

# The Choice of the Four Fathers: Henry IV, Falstaff, the Lord Chief Justice, and the King of France in the *Henriad*

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To speak of justice in Shakespeare's plays without speaking of the sovereign may seem like playing *Hamlet* without the Prince. In Shakespeare's time, the sovereign was the ultimate symbolic source of justice, as seen in the iconographic conflation of Queen Elizabeth I with Astraea, the goddess of Justice.<sup>1</sup> Perhaps Shakespeare's deepest meditation on what makes a just ruler lies in the four plays scholars have dubbed the *Henriad* (*Richard II*;<sup>2</sup> *Henry IV, Part 1*;<sup>3</sup> *Henry IV, Part 2*;<sup>4</sup> and *Henry V*<sup>5</sup>). In these plays, we follow the development of the dissolute youth Prince Hal as he matures into the paradigmatic good ruler, Henry V.

The four plays have an epic structure (the tetralogy is called the *Henriad* to mimic the *Iliad*), telling the story of three successive sovereigns. Richard II is a weak king deposed by Henry Bolingbroke, who becomes Henry IV. Henry IV finds little solace in the crown, as he feels immense guilt for having seized it from an anointed sovereign. He also worries about his own successor: his oldest son Prince Hal is reckless, spending all his time in the tavern world of Eastcheap. While Hal is the heir apparent, he has exchanged his seat in the Privy Council for a stint in prison for striking the Lord Chief Justice. Hal's surrogate father figure in the tavern

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1. Frances A. Yates, *Queen Elizabeth as Astraea*, 10 J. WARBURG & COURTAULD INSTS. 27 (1947).

2. WILLIAM SHAKESPEARE, KING RICHARD II (Charles R. Forker ed., Arden Shakespeare 3d rev. ed. 2002) (1595) [hereinafter RICHARD II].

3. WILLIAM SHAKESPEARE, KING HENRY IV, PART 1 (David Scott Kastan ed., Arden Shakespeare 3d. 2002) (1596-1597) [hereinafter HENRY IV, PART 1].

4. WILLIAM SHAKESPEARE, KING HENRY IV, PART 2 (A.R. Humphreys ed., Arden Shakespeare 1967).

5. WILLIAM SHAKESPEARE, KING HENRY V (T.W. Craik ed., Arden Shakespeare 3d ed. 1995) (1598-1599) [hereinafter HENRY V].

6. MARJORIE GARBER, SHAKESPEARE AFTER ALL 314 (2004).

is one of Shakespeare's most glorious creations, Falstaff. Yet Hal knows he must someday leave that demimonde to assume the throne. After Henry IV dies, Hal becomes Henry V. Delighted at this turn of events, Falstaff rides to London to collect the perks of cronyism. But Hal cuts him dead, saying "I know thee not, old man."<sup>7</sup> Falstaff dies offstage of a broken heart in *Henry V*. In that play, the new King Henry V conquers France in the legendary battle of Agincourt.

Most accounts of this play frame Hal's choice as one "between his cold, hard conscience-stricken father and the warm, generous embrace of his spiritual father in the gargantuan shape of Falstaff."<sup>8</sup> Under this account, Hal chooses his father when he banishes Falstaff. But in fact Hal rejects *both* his father and Falstaff in favor of the Chief Justice, the embodiment of the law. Because he has usurped the throne, Henry IV is as much an anti-legal figure as Falstaff. Neither Henry IV nor Falstaff, then, can help Hal become a legitimate king. Only the Chief Justice, almost always overlooked in the critical commentary, can do so.

I read the *Henriad* as a choice the young Hal makes among three fathers—his biological father Henry IV, his tavern "father" Falstaff, and his legal "father" the Chief Justice. To understand the stakes of this choice, we need to know each father better. I then observe that while the Lord Chief Justice represents incorruptible virtue, he is not a sustainable character in the deeply political world of this epic. By the time we reach the final play of the tetralogy—*Henry V*—the Lord Chief Justice is supplanted by the more cynical Archbishop of Canterbury. And in that play, Henry finds yet a fourth father in the King of France—not a legal father but a father-in-law—who arguably presents him with a solution to the problem of Henry IV's illegitimate accession to the crown. Yet that solution also inspires little confidence. Law, in the person of the Lord Chief Justice, gets a shining moment, but only a moment, in the *Henriad*.

