigant, witness, or party to a number of real estate conveyances.⁶⁹ But beyond that the level of legal sophistication in Elizabethan England seems to have been high.⁷⁰

As for Shakespeare's historical source material, it was so plentiful that no one can say today what was the full extent of his reading on the subject.⁷¹ Richard's chroniclers generally adopted one of three biases: Lancastrian (holding Bolingbroke to have been a savior), Yorkist (holding Bolingbroke at best a rebel), and Richardian (focusing on Richard as a Christ-like martyr).⁷² Shakespeare apparently had access to all three viewpoints,⁷³ and traces of all approaches are visible in the syncretistic treatment of the constitutional themes of the play.

III. THE ARTICULATION OF THE PROBLEM IN THE PLAY

A. RICHARD'S ABSOLUTISM

Like the historical Richard, the dramatic Richard exhibits an unshakable conviction in the unlimited nature of his prerogative.⁷⁴ He speaks of himself as

67. See H. RICHMOND, *SHAKESPEARE'S POLITICAL PLAYS 4-10* (1967) (popularity of historical plays in Elizabethan era).

68. In other plays, Shakespeare wrestled with legal concepts, most notably the growing struggles between the courts of law and equity. The outstanding instances are *The Merchant of Venice* and *Measure for Measure*. For a legal and historical analysis of *The Merchant of Venice*, see M. ANDREWS, *LAW VERSUS EQUITY IN THE MERCHANT OF VENICE* (1965). Various commentators have noted Shakespeare's extensive knowledge of law. See generally D. BARTON, *LINKS BETWEEN SHAKESPEARE AND THE LAW* (1929); G. KEETON, *SHAKESPEARE'S LEGAL AND POLITICAL BACKGROUND* (1967).

69. D. BARTON, *supra* note 68, at 9.

70. G. KEETON, *supra* note 68, at 3.

71. Although Shakespeare would not have had access to all contemporary accounts, there were at least thirty-six accounts available. See generally L. DULS, *supra* note 10 (comparative study of 36 accounts, excluding parliamentary record and subsequent histories).

72. See *id.* at 7, 248-53. See generally Elliott, *History and Tragedy in Richard II*, 8 *STUD. IN ENG. LIT.* 253 (1968).

73. Scholars agree that Shakespeare's sources included the French chronicle of Jehan Creton (1399), the anonymous *Chronique de la Traison et Mort de Richart Deux* (ca. 1400-12), Bouchier's 1525 translation of Sir John Froissart's *Chronicles* (ca. 1400), E. Hall's *Union of Noble and Illustre Famelies of Lancastre and York* (1550), Samuel Daniel's freshly published epic poem, *The Civile Wars* (1595), a recent play entitled *Woodstock* (1593), and most important, Raphael Holinshed's *Chronicles* as reprinted by John Hooker in 1587. Creton and the *Chronique* were Richardian, Daniel and Holinshed were Lancastrians, and Hall and Froissart, Yorkists.

For a discussion of the scholarly debate concerning the attribution of these sources, see M. BLACK, *THE LIFE AND DEATH OF KING RICHARD THE SECOND, A NEW VARIORUM EDITION OF SHAKESPEARE* 405-505 (1955), reprinted from JOHN QUINCY ADAMS MEMORIAL STUDIES 199-216 (J. McManaway ed. 1948); Wilson, *supra* note 4, at xxxviii-lxiv.

74. Although Professor Irving Ribner has suggested that the historical Richard held more limited views of the monarch's power and prerogative than Shakespeare attributes to him, Ribner, *The Historical Richard*, in *TWENTIETH-CENTURY INTERPRETATIONS OF RICHARD II* 13 (P. Cubeta ed. 1971), Ribner is a literary critic; historians picture Richard as a convinced absolutist. See A. GOODMAN, *THE*

a "deputy elected by the Lord,"⁷⁵ while oblivious to the possibility that Divine Designation might imply correlative duties to his subjects.⁷⁶

Richard's asymmetrical view of the relation of Monarch and subjects can be seen in the land imagery. Critics have frequently remarked on the land imagery in the play without recognizing its relevance to this issue.⁷⁷ Richard and the other characters continually refer to England as Richard's estate. Bolingbroke, for instance, expresses his desire not to shed blood on his return, speaking of the unwanted possibility thus:

. . . such crimson tempest should bedrench
The fresh green lap of fair King Richard's land . . .⁷⁸

John of Gaunt on his deathbed makes use of two elaborate figures of speech⁷⁹ which characterize Richard as "Landlord of England,"⁸⁰ one who

LOYAL CONSPIRACY: THE LORDS APPELLANT UNDER RICHARD II (1971) (Richard, early in his reign, behaved in manner unjust and harmful to major factions of nobility); R. JONES, *supra* note 5, at 88-99 (Richard behaved in absolutist manner throughout reign).

Although it is true that, in Richard's day, there was not in theoretical treatises on the royal prerogative the insistent emphasis so prevalent in Elizabethan-period literature on the sinfulness of seeking recourse against an unjust monarch, this is apparently because medieval theoreticians never seriously posed themselves the question of the legitimacy of recourse. The literature of that period, however, did stress the divinity of kingship and the necessity of obedience. D. HANSON, FROM KINGDOM TO COMMONWEALTH: THE DEVELOPMENT OF CIVIC CONSCIOUSNESS IN ENGLISH POLITICAL THOUGHT 71-80 (1970); E. KANTOROWICZ, THE KING'S TWO BODIES: A STUDY IN MEDIEVAL POLITICAL THEOLOGY 35-40 (1966).

75. *Richard II*, Act III, scene ii, line 57. All subsequent citations to the text of the play will conform to common literary citation format under which the above citation would be III:ii:57. The text relied on for this and all quotations is the Cambridge University Press edition of *King Richard II*, edited by J. Dover Wilson (1939).

76. The dramatic Richard is unlike Bracton and traditional medieval thinkers, who believed that a divinely appointed king owed a duty to rule wisely. See note 12 *supra* (discussing Bracton's beliefs). See generally B. TUCHMAN, A DISTANT MIRROR (1978) (describing breakdown of medieval social and political order during second half of fourteenth century; medieval ideal of just monarch gave way under weight of events).