## I. THE FIRST FATHER: HENRY IV

Hal's most obvious male role model is his biological father. Besides the natural rebelliousness of sons, Hal has reason to distrust Henry IV. While Richard II was undeniably weak, he was also undeniably legitimate. In wresting the crown away from its natural, divinely sanctioned line, Bolingbroke arguably committed treason.

In Bolingbroke's time (Henry IV ascended the throne in 1399), the crown could descend according to several theories, including inheritance, divine designation, conquest, parliamentary designation, or acclamation.<sup>9</sup>

7. HENRY IV, PART 2, *supra* note 4, act 5, sc. 5, l. 31.

8. Michael Billington, *There's a Hole in Hal's Bucko*, GUARDIAN, June 11, 1982, at 11.

9. See, e.g., CHRISTOPHER ALLMAND, HENRY V 14 (1992) (discussing "hereditary right,"

The historical Bolingbroke used a shifting pastiche of these justifications.

While the rule of hereditary descent had not yet been firmly established, it carried force: “Whenever possible . . . kings sought to legitimate their right to rule through blood inheritance, for, as is well known, this was the most powerful and widely-accepted way in which land, title, and authority were transmitted.”<sup>10</sup> Bolingbroke made a weak claim that he had a hereditary right “by right line of the blood coming from the good lord Henry the Third,” but this “was a statement dripping with insincerity and laden with half-truths.”<sup>11</sup> Richard II was clearly the lineally legitimate sovereign, and Edmund Mortimer, the Earl of March, putatively had a stronger claim to be his successor than Bolingbroke.<sup>12</sup>

Relatedly, Richard II was taken to be the divinely anointed sovereign, mostly because of his lineal legitimacy, but also because of his deeply religious nature.<sup>13</sup> Shakespeare picks up on this aspect of Richard II’s own “self-fashioning”<sup>14</sup> in having his character state: “Not all the water in the rough rude sea. / Can wash the balm off from an anointed king.”<sup>15</sup> Henry IV sought to follow suit by having a coronation replete with religious trappings. The heavens seemed to smile on Henry when a gold eagle ampulla filled with sacred ointment was rediscovered after being lost for many years.<sup>16</sup> However, when the Archbishop of Canterbury began to anoint the new king, it was discovered that the king’s head was riddled with lice.<sup>17</sup> Similarly, the king’s traditional gold coin slipped from his hand at the offertory and despite concerted effort could not be recovered.<sup>18</sup>

Conquest best described what Bolingbroke did. But conquest usually designated conquest by an external enemy (as in the Norman Conquest of 1066, or Henry V’s conquest of France). To use this theory in the civil context raised obvious difficulties: “This was a dangerous approach,

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“conquest,” “parliamentary title,” and parliament’s “right to elect or create”); Jack Benoit Gohn, *Richard II: Shakespeare’s Legal Brief on the Royal Prerogative and the Succession to the Throne*, 70 GEO. L.J. 943, 949 (1982) (discussing the four preceding theories as well as divine designation).

10. Chris Given-Wilson, *Legitimation, Designation and Succession to the Throne in Fourteenth-Century England*, in BUILDING LEGITIMACY: POLITICAL DISCOURSES AND FORMS OF LEGITIMATION IN MEDIEVAL SOCIETIES 89 (Isabel Alfonso, Hugh Kennedy & Julio Escalona eds., 2004).

11. TREVOR ROYLE, LANCASTER AGAINST YORK 43 (2008).

12. Gohn, *supra* note 9, at 950. Revisionist scholars have pointed out that Bolingbroke may have had a stronger claim to the throne than previously thought. See Michael Bennett, *Edward III’s Entail and the Succession to the Crown, 1376-1471*, 113 ENG. HIST. REV. 580 (1998) (noting that Edward III attempted to dictate the order of succession through a deed that favored Edward’s sons according to age). However, as Bennett points out, this deed does not seem to have been publicly available at the time of Henry IV’s accession, or, for that matter, at the time Shakespeare wrote the *Henriad*. *Id.* at 605-07.

13. Charles R. Forker, *Introduction to RICHARD II*, *supra* note 2, at 1, 17-18.

14. See STEPHEN GREENBLATT, RENAISSANCE SELF-FASHIONING: FROM MORE TO SHAKESPEARE (2005).

15. RICHARD II, *supra* note 2, act 3, sc. 2, ll. 50-51.

16. ROYLE, *supra* note 11, at 43-44.

17. *Id.* at 44.

18. *Id.*

which might be used by others in the future to justify the use of force to depose Lancaster himself.”<sup>19</sup>

Parliamentary designation was also a fraught path to the crown. The dominant view was that Parliament was nothing more than a council convened to do the will of the sitting King.<sup>20</sup> The Parliament summoned in Richard’s name had therefore ceased to exist under the law the moment Richard abdicated the throne.<sup>21</sup> Bolingbroke rested most of his claim on the idea that Parliament was sitting not as such, but, after Richard II’s abdication, as the estates.<sup>22</sup> The estates represented the polity as a whole, functioning as a kind of direct representation when mediated representation had failed.

Even taken all in all, the justifications were not airtight. Shakespeare maintains steady pressure on this problem of legitimacy. Historians agree the deposed Richard died in confinement at Pomfret Castle, but disagree about whether he did so of natural causes.<sup>23</sup> Shakespeare follows his source Raphael Holinshed’s *Chronicles*<sup>24</sup> in taking the more sinister view. One of Henry IV’s followers, Exton, alleges hearing Henry IV state: “‘Have I no friend will rid me of this living fear?’”<sup>25</sup> Exton obligingly assassinates Richard, and reports back to Henry, only to find his king ostensibly aghast.

#### EXTON

From your own mouth, my lord, did I this deed.

#### KING HENRY

They love not poison that do poison need,  
Nor do I thee. Though I did wish him dead,  
I hate the murderer, love him murdered.  
The guilt of conscience take thou for thy labour,  
But neither my good word nor princely favour.  
With Cain go wander thorough shades of night,  
And never show thy head by day nor light. [*Exit Exton.*]  
Lords, I protest, my soul is full of woe  
That blood should sprinkle me to make me grow.  
Come, mourn with me for what I do lament

19. ALLMAND, *supra* note 9, at 15.

20. *Id.*

21. A.R. Myers, *Parliament, 1422-1509*, in THE ENGLISH PARLIAMENT IN THE MIDDLE AGES 141 (R.G. Davies & J.H. Denton eds., special ed. 1999).

22. See generally Gaillard Lapsley, *The Parliamentary Title of Henry IV*, 49 ENG. HIST. REV. 423 (1934) (describing how the proceedings shifted from a Parliament called by Richard II to a makeshift body ostensibly representing the polity as a whole).

23. LOUISA DESAUSSURE DULS, RICHARD II IN THE EARLY CHRONICLES 169-76 (1975) (noting that conflicting accounts ascribe Richard’s death to grief, voluntary starvation, starvation by his prison guards, or assassination by Sir Peter Exton).

24. Forker, *supra* note 13, at 131.

25. RICHARD II, *supra* note 2, act 5, sc. 4, l. 3.

And put on sullen black incontinent.  
 I'll make a voyage to the Holy Land  
 To wash this blood off from my guilty hand.  
 March sadly after; grace my mournings here  
 In weeping after this untimely bier.<sup>26</sup>

These lines conclude *Richard II*. They do not inspire confidence in the new King. Inverting Christian doctrine, King Henry loves the sin but hates the sinner: “Though I did wish him dead, / I hate the murderer.” He then compresses his ambivalence into four words: “I . . . love him murdered,” which could mean either that Henry loves the murder of Richard or that he loves the murdered Richard. He makes a vow to go to the Holy Land “[t]o wash this blood off from my guilty hand.” Yet a recurring theme in Shakespeare is that water cannot cleanse the bloody hand, as we see in *Macbeth* and *Much Ado About Nothing*. Most of all, Henry IV seems to be feigning any horror he feels at Richard’s death. His apparent shock is undercut by his tidy rhyming couplets.