77. See, e.g., C. SPURGEON, SHAKESPEARE'S IMAGERY 220-24 (1935); Altick, *Symphonic Imagery in Richard II*, 62 MOD. LANGUAGE A. OF AMERICA PUBLICATIONS 339, 341-44 (1947); Doran, *Imagery in "Richard II" and in "Henry IV,"* 37 MOD. LANGUAGE REV. 113, 120-21 (1942); Suzman, *Imagery and Symbolism in Richard II*, 7 SHAKESPEARE Q. 354, 360-64 (1956).

78. III:iii:46-47.

79. Legal real estate imagery ends John of Gaunt's great deathbed speech:

This royal throne of kings, this sceptred isle,
This earth of majesty, this seat of Mars,
This other Eden, demi-paradise,
This fortress built by Nature for herself
Against infection and the hand of war,
This happy breed of men, this little world,
This precious stone set in the silver sea,
Which serves it in the office of a wall,
Or as a moat defensive to a house,
Against the envy of less happier lands. . . .
This blessed plot, this earth, this realm, this England,
This nurse, this teeming womb of royal kings,
Feared by their breed, and famous by their birth,
Renowned for their deeds as far from home,
For Christian service and true chivalry,
As is the sepulchre in stubborn Jewry
Of the world's ransom, blessed Mary's Son:
This land of such dear souls, this dear dear land,
Dear for her reputation through the world,

views his duties to his subjects as of the same extent as those a landowner owes

Is now leased out—I die pronouncing it,
Like to a tenement or pelting farm. . . .
England, bound in with the triumphant sea,
Whose rocky shore beats back the envious siege
Of wat'ry Neptune, is now bound in with shame,
With inky blots, and rotten parchment bonds

II:i:40-64. The great encomium to the land is brought up short by a deliberately bathetic legalism:

. . . leas'd out . . .
Like to a tenement or pelting farm
. . . bound in with shame,
With inky blots and rotten parchment bonds.

The sense of the legalism is worth scrutinizing. "Tenement," as early as 1593, meant a rented suite of rooms or an apartment, 11 OXFORD ENGLISH DICTIONARY 183 (1933), and, despite the more general sense of tenure—freehold interest in structures affixed to lands, a legal usage current since the Middle Ages, *id.*—the rented rooms usage seems clearly intended. "Pelting farm," a phrase Shakespeare borrowed from the play *Woodstock*, see WOODSTOCK, *supra* note 73 (IV:i:147), meant an insignificant or worthless farm. 7 OXFORD ENGLISH DICTIONARY, *supra*, at 628-29. Gaunt's meaning, then, is that Richard values "[t]his blessed plot" so little that he does not occupy it himself but leases it to others as if it were a flat or a farm. The "inky blots and rotten parchment bonds" also show Richard's low regard for the land because they signify a transfer of ownership by legal transactions rather than by succession. The sale of land was considered almost immoral in medieval England.

Gaunt returns to this charge repeatedly during his subsequent tirade to Richard:

It were a shame to let this land by lease

II:i:110

Landlord of England art thou now, not king

II:i:113. What apparently is meant by this metaphor is, in general, Richard's reliance on his despised counsellors, principally Bushy, Green, Bagot and Scrope, whose advice was generally condemned by hostile chroniclers as leading Richard to perdition. More particularly, Shakespeare may have had in mind a scene from *Woodstock*, *supra* note 73, at 40-54, in which these counsellors divide the kingdom into tax collection districts. The pair used "blank charters," a notorious revenue raising device. With royal threats, they would extort from men of substance signed pledges on blank documents. The collectors would then fill in the amounts to be given the treasury and keep the excess themselves. R. JONES, *supra* note 5, at 92. Shakespeare twice mentions the charters elsewhere in the play:

We are enforced to farm our royal realm;
The revenue whereof shall furnish us
For our affairs in hand. If that come short,
Our substitutes at home shall have blank charters;
Whereto, when they shall know what men are rich,
They shall subscribe them for large sums of gold.

II:iv:45-50.

And daily new exactions are devised,
As blanks, benevolences, and I wot not what.

II:i:249-50. Moreover, it seems clear from the following scene that the blank charters themselves are only exemplary, and not the only abuse embraced by "leas'd out":

A thousand flatterers sit within thy crown,
Whose compass is no bigger than thy head,
And yet incaged in so small a verge,
The waste is no whit lesser than thy land

II:i:100-03. Waste is used here in its legal sense, meaning destruction of the value of real property by those whose use of the land adversely affects the rights of others with presently vested interests in the land. This usage had been current since at least 1414. 12 OXFORD ENGLISH DICTIONARY, *supra*, at 138. In this elaborate metaphor, King Richard's flatterers, and by implication Richard himself, are liable for waste because their rule has destroyed the "land." It requires little ingenuity to conclude that the wasters of the land are identical to the flatterers. Although it has been suggested that the accusations in Gaunt's speech do not warrant thorough indignation, see Friedman, *John of Gaunt and the Rhetoric of Frustration*, 43 ELH 279 (1976) (mere delegation of royal power to flatterers and creation of

to his land—none whatsoever. Duty is owed up, never down. The land may neither rebel nor seek to change owners. This accounts for Richard's indignation, the sense of being affronted by the inversion of the natural and divine orders in his references to the land while he is being ousted:

Dear earth, I do salute thee with my hand,
Though rebels wound thee with their horses' hoofs:
Feed not thy sovereign's foe, my gentle earth,
Nor with thy sweets comfort his ravenous sense⁸¹

Richard has no respect for the land rights of others, however, as he demonstrates in confiscating Bolingbroke's inheritance. He does so despite the remonstrance of York:

Take Hereford's rights away, and take from Time
His charters and his customary rights;
Let not tomorrow then ensue today;
Be not thyself . . . for how art thou a king
But by fair sequence and succession?⁸²

Although Richard does not respond directly, he might answer that his monarchy came not through "fair sequence and succession," but through Divine Designation, however manifested. Therefore, he is not accountable to the principle of Inheritance. He might add that, as the grantor of all tenures, he has at least the technical right to revoke them.⁸³ Whatever his reasons, Rich-

a few additional dukedoms seems inadequate reason for Gaunt's indignation), this interpretation misses the nature of the waste complained of. Gaunt gives a hint immediately after he dubs Richard "Landlord":

Thy state of law is bonds slave to the law

II:i:114. The waste is the maladministration of justice in Richard's kingdom. Most particularly, of course, Gaunt refers to the murder of his brother Thomas of Woodstock. See French, *Richard II and the Woodstock Murder*, 22 SHAKESPEARE Q. 337, 338-39 (1971) (Woodstock's murder uppermost in Gaunt's attention during deathbed speech). This grave charge, carried by a wealth of imagery, is most clearly expressed in the real estate image, and concluded by the remark:

Gaunt am I for the grave, gaunt as a grave,
Whose hollow womb inherits nought but bones . . .

II:i:82-83, and by Gaunt's elaborate rhetorical efforts to present Richard as suffering worse health than he. The "hollow womb" of the grave that Gaunt is both "for" and "like" will inherit "nought but bones." Richard's ultimate "landholdings," Gaunt prophesies, will come to even less, because of the "waste" committed by Richard's tenants and his flatterers.

80. II:i:13.

81. III:ii:6-7, 12-13.

82. II:i:195-99.

83. The law of tenures provided that one held one's land of the King, or of a mesne lord who held of the King at some number of removes, for the mutual benefit of King, landholder, and the nation at large. In return, landholders owed the "incidents" of tenure, especially loyalty and military service. Payments also might be required. C. KOLBERT & N. MACKAY, *HISTORY OF SCOTS AND ENGLISH LAND LAW* 22-24 (1977). Tenure had been revocable for treason since at least 1350. See 25 Edw. III, ch. 2 ("of such Treason the Forfeiture of the Escheats pertaineth to our Sovereign Lord, as well as the Lands and Tenements holden of other, as of himself"). Such forfeiture was still the practice in Elizabeth's time. See *Pim's Case*, 72 Eng. Rep. 528 (1585) ("The king is entitled to all the land traitors had at the time of [their] treason") (translation from French). See generally 3 W. HOLDSWORTH, *supra* note 13 at 70-71 (7th ed. 1956) (forfeiture upon conviction for treason not abolished until 1870).

The confiscation of Bolingbroke's lands, however, was not this sort of forfeiture. In the first place, Bolingbroke, at this stage of the play, has not been convicted of treason. (Although the parliamentary record treated the historical Bolingbroke as if he had been convicted of something, 3 ROT. PARL., *supra*

ard clearly regards it as within his legitimate prerogative to set aside the law of property, perhaps the most sacred form of law to Medieval and Renaissance Englishmen.

Richard has so divine a conception of his own status that it adds to his grief when he revokes his exile of Bolingbroke:

O God, O God! that e'er this tongue of mine,
That laid the sentence of dread banishment
On yon proud man, should take it off again
With words of sooth! . . .⁸⁴

There is a palpable sense of impiety toward his own royalty in undoing that which he had, in his royal capacity, done.⁸⁵

Finally, Richard believes that inasmuch as his kingship is divine in its origin, only divine agency properly can revoke it.

Not all the water in the rough rude sea
Can wash the balm from an anointed King.
The breath of worldly men cannot depose
The deputy elected by the Lord . . .⁸⁶

Even after his public abdication, Richard has great reverence for the divine nature of his position:

I find myself a traitor with the rest:
For I have given here my soul's consent
T' undeck the pompous body of a King . . .⁸⁷

Richard believes in his kingship to his last. Having received his deathblow from Exton, he speaks of himself as the King and of the land as his:

. . . Exton, thy fierce hand
Hath with the King's blood stained the King's own
land. . .⁸⁸

In short, Shakespeare's Richard conceives of the relation between a King and his subjects as totally non-reciprocal. The King cannot make an illegitimate demand upon his subjects, and perhaps as a consequence, subjects need be equipped with no protective power, least of all that of replacing the King.

B. THE MURDER OF GLOUCESTER AND THE FRUSTRATION OF JUDICIAL PROCESS

The historical causes for Bolingbroke's challenge to Mowbray after Gloucester's murder have already been described.⁸⁹ Shakespeare's audience, unlike

note 14, at 417, the nature of the offense was not clear.) And there seems to be no precedent for the revocation of tenure for a cause other than treason.

84. III:iii:133-36.

85. Richard had already meddled with the sentence by reducing it from ten years to six years soon after pronouncing it. I:iii:140-43, 208-12.

86. III:iii:54-57.

87. IV:i:248-50.

88. V:v:109-10.

89. See text accompanying notes 12-15 *supra* (Bolingbroke could not bring King Richard to trial for Gloucester's death).

modern audiences, would have understood Bolingbroke's motivation. The story was not only generally familiar, but the play *Woodstock*, first produced between 1591 and 1594,⁹⁰ also recounted the particulars of Richard's and Mowbray's responsibility for Gloucester's death.⁹¹ Thus, Shakespeare could afford the path of oblique hints he drops concerning Richard's involvement.

Indeed, the obliqueness shows Shakespeare's artistry. Precisely because the King is law incarnate, direct accusations against Richard cannot be made. Rather, everything must be done by indirection. That it is taboo to say anything scandalous about the King can be seen from several circumlocutions. When John of Gaunt discusses Gloucester's murder with Gloucester's widow, he speaks of Richard's involvement this way:

But since correction lieth in those hands,
Which made the fault that we cannot correct . . .
Put we our quarrel to the will of heaven . . .⁹²

A few moments later, Gaunt speaks more directly but still by epithet:

. . . God's substitute,
His deputy anointed in His sight,
Hath caused his death, . . .⁹³

Even on his deathbed, presumably emboldened by the realization that he has nothing to lose, Gaunt still speaks elliptically to Richard:

O, had thy grandsire with a prophet's eye
Seen how his son's son would destroy his sons,⁹⁴

It is only when Richard, enraged by even thus circumspect an accusation, threatens him, that Gaunt finally speaks out clearly:

O, spare me not, my brother Edward's son,
For that I was his father Edward's son,
That blood already, like the pelican,
Hast thou tapped out and drunkenly caroused.
My brother Gloucester, plain well-meaning soul,
Whom fair befall in heaven 'mongst happy souls,
May be a precedent and witness good . . .
That thou respect'st not spilling Edward's blood!⁹⁵

Bolingbroke confronts not only the near-impossibility of accusing a King directly, but also the the King's status as law personified. The formulaic accusations Bolingbroke and Mowbray level at each other as preliminaries to trial by combat demonstrate the implicit assumption that all crimes offend the King.

Mowbray: To prove him, in defending of myself,
A traitor to my God, my King, and me —⁹⁶

90. *WOODSTOCK*, *supra* note 73, at 71-72.

91. *Id.* at 16-25.

92. *I*:ii:4-6.

93. *I*:ii:37-39.

94. *II*:i:104-05.

95. *II*:i:124-31.

96. *I*:iii:24-25.