The *Henriad* presents a core dilemma of royal succession. If the crown descends through inheritance, it will produce weak rulers like Richard II. But if the crown does not descend lineally, social instability will dog the sovereign. Having usurped the crown, Henry IV spends the rest of his life putting down rebellions. In *Henry IV, Part 1*, Henry must postpone his trip to the Holy Land to quash a rebellion led by the Percy family. He successfully defeats some of the rebels at the Battle of Shrewsbury, but the play ends with work to be done. In *Henry IV, Part 2*, he subdues the other rebels, but is left bedridden at the end of the play. On his deathbed, he puzzles out a prophecy that he will die in Jerusalem when informed that the palace room where he first “did swoon”<sup>27</sup> is known as the “Jerusalem Room.”<sup>28</sup>

If having a usurping, murderous father were not enough, Hal must also grapple with the hostility King Henry IV directs toward him. King Henry IV publicly states that he envies Northumberland for having Harry Percy, known as Hotspur, as his son:

Yea, there thou mak’st me sad and mak’st me sin  
 In envy that my lord Northumberland  
 Should be the father to so blest a son,  
 A son who is the theme of honour’s tongue,  
 Amongst a grove the very straightest plant,  
 Who is sweet Fortune’s minion and her pride;  
 Whilst I, by looking on the praise of him,  
 See riot and dishonour stain the brow

26. RICHARD II, *supra* note 2, act 5, sc. 6, ll. 38-52.

27. HENRY IV, PART 2, *supra* note 4, act 4, sc. 2, l. 233.

28. *Id.* act 4, sc. 2, l. 234.

Of my young Harry. O, that it could be proved  
 That some night-tripping fairy had exchanged  
 In cradle clothes our children where they lay,  
 And called mine ‘Percy,’ his ‘Plantagenet’;  
 Then would I have his Harry, and he mine.<sup>29</sup>

Shakespeare drastically changes Hotspur’s age to make him a contemporary of Hal (the historical Hotspur was three years older than the historical Henry IV).<sup>30</sup> This revision makes Hotspur into Hal’s foil throughout the *Henriad*. It sets Hal up for the strongest rebuke a parent can offer a child—that he wishes a mix-up had occurred in the cradle.

Moreover, the terms on which Henry IV is willing to reconcile with his son show the King’s chilly, calculating nature. Henry IV berates Hal for being too familiar with the masses:

Had I so lavish of my presence been,  
 So common-hackneyed in the eyes of men,  
 So stale and cheap to vulgar company,  
 Opinion, that did help me to the crown,  
 Had still kept loyal to possession  
 And left me in reputeless banishment,  
 A fellow of no mark nor likelihood.  
 By being seldom seen, I could not stir  
 But, like a comet, I was wondered at,  
 That men would tell their children ‘This is he!’  
 Others would say, ‘Where? Which is Bolingbroke?’  
 And then I stole all courtesy from heaven  
 And dressed myself in such humility  
 That I did pluck allegiance from men’s hearts,  
 Loud shouts and salutations from their mouths,  
 Even in the presence of the crowned King.<sup>31</sup>

Henry IV willingly divulges to his son the secret of how he usurped the crown through careful management of his public persona. But the revelation of how he “stole all courtesy from heaven” and “pluck[ed] allegiance from men’s hearts” is repellent. The king goes on to make an explicit comparison between Hal and Richard II—“As thou are to this hour was Richard then,”<sup>32</sup> and between himself and Hotspur—“And even as I was then is Percy now.”<sup>33</sup> This, too, is an extreme act of aggression toward Hal: “You are more like the king I deposed, and I am more like the man I wish were my son.”

29. HENRY IV, PART 1, *supra* note 3, act 1, sc. 1, ll. 77-89.

30. David Scott Kastan, *Introduction* to HENRY IV, PART 1, *supra* note 3, at 1, 39.

31. HENRY IV, PART 1, *supra* note 3, act 3, sc. 2, ll. 39-54.

32. *Id.* act 3, sc. 2, l. 94.

33. *Id.* act 3, sc. 2, l. 96.

Unbeknownst to Henry IV, Hal has inherited his craft. Even as he riots in the tavern world in Act I, Hal pauses in soliloquy to describe the company he keeps:

I know you all, and will awhile uphold  
The unyoked humor of your idleness  
Yet herein will I imitate the sun,  
Who doth permit the base contagious clouds  
To smother up his beauty from the world,  
That, when he please again to be himself,  
Being wanted, he may be more wondered at  
By breaking through the foul and ugly mist  
Of vapors that did seem to strangle him.  
If all the year were playing holidays,  
To sport would be as tedious as to work,  
But when they seldom come, they wished for come,  
And nothing pleaseth but rare accidents.  
So when this loose behavior I throw off  
And pay the debt I never promised,  
By how much better than my word I am,  
By so much shall I falsify men's hopes;  
And, like bright metal on a sullen ground,  
My reformation, glitt'ring o'er my fault,  
Shall show more goodly and attract more eyes  
Than that which hath no foil to set it off.  
I'll so offend to make offense a skill,  
Redeeming time when men least think I will.<sup>34</sup>

This justly celebrated passage shows that Hal, like his father, understands that sovereignty subsumes stagecraft. As David Scott Kastan points out, father and son simply make different directorial decisions about how to achieve the same end of being “wondered at” (a phrase that occurs in each of their speeches).<sup>35</sup> While Henry IV removes himself to make his emergence more dramatic, Hal covers himself in “the base contagious clouds.” If Henry IV is the “comet,” Hal is the “sun.”