Bolingbroke: . . . he is a traitor foul and dangerous,
To God of heaven, King Richard and to me . . .⁹⁷

Bolingbroke's later account of his rationale for executing Richard's henchmen Bushy and Green illustrates the same principle:

I will unfold some causes of your deaths:
You have misled a prince, a royal king,
A happy gentleman in blood and lineaments,
By you unhappied and disfigured clean.
You have in manner with your sinful hours
Made a divorce betwixt his queen and him,
Broke the possession of a royal bed,
And stained the beauty of a fair queen's cheeks
With tears, drawn from her eyes by your foul wrongs.⁹⁸

Only after cataloguing these accusations of *lese majeste* does Bolingbroke reveal his real reason for killing them—their role in oppressing him. In any case, the King is so much the personification of justice that every crime must be an offense against him personally.

The King also is the chief administrator of justice. "Correction lieth in [his] hands"⁹⁹ and he supervises the trial by combat. As chief magistrate, the King is not subject to any recourse. As Gaunt notes:

God's is the quarrel — for God's substitute,
His deputy anointed in his sight,
Hath caused his death, the which if wrongfully,
Let heaven revenge, for I may never lift
An angry arm against His minister.¹⁰⁰

Unable to accuse the King directly, Bolingbroke uses an elaborate judicial procedure to establish the basis for the "declaratory relief" he seeks. The most historically and technically correct aspects of the play are the two scenes depicting the judicial combat.¹⁰¹ The court with jurisdiction was the Court of the Constable and the Marshal, whose writ ran to treasons and homicides committed abroad which had no remedy at common law.¹⁰²

For the preliminaries, the appellant would prepare a petition for the King in Council, to which was annexed a schedule of the articles of complaint.¹⁰³ Historically, the accusations by Bolingbroke and the counter-accusations by Mow-

97. I.iii:39-40.

98. III.i:7-15.

99. I.iii:4.

100. I.iii:37-41.

101. Shakespeare's main source for the scene was Holinshed, whose account he tracks with great care. See HOLINSHED'S CHRONICLES, *supra* note 73, at 67-73. Diane Bornstein suggests that Shakespeare may have used another technical source, William Segar's THE BOOKE OF HONOUR AND ARMES (1590). Bornstein, *Trial by Combat and Official Responsibility in Richard II*, 8 SHAKESPEARE STUD. 131, 136-37 (1975).

102. Note 15 *supra*. This particular trial by combat, involving Bolingbroke and Mowbray, may not actually have been supervised by the court, because the Marshal at the time was Mowbray himself. G. SQUIBB, *supra* note 15, at 23 n.1. Nevertheless, the combat was carried out according to the protocol of the court. *Id.*

103. See [Talbot v. Ormond], 4 ROT. PARL., *supra* note 14, at 198 (1423) (example of such a case). In this fascinating report, the basic account of the events is in Latin, the complaint is in Anglo-Norman, and the annexed schedule is in Middle English. *Id.*

bray were made at a Parliament in Shrewsbury, in February of 1398, but the King and Council did not hear them formally until April 29, at Windsor.¹⁰⁴ Shakespeare begins the play with the Windsor confrontation. Richard refers to the initial accusations as

. . . the boist'rous late appeal,
Which then our leisure would not let us hear¹⁰⁵

Although not tendering documents, each of the antagonists provides the verbal equivalent. Bolingbroke speaks first, using conclusory language suitable for pleadings:

Thou art a traitor and a miscreant,
With a foul traitor's name stuff I thy throat,
And wish (so please my sovereign) ere I move,
What my tongue speaks my right drawn sword may prove.¹⁰⁶

Mowbray has two tasks in his "answer": he must traverse Bolingbroke's charge and make a countercharge. Because he has been accused, Mowbray may freely traverse Bolingbroke's charge. The countercharge poses a more delicate problem, however, because it is dangerous to accuse a King's cousin of treason:

First the fair reverence of your highness curbs me
From giving reins and spurs to my free speech,
Which else would post until it had return'd
These terms of treason doubled down his throat:
Mean time, let this defend my loyalty,
By all my hopes most falsely doth he lie.¹⁰⁷

Richard then asks for what amounts to a bill of particulars from Bolingbroke:

What doth our cousin lay to Mowbray's charge?¹⁰⁸

Bolingbroke responds with three specifics: appropriation of moneys intended for soldiers' pay, participation in "all the treasons for these eighteen years/Complotted and contrived in this land," and the murder of Gloucester.¹⁰⁹

Richard turns to Mowbray:

Thomas of Norfolk, what say'st thou to this?¹¹⁰

Before responding to the specific accusations, Mowbray insists upon, and receives, the right to make a countercharge against the King's kindred.¹¹¹ Having settled this threshold point, he proceeds to answer Bolingbroke's accusations: he paid the money, offsetting only a debt owed him by the King (perhaps blood money for Gloucester's murder); he had no hand in Gloucester-

104. [Hereford v. Norfolk,] 3 ROT. PARL., *supra* note 14, at 383 (1398).

105. Ii:4-5.

106. Ii:39, 44-46.

107. Ii:54-57, 67-68.

108. Ii:84.

109. Ii:87-108.

110. Ii:110.

111. Ii:110-14.

ter's death, though he admits he "neglected [his] sworn duty in that case."¹¹² As to the comprehensive charge of treason this is clearly a case of deliberately overbroad pleading. Mowbray therefore addresses the gravamen of the charge, the allegation that he had plotted the death of Gaunt, Bolingbroke's father. He implies there is no cause of action, because he had already confessed and been forgiven, not only by God but also by Gaunt.¹¹³ Having completed this traverse, Mowbray takes the offensive and charges Bolingbroke with treason:

... as for the rest appealed
It issues from the rancour of a villain,
A recreant and most degenerate traitor¹¹⁴

After a futile effort to reconcile the parties, Richard sets the fight for Saint Lambert's Day at Coventry and commits the matter to the supervision of the Marshal.¹¹⁵ The action of the combat scene is as authentic as stage conventions of the time would allow. Shakespeare virtually tracks the account of Holinshed's *Chronicles* here.¹¹⁶ Moreover, we know that Holinshed's account of judicial combat was accurate because of a most ironic circumstance. The most detailed manual of protocols for trial by combat in the Court of Chivalry was written by none other than the late Thomas of Woodstock, Duke of Gloucester, for the edification of his nephew, Richard II.¹¹⁷ The similarities of detail are too numerous to dilate upon.