Shakespeare had cause to interpolate this speech soon after introducing Hal. The historical Henry V was a semi-divine figure to the Elizabethans.<sup>36</sup> The audience may have been concerned to see their national hero introduced in a tavern surrounded by rakehells. They could

34. *Id.* act 1, sc. 2, ll. 185-207.

35. Kastan, *supra* note 30, at 32. See generally STEPHEN GREENBLATT, SHAKESPEAREAN NEGOTIATIONS: THE CIRCULATION OF SOCIAL ENERGY IN RENAISSANCE ENGLAND 21-65 (1988) (discussing the relationship between power and theatricality in the *Henriad*).

36. See, e.g., Gary Taylor, *Introduction* to WILLIAM SHAKESPEARE, HENRY V 1, 3-8 (Gary Taylor ed., Oxford Shakespeare 1998) (1598-1599) (describing the play's initial reception and the reception of other contemporary Elizabethan dramas about the life of Henry V).

have asked, like Claudius in *Hamlet*: “Have you heard the argument? Is there no offense in’t?”<sup>37</sup> This soliloquy would have reassured them.

Nonetheless, this passage has long troubled those who, like myself, wish to see Hal as less Machiavellian. I can tolerate a Hal who, faced with the obligations of leadership, makes the hard decision to relinquish the friends of his youth. I cannot accept a Hal who planned from the outset to use his friends to rise to power. This is particularly true when the plan seems, to put it gently, farfetched.

I would much rather read Hal’s resolution to be like Falstaff’s. In Act I of *Henry IV, Part 1*, Falstaff vows to mend his ways: “I must give over this life, and I will give it over.”<sup>38</sup> In Act III, he observes: “Well, I’ll repent, and that suddenly while I am in some liking.”<sup>39</sup> We know Falstaff’s resolve will flicker out, much like the resolve of the nobles in *Love’s Labour’s Lost*. A reformed Falstaff is unimaginable. Hal’s resolution carries much more conviction, but may still be tentative. He knows this is not an honorable life. Yet it is also a sustaining one, not least because of Falstaff himself.

## II. THE SECOND FATHER: FALSTAFF

“Now, Hal, what time of day is it, lad?”<sup>40</sup> This is Falstaff’s first line in the *Henriad*. Hal scornfully asks why the fat knight, who is stirring from a drunken stupor, would need to know the time. Falstaff’s unabashed response is that he can only thieve at night. He immediately ties his thievery to Hal’s future status as king:

[B]ut I prithee, sweet wag, shall there be gallows standing  
in England when thou art king? And resolution thus  
fubbed as it is with the rusty curb of old Father Antic the  
law? Do not thou, when thou art king, hang a thief.<sup>41</sup>

This early exchange reveals much. Falstaff expresses fatherly familiarity with his “lad” and “sweet wag” “Hal” (not “Harry,” much less “Henry”). Falstaff genuinely loves Hal. At the same time, Falstaff is introduced as a quintessentially *anti-legal* figure. He wishes for a topsy-turvy world in which “old Father Antic the law” will not curb thieves. Far from being hanged, thieves in Falstaff’s world will be knighted as “Diana’s foresters, gentlemen of the shade, minions of the moon.”<sup>42</sup> Most dangerously for Hal, Falstaff wishes to use Hal to bring his anarchic world into being.

37. WILLIAM SHAKESPEARE, HAMLET act 3, sc. 2, ll. 234-35 (Neil Taylor & Ann Thompson eds., Arden Shakespeare 3d ed. 2006) (1599-1600) [hereinafter HAMLET].

38. HENRY IV, PART 1, *supra* note 3, act 1, sc. 2, l. 92.

39. *Id.* act 3, sc. 3, l. 5.

40. *Id.* act 1, sc. 2, l. 1.

41. *Id.* act 1, sc. 2, ll. 55-59.

42. *Id.* act 1, sc. 2, ll. 24-25.

Initially, the threat posed by Falstaff seems weak. Falstaff's immediate excursion into outlawry is a proposed robbery at Gad's Hill. Falstaff decides to waylay some travelers and steal their gold. Hal falls in with this plot, not for the money, but because Hal's friend Poins sees an opportunity to play a trick on Falstaff. Poins plans to let Falstaff and his three cronies commit the crime, but then to rob the robbers.

Falstaff successfully executes his plan. As he does so, he cries out: "You are grand jurors, are ye? We'll jure ye, faith."<sup>43</sup> He calls the travelers "grand jurors" because, at the time, only those with property could perform that office.<sup>44</sup> In saying that he will judge ("jure") the jurors, Falstaff again inverts law's ordinary structure. Thieves judge jurors. Falstaff not only robs, but uses the rhetoric of the law whilst doing so. Hal indirectly restores the law by robbing the robbers. Disguised in buckram suits, he and Poins set onto Falstaff and his three cronies, who run howling into the night.

Falstaff's outlawry extends to his speech.<sup>45</sup> Falstaff breaks the iambic pentameter spoken by the high characters in the *Henriad*. This is not a class distinction, for "Sir John Falstaff" is a knight. Falstaff has the education of a gentleman, as we see from his frequent learned references to classical mythology, religion, and medicine.<sup>46</sup> If we forget this, it is only because Falstaff's learning is eclipsed by his native intelligence, in particular his sublime alertness to the possibilities in language. Falstaff could no more speak iambic pentameter than the stilted Henry IV could speak prose. Form follows substance—Falstaff breaks the rules of meter, overflows those rules, and expects not just to be forgiven, but to be loved for this excess. And his audiences—inside and outside the play—do love him.

Hal delights in Falstaff. He understands Falstaff to be a verbal Proteus, who can wriggle out of whatever fetters hold him. The sharp pleasure Hal feels at Gad's Hill is not so much in thwarting Falstaff, but in the expected lies Falstaff will tell to cover up his failure. As Poins observes, "[t]he virtue of this jest will be the incomprehensible lies that this same fat rogue will tell us when we meet at supper: how thirty at least he fought with, what wards, what blows, what extremities he endured; and in the reproof

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43. *Id.* act 2, sc. 2, ll. 88-89.

44. EDWARD J. WHITE, COMMENTARIES ON THE LAW IN SHAKESPEARE 255 (2d ed. 1913).

45. Barbara Johnson, *Anthropomorphism in Lyric and Law*, 10 YALE J.L. & HUMAN. 549, 550 (1998) ("[L]yric poetry has, at least historically, been the more law-abiding or rule-bound of the genres. Indeed, the sonnet form has been compared to a prison (Wordsworth) or at least to a bound woman (Keats), and Baudelaire's portraits of lyric depression (*Spleen*) are often written as if from behind bars." (footnotes omitted)).

46. See HENRY IV, PART 1, *supra* note 3, act 1, sc. 2, ll. 25-26 ("[L]et us be Diana's foresters, gentlemen of the shade, minions of the moon . . ."); *id.* act 4, sc. 2, ll. 23-25 ("[A]nd now my whole charge consists of ensigns, corporals, lieutenants, gentlemen of companies—slaves as ragged as Lazarus in the painted cloth . . ."); HENRY IV, PART 2, *supra* note 4, act 1, sc. 2, ll. 115-26 ("I have read the cause of his effects in Galen, it is a kind of deafness.").

of this lives the jest.”<sup>47</sup> Falstaff delivers. As he recounts the event back at the tavern, his embellishments are as brazen as they are transparent. He initially says that he was set on by two men, then by four, seven, nine, and eleven. He has hacked notches in his sword with his dagger to provide “ocular proof” of the fight. When Hal and Poins confront him with the truth, Falstaff remains unfazed. He now states he must have known all along that it was Hal who accosted him. Falstaff’s “instinct” kept him from killing the heir apparent.