But their effect is clear. After going through elaborate procedural steps, the passion and tedium of which the audience has experienced at first hand, Bolingbroke is met with a sudden, total dismissal. None of his legal labors has succeeded. Worse, he is penalized with a ten-year exile for having sought judicial relief at all. Shakespeare makes Richard's tyranny even less palatable by underlining its caprice: Richard also banishes for life his own henchman, Mowbray, and then cuts four years from Bolingbroke's sentence.¹¹⁸ The law-

112. Ii:124-34.

113. Ii:135-41.

114. Ii:142-44.

115. Shakespeare apparently is unaware that the historical Mowbray was the Marshal at this time and that, therefore, the Court may not have supervised this combat. Note 102 *supra*. Nevertheless, Shakespeare was technically correct in putting the battle in the court's hands. It erected the lists (where the battle would be fought) and armored the combatants. *Ordonaunce and Fourme of Fichting*, *supra* note 16, at 305, 307. By having Richard set the date of combat, however, Shakespeare contravened the court's protocol, for the court set the time and place of combat. G. SQUIBB, *supra* note 15, at 22.

116. See HOLINSHED'S CHRONICLES, *supra* note 73, at 70-73.

117. See *Ordonaunce and Fourme of Fichting*, *supra* note 16, at 300-30 (detailed manual of protocol); *id.* at 300 n.1 (Thomas of Woodstock wrote manual for nephew).

118. Shakespeare also hints at the role of the Parliamentary Committee here. Richard prefaces Bolingbroke's sentence with the words:

And list what *with our council* we have done.

I:iii:124 (emphasis added). Later, in conference with Gaunt, Richard says:

Thy son is banished *upon good advice*,
Whereto thy tongue a party-verdict gave,

I:iii:233-34 (emphasis added). Gaunt definitely was on the Committee, 3 ROT. PARL., *supra* note 14, at 368 (31 January 1398), and apparently played a role in his own son's banishment. Gaunt may have participated because of a greater interest in his children by his mistress Kathryn Swynford than in his legal heir. R. JONES, *supra* note 5, at 95 & n.13. In any event, it seems Shakespeare was aware of the Committee's existence, but gave no sign of regarding it as a manifestation of Richard's objectionable absolutism.

lessness of Richard's absolutism could not have been better expressed.

C. THE SEIZURE OF BOLINGBROKE'S INHERITANCE

Both the legal sleight-of-hand by which the historical Richard stole Bolingbroke's patrimony without formally divesting him of his title, and the cryptically-described seizure by which Shakespeare's Richard accomplishes the same end have already been noted. Shakespeare apparently was not aware of or interested in the legal technicalities. Rather, he simply seems to have followed Holinshed's observation that Richard "meant his utter undoing" in appropriating Bolingbroke's property.¹¹⁹ Shakespeare did make use of two historical facts, however.

First, Shakespeare noted that Bolingbroke's lands had been parcelled out to third parties. When he captures Bushy and Green, Bolingbroke accuses them of these crimes:

. . . you have fed upon my signories,
 Disparked my parks, and felled my forest woods;
 From my own windows torn my household coat,
 Razed out my imprese, leaving me no sign,
 Save men's opinions and my living blood,
 To show the world I am a gentleman¹²⁰

Second, Shakespeare notes that Bolingbroke had no legal recourse while abroad, because the Parliamentary Committee had revoked his powers of attorney:

. . . . I am denied to sue my livery here,
 And yet my letters-patents give me leave
 My father's goods are all distrained and sold,
 And these and all are all amiss employ'd
 What would you have me do? I am a subject;
 And I challenge law. Attorneys are denied me¹²¹

Thus, without much ado, Shakespeare develops the essential point: Richard has arranged legal technicalities to frustrate Bolingbroke's attempts to remedy his real grievances.

At this point it is helpful to summarize how Shakespeare has depicted a constitutional crisis. He has shown how Richard, by exiling and disinheriting Bolingbroke, has used his absolutist prerogative to oppress one subject, twisting the institutions of society to do so. Shakespeare has not relied only on these acts of oppression to portray Richard's dubious legitimacy. Rather, Shakespeare carefully adds references to the tax farming, the blank charters, the favoritism, and the supposedly craven surrender of some French territories won by Richard's father, the Black Prince.¹²² Because of these abuses, the rest of the country shares Bolingbroke's justifiable discontent with Richard. The particular abuses of Bolingbroke are emblematic. If the oppression of Boling-

119. HOLINSHED'S CHRONICLES, *supra* note 73, at 74.

120. III:i:22-27. In fact, neither Bushy nor Green seems to have been granted any of Bolingbroke's inheritance. See R. JONES, *supra* note 5, at 99.

121. II:iii:129-34.

122. II:i:246-55.

broke, replicated throughout the entire operation of the government, is grounds for a constitutional upheaval, then Shakespeare has demonstrated, as well as a dramatist can, the outlines of a constitutional crisis.

IV. THE WORKING OUT OF THE PROBLEM IN THE PLAY

A. REBELLION

Critics agree that Bolingbroke's actions in response to Richard's oppression do not, to say the least, meet with Shakespeare's unqualified approval.¹²³ The words of York, responding to Bolingbroke's speech about the denial of attorneys, are to be taken at face value:

My lords of England, let me tell you this:
I have had feeling of my cousin's wrongs,
And laboured all I could to do him right:
But in this kind to come, in braving arms,
Be his own carver and cut out his way,
To find out right with wrong, it may not be:
And you that do abet him in this kind
Cherish rebellion, and are rebels all.¹²⁴

Even though Bolingbroke has been denied what we should today call due process, it is not altogether satisfactory for the aggrieved party to seek recourse outside the proper channels.

Similarly, nothing can mitigate the impiety of overthrowing a king. The Bishop of Carlisle tells Parliament:

. . . shall the figure of God's majesty,
His captain, steward, deputy-elect,
Anointed, crowned, planted many years,
Be judged by subject and inferior breath . . .¹²⁵

The consequences of so doing are set forth in Carlisle's prophecy:

And if you crown him, let me prophesy,
The blood of English shall manure the ground,
And future ages groan for this foul act,
Peace shall go sleep with Turks and infidels,

123. The classic statement of the critical consensus is that of E.M.W. Tillyard:

Richard II does its work in proclaiming the great theme of the whole cycle of Shakespeare's History Plays: the beginning in prosperity, the distortion of prosperity by a crime, civil war, and the ultimate renewal of prosperity. The last stage falls outside the play's scope, but the second scene with the Duchess of Gloucester's enumeration of Edward III's seven sons, her account of Gloucester's death, and her call for vengeance is a worthy exordium of the whole cycle. The speeches of the Bishop of Carlisle and of Richard to Northumberland . . . are worthy statements of the disorder that follows the deposition of a rightful king. In doctrine the play is entirely orthodox.

E. TILLYARD, *SHAKESPEARE'S HISTORY PLAYS* 261 (1946). Modern critics, while emphasizing more than Tillyard the urgency of Bolingbroke's claim for justice, and Richard's bad qualities, find themselves reluctantly drawn to agree with Tillyard's position. See Speaight, *Shakespeare's Political Spectrum, as Illustrated by Richard II*, in *STRATFORD PAPERS ON SHAKESPEARE* [1964] 135-54 (B. Jackson ed., 1965); B. Stirling, *Bolingbroke's "Decision,"* 2 *SHAKESPEARE QUARTERLY* 27-34 (1951).

124. II:iii:140-47.

125. IV:i:125-28.

And, in this seat of peace, tumultuous wars
 Shall kin with kin, and kind with kind confound;
 Disorder, horror, fear, and mutiny
 Shall here inhabit, and this land be called
 The field of Golgotha and dead men's skulls.
 O, if you raise this house against this house,
 It will the woofullest division prove
 That ever fell upon this cursed earth:
 Prevent 't, resist it, let it not be so,
 Lest child, child's children, cry against you 'woe!'¹²⁶

That the prophecy came to pass,¹²⁷ as all audiences knew and Shakespeare so prolifically chronicled in his other history plays, is a strong guarantee of the validity of Carlisle's position. Moreover, when Carlisle is brought before Bolingbroke for judgment, Bolingbroke treats his actions, including the speech, for which he was arrested, not as sedition, but as admirable principle:

So as thou liv'st in peace, die free from strife,
 For though mine enemy thou hast ever been,
 High sparks of honour in thee have I seen.¹²⁸

Likewise, after Richard has been killed at Bolingbroke's behest, if not at his bidding, Bolingbroke makes an extravagant pledge to:

. . . make a voyage to the Holy Land,
 To wash this blood off from my guilty hand . . .¹²⁹

This response may seem excessive for complicity in ordinary murder, but is appropriate to atone for the impiety of regicide. Because Shakespeare does not dispute—given the political orthodoxies in 1595, it would have been foolhardy to dispute—the impiety of overthrowing monarchs, he does not feel himself required to justify, theoretically or morally, Bolingbroke's coming in arms to take his own. As to the theory, Shakespeare simply reproduces, in the speech already quoted,¹³⁰ Bolingbroke's complaint that no other course is left him, as well as the casuistic argument that:

As I was banished, I was banished Hereford;
 But as I come, I come for Lancaster . . .¹³¹

Shakespeare is deliberately opaque about the personal honesty of Bolingbroke's motives upon his return, that is, whether he seeks the Crown or merely the vindication of his rights.

The most striking example is the famous "base court" scene. The dialogue runs thus:

126. IV.i:136-49.

127. Bolingbroke, as Henry IV, was plagued throughout his reign by civil wars and during the reign of Bolingbroke's grandson, Henry VI, the Wars of the Roses broke out between the Lancastrian supporters of the King, and the faction led by Richard, Duke of York. York was also descended from Edward III, and could claim better title, under the usual rules of inheritance, to the throne. For over thirty years this feud wracked England, until Elizabeth's grandfather, Henry Tudor, won his decisive victory over the Yorkists at Bosworth Field.

128. V.vi:27-29.

129. V.vi:49-50.

130. See text accompanying note 121 *supra* (Bolingbroke's speech).

131. II.iii:113-14.

Bolingbroke. . . . Stand all apart,
And show fair duty to his majesty. . .

[*He kneels down.*]

My gracious lord,
King Richard. Fair cousin, you debase your princely knee,
To make the base earth proud with kissing it:
Me rather had my heart might feel your love,
Than my displeased eye see your courtesy:
Up, cousin, up — your heart is up, I know
Thus high [*touching his own head*] at least, although your knee be
low.

Bolingbroke. My gracious lord, I come but for mine own.

King Richard. Your own is yours, and I am yours and all.

Bolingbroke. So far be mine, my most redoubted lord,
As my true service shall deserve your love.

King Richard. Well you deserve: they well deserve to have,
That know the strong'st and surest way to get.

. . .

Cousin, I am too young to be your father,
Though you are old enough to be my heir.
What you will have, I'll give, and willing too,
For do we must, what force will have us do . . .
Set on towards London, cousin, is it so?

Bolingbroke. Yea, my good lord.

King Richard. Then I must not say no.¹³²

As E.W. Talbert points out, Bolingbroke's behavior—at least apart from his "Yea my good lord"—is everything that Lancastrian chroniclers seeking to justify Bolingbroke's accession to the crown could have claimed.¹³³ Bolingbroke is full of obeisance, reverence, and reassurance that his aim falls short of usurpation. Richard, on his part, acts as if he were bent headlong on abdication. Even Bolingbroke's direction that Richard go to London, because technically first proposed by Richard, is framed rhetorically as Richard's request, rather than Bolingbroke's command. At the same time, Richard's description of Bolingbroke ("your heart is up, I know, / Thus high at least") concurs with Yorkist propaganda in depicting Bolingbroke as a grasping opportunist and Richard as a helpless victim. Thus, neither Bolingbroke nor Richard speaks in terms justifying rebellion. Rather they compete rhetorically to uphold the tradition of obeisance to the Monarch, each attempting to show the other deficient in his adherence thereto.

There is thus no evidence in the play to show that Shakespeare supports rebellion. In fact, Shakespeare's answer to any of the characters' attempts to justify rebellion or conquest is that the impiety of such things—even if directed against a tyrant—can never be justified. Divine Designation will be supported

132. III.iii:187-201, 204-210.

133. E. TALBERT, *THE PROBLEM OF ORDER: ELIZABETHAN POLITICAL COMMONPLACES AND AN EXAMPLE OF SHAKESPEARE'S ART* 168 (1939).

by God's chastisement of any nation that supports rebellion. Shakespeare refutes, by the evidence of the ensuing chaos that Bolingbroke's actions invite, Bolingbroke's claims that his seizure of the kingship could be justified by the promise of a surcease to bad governance.

But this was the part of the play's argument less applicable to late Elizabethan troubles. Absolutism was not in direct difficulties as it was during Richard's reign. Instead, the obsessive Elizabethan problem was absolutism's indirect loss of credibility from the impending humanly-engineered succession. The lessons Shakespeare thought most important were the attempts made subsequent to Richard's downfall to legitimize the transition in a way that did the least damage to absolutism.

B. UNKINGING, JUDGMENT, AND KINGING

The problem for Shakespeare, then, was not to justify Bolingbroke's actions. The problem was how to unking, judge, and replace a Monarch, actions that constituted a striking inversion of the natural and social order.

Shakespeare's answer was the same as that at which the historical Bolingbroke arrived: arranging the *show* of an orderly succession. For Shakespeare, as for Bolingbroke, this necessitated a departure from the historical record. Shakespeare knew from a number of his sources, including Holinshed, the following history:¹³⁴ Richard, after returning to England, was lodged at Conway Castle. Having heard that most of the land was in Bolingbroke's hands, he decided against settling the matter by arms and dismissed most of his soldiers. Henry Percy, Earl of Northumberland, came to him on Bolingbroke's behalf and asked for a parley at Bolingbroke's stronghold of Flint. Northumberland swore that Richard would be accorded safe conduct. Richard, relying on the oath, agreed to the parley. On the way, however, Northumberland's men ambushed Richard's party and forcibly took him to Flint. Shortly thereafter, Bolingbroke came to the castle and took custody of Richard. According to the chroniclers Shakespeare probably relied on, Richard did not abdicate or promise to abdicate at Flint, although he may have been informed that he should no longer reign.¹³⁵ After both men returned to London, a Parliament issued the indictments against Richard for misgovernance. A deputation then went to Richard in the Tower, and secured his abdication. Richard then voluntarily transferred the regalia to Bolingbroke, signifying that he wished Parliament to name Bolingbroke as his successor.

Shakespeare's account is consistent with this history only through the point when Richard receives the news of the falling off of his supporters. Richard receives this news in installments.¹³⁶ Arriving on the Welsh coast, he greets his land and expresses the hope that the land itself will defeat Bolingbroke:

Feed not thy sovereign's foe, my gentle earth,
Nor with thy sweets comfort his ravenous sense,
But let thy spiders that suck up thy venom

134. See HOLINSHED'S CHRONICLES, *supra* note 72, at 79-87 (Holinshed's historical account of Richard's deposition).

135. R. JONES, *supra* note 5, at 105.

136. III:ii.

And heavy-gaited toads lie in their way,
 Doing annoyance to the treacherous feet,
 Which with usurping steps do trample thee
 Yield stinging nettles to mine enemies:
 And when they from thy bosom pluck a flower,
 Guard it, I pray thee, with a lurking adder . . .¹³⁷

Carlisle suggests that Richard may also hope for divine aid. And Richard adds that his own majesty, and even angels, may be counted on in the coming fight:

For every man that Bolingbroke hath pressed
 To lift shrewd steel against our golden crown,
 God for his Richard hath in heavenly pay
 A glorious angel; then, if angels fight,
 Weak men must fall, for heaven still guards the right.¹³⁸

Richard then receives the first shock of reality, Salisbury's news that his twelve thousand Welsh troops have disbanded. Richard is momentarily taken aback, but then rallies at the thought of his royal glory:

I had forgot myself, am I not King?
 Awake, thou coward majesty! thou sleepest.
 Is not the king's name twenty thousand names?
 Arm, arm, my name! a puny subject strikes
 At thy great glory. . .¹³⁹

Richard has no sooner made this speech than Scroop enters with news of mass defections, causing Richard to despair and talk of his overthrow, Bolingbroke's seizure of his crown, and his own mourning and death. At this, Aumerle, the Duke of York's son, reminds Richard of the power of York, Richard's supporter. Richard again rallies:

An easy task it is to win our own. . .¹⁴⁰

Then Scroop tells the worst, that York also has gone over to Bolingbroke. Richard at this point commits himself unequivocally to despair:

By heaven I'll hate him everlastingly,
 That bids me be of comfort any more. . .¹⁴¹

Finally, he dismisses his soldiers:

Discharge my followers, let them hence away,
 From Richard's night, to Bolingbroke's fair day.¹⁴²

This scene suggests Richard's acknowledgment that he deserves to be deposed if he cannot, despite his title, retain control. As the tale of Richard's diminished army grows more bleak, Richard realizes that without this tangible support he cannot count on the intangible partisanship of God, land, angels, and royal name.

137. III:ii:12-20.

138. III:ii:58-62.

139. III:ii:83-87.

140. III:ii:191.

141. III:ii:207-08.

142. III:ii:216-17.

Cover your heads, and mock not flesh and blood
With solemn reverence, throw away respect,
Tradition, form, and ceremonious duty,
For you have but mistook me all this while;
I live with bread like you, feel want,
Taste grief, need friends—subjected thus,
How can you say to me, I am a King?¹⁴³

Richard seems to acknowledge that he may not retain the throne, even if occupied legitimately, in the face of all his subjects' opposition.

At this point, Shakespeare significantly departs from the historical record. Shakespeare's Richard, unlike his historical counterpart, apparently has already decided to abdicate in Bolingbroke's favor. That is a reasonable inference from the dismissal of his troops, their dispatch to Bolingbroke, and the lines:

Strives Bolingbroke to be as great as we?
Greater he shall not be. If he serve God,
We'll serve him too, and be his fellow so . . .¹⁴⁴

Although Richard finds it utterly contrary to his nature and views, he has already determined to abdicate.

Thus, Shakespeare need not portray Northumberland's ambush, for Richard has already decided to "go quietly." Nor is Shakespeare concerned with precisely tracking the historical sequence of events. Although well aware that Richard's formal abdication took place in the Tower and that Richard was never tried for his offenses, Shakespeare puts both actions before Parliament.

In the Parliamentary scene,¹⁴⁵ York enters, bearing news that Richard has abdicated in Bolingbroke's favor. Northumberland, speaking for the Commons, demands that Richard be brought forth to perform the act in person. He is conveyed into the Parliament, with attendants bearing the crown and the scepter. He then performs the necessary ritual:

Now mark me how I will undo myself:
I give this heavy weight from off my head,
And this unwieldy sceptre from my hand,
The pride of kingly sway from out my heart;
With mine own tears I wash away my balm,
With mine own hands I give away my crown,
With mine own tongue deny my sacred state,
With mine own breath release all duteous oaths:
All pomp and majesty I do forswear;
My manors, rents, revenues, I forego;
My acts, decrees, and statutes, I deny:
God pardon all oaths that are broke to me!
God keep all vows unbroke are made to thee!
Make me, that nothing have, with nothing grieved,
And thou with all pleased, that hast all achieved!

143. III:ii:171-77.

144. III:ii:97-98.

145. IV:i.

Long mayst thou live in Richard's seat to sit,
 And soon lie Richard in an earthy pit . . .
 God save King Henry, unkinged Richard says,
 And send him many years of sunshine days . . .¹⁴⁶

Just as the historical Bolingbroke sought to achieve the appearance of succession, not by Conquest, but by Acclamation, Parliamentary Designation, and Inheritance, the dramatic Richard and Bolingbroke work together to produce the same effect.

Richard unking himself in copious detail. Neither he nor Bolingbroke raises the reality of Conquest. Richard neither falls nor is pushed; he jumps. By having Richard abdicate in Bolingbroke's favor, physically transfer the regalia to Bolingbroke, and say "God save King Henry," Shakespeare shows Richard giving Bolingbroke the legitimacy of Inheritance by Devise. Thus, the dramatic Richard grants freely what was almost certainly extorted from the historical Richard. Although not single-minded about the action, the dramatic Richard abdicates decisively.

Acclamation—by definition involving a crowd—would have strained the physical resources of Shakespeare's stage. Moreover, demonstrating Acclamation would have conflicted with Shakespeare's well-known distaste for the mob.¹⁴⁷ Nevertheless, there is a trace of Acclamation in York's exclamation:

. . . long live Henry, of that name the fourth!¹⁴⁸

It is impossible to tell to what extent York's speech is intended merely to repeat Richard's remark, and to what extent it is intended to be exemplary of the voice of the Estates or Parliament. It surely is significant, however, that Bolingbroke responds:

In God's name, I'll ascend the regal throne . . .¹⁴⁹

Even if Shakespeare hints at the concepts of Acclamation and Parliamentary Designation, the important event is Richard's abdication and adoption of Bolingbroke as his heir. However unwilling the dramatic Richard may have been, he has collaborated with his successor to enhance the legitimacy of the succession. Unlike the historical Richard, the dramatic Richard has declined to make the seizure of the Crown a matter of usurpation.

It was for these reasons that Shakespeare departed so markedly from the historical record in the second half of the play. Shakespeare found the events of August and September, 1399 interesting, not because one man had wrested the Crown from another's grasp, but because the *official* story of the transfer vindicated absolutism.

Absolutism was vindicated in the official account in two ways. First, this

146. IV:ii:203-21.

147. Robert Speaight notes that the mob is "the anonymous and fickle crowd for whom Shakespeare never had anything but merciless contempt." Speaight, *supra* note 122, at 51. Two of the more egregious Shakespearean mobs are found in *Julius Caesar* and *Henry VI, Part 2*. In *Julius Caesar* the fickle Roman citizenry first embraces Pompey, then Caesar, then Brutus, then Antony, rejecting its previous allegiance with each new one. W. SHAKESPEARE, *JULIUS CAESAR* (1599). In *Henry VI, Part 2*, the rebellious crowd seeks to install the preposterous but malignant Jack Cade as king. W. SHAKESPEARE, *HENRY VI, PART TWO* (1590-91).

148. IV:ii:112.

149. IV:ii:113.

account showed that, although the institutions of justice did not permit recourse against a tyrant, some equilibrium-enforcing power in society other than rebellion could force a tyrant from the throne. Presumably, that is why Shakespeare's Richard resolves to surrender upon hearing of his soldiers' desertion. Although the rebel Bolingbroke is the catalyst for the desertion, Richard clearly states that his subjects' desertion, not their opposition, forces his own decision to abdicate:

Salisbury. For all Welshmen, hearing thou wert dead,
Are gone to Bolingbroke, dispersed and fled.
Aumerle. Comfort, my liege, why looks your grace so pale?
Richard. But now the blood of twenty thousand men
Did triumph in my face, and they are fled:
And till so much blood thither come again,
Have I not reason to look pale and dead?
All souls that will be safe, fly from my side,
For time hath set a blot upon my pride.¹⁵⁰

Second, although the official account could not summon constitutional legitimacy sufficient to satisfy Tudor orthodoxy, it came close to doing so. The heart of the official account was Bolingbroke's claim based on Abdication, followed by Inheritance. In order to emphasize this arrangement and its legitimacy, Shakespeare flouted every account of the actual events, and set Richard's abdication, and designation of Bolingbroke as his heir, in the midst of Parliament.

What follows next also emphasizes Shakespeare's effort to remold historical events to support Absolutism. It is unimportant that Richard receives no more in the way of due process at Bolingbroke's hands than Bolingbroke did at Richard's—that the trial is abandoned immediately after Richard puts on a histrionic display. The principle that a reigning King should not be brought to the bar of justice is preserved. The absolutist principle that the King is above, or at least the head of, the law has not been violated.

Throughout the play, Shakespeare evinces repugnance for revolt and Conquest. He evidently is fascinated, however, with the formalities of Bolingbroke's accession to power. Shakespeare easily could have achieved his other aims in the play—for example, exploring the tragic downfall of an overweening but yet human Richard—while still following the historical record. Nevertheless, to concoct the legal ritual of Richard's abdication speech and the rest of the Parliamentary scene, Shakespeare had to depart from the historical record. In fact, Shakespeare did better than the historical Bolingbroke; he could arrange for Richard actually to perform the acts of abdication the historical Bolingbroke had had to lie about. The ritual was a saving ritual, a formula for crossing a constitutional chasm similar to the one Elizabethan England was about to come to. Shakespeare clearly intended it as a lesson to Elizabeth and the country.

AFTERWORD

If in *Richard II* art followed life, then in the transition from Elizabeth to

150. III:ii:73-81.

James Stewart, life followed art. Elizabeth designated James, with a hereditary claim no stronger than Bolingbroke's, as her successor. This spared the land the spectacle of a Monarch being designated by purely human agency. Moreover, a better champion of absolutism than James, author of a great defense of the Divine Right of Kings, *Basilicon Doron*,¹⁵¹ could not have been chosen. Elizabeth had apparently understood and heeded the lesson of *Richard II*.

151. JAMES I, *BASILICON DORON* (Edinburgh 1599) (reproduced by Menston 1969).