This tomfoolery is relatively unconcerning. Yet Harold Bloom, whose identification with Falstaff is extreme, overreaches when he says Falstaff does “no real harm” in the play.<sup>48</sup> This may be true before civil war erupts. Once war comes, Falstaff does immense harm. Hal puts Falstaff in charge of raising and leading a regiment. Falstaff admits he has “misused the King’s press damnable.”<sup>49</sup> He has permitted the wealthy to buy themselves out of the draft, pocketing “three hundred and odd pounds”<sup>50</sup> for himself. He describes the remaining soldiers as “slaves as ragged as Lazarus in the painted cloth, where the glutton’s dogs licked his sores; unjust servingmen, younger sons to younger brothers, revolted tapsters, and ostlers tradefallen.”<sup>51</sup> Hal observes: “I did never see such pitiful rascals.”<sup>52</sup> Falstaff responds: “Tut, tut, good enough to toss; food for powder, food for powder. They’ll fill a pit as well as better. Tush, man, mortal men, mortal men.”<sup>53</sup> We hope he is joking, but his callousness extends into battle. At Shrewsbury, he reports: “I have led my ragamuffins where they are peppered; there’s not three of my hundred and fifty left alive, and they are for the town’s end to beg during life.”<sup>54</sup>

Unlike sentimental critics, Hal takes his friend’s measure from the start. In the second Act, King Henry IV summons Hal. Both Hal and Falstaff know this will be a paternal audit. They practice for it by playacting, with Hal taking his father’s part, and Falstaff taking Hal’s. Playing Hal, Falstaff defends himself:

No, my good lord, banish Peto, banish Bardolph, banish Poins, but for sweet Jack Falstaff, kind Jack Falstaff, true Jack Falstaff, valiant Jack Falstaff, and therefore more valiant being, as he is old Jack Falstaff, banish not him thy Harry’s company. Banish plump Jack, and banish all

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47. HENRY IV, PART 1, *supra* note 3, act 1, sc. 2, ll. 176-80.

48. HAROLD BLOOM, SHAKESPEARE: THE INVENTION OF THE HUMAN 286 (1998).

49. HENRY IV, PART 1, *supra* note 3, act 4, sc. 2, ll. 12-13.

50. *Id.* act 4, sc. 2, ll. 13-14.

51. *Id.* act 4, sc. 2, ll. 24-29.

52. *Id.* act 4, sc. 2, l. 63.

53. *Id.* act 4, sc. 2, ll. 64-65.

54. *Id.* act 5, sc. 3, ll. 35-38.

the world.<sup>55</sup>

Playing his father, Hal says: “I do, I will.”<sup>56</sup> This is the sharpest, most scythe-like comma in literature. Hal speaks “I do” in jest, but “I will” in deadly earnest; he speaks “I do” as Henry IV, but “I will” as Henry V, the king he will become.

Hal’s sense of his predicament can be seen in the ruse he plays on the “drawer,” or bartender, Francis. Hal has Poins go into another room of the tavern and repeatedly call Francis’s name. In the meantime, Hal engages Francis in conversation. Francis becomes increasingly agitated. He cannot leave the Prince, but must also take care of his customers. The ruse ends when both Hal and Poins call “Francis!” at the same time. As the stage action notes: “*Here they both call him. The Drawer stands amazed, not knowing which way to go.*”<sup>57</sup>

Critics call Hal’s jape petty.<sup>58</sup> We can pity Francis’s discomfiture without ceding that Hal is driven only by cruelty. Hal dramatizes his own dilemma. He, like the Drawer, is called simultaneously by court and tavern. Hal represents the voice of the court here, as he does while playacting with Falstaff. Yet his identification is with the Drawer, immobilized by equal opposing forces. The voice of the court is frosty and powerful. The voice of the tavern is warm and degenerate.

The dilemma seemingly dissipates at the end of *Henry IV, Part 1*. After Hal saves his father’s life at Shrewsbury, Henry IV and Hal reconcile. Their amity does not last. In *Henry IV, Part 2*, it is as if the rapprochement never occurred. Yet this play produces the character who can truly help Hal.

### III. THE THIRD FATHER: THE LORD CHIEF JUSTICE

The Lord Chief Justice is easily ignored. He appears in only one of the four plays—*Henry IV, Part 2*—and is never given a name. It took a practicing lawyer to see that he represents something distinctive in Shakespeare. Daniel Kornstein observes that in the Chief Justice, “Shakespeare gives us the most unqualifiedly, unmistakably complimentary portrait of a sober, solid, fair-minded lawyer figured in all the canon.”<sup>59</sup> The Chief Justice is originally Hal’s enemy—Hal is banished from the Privy Council before the action of *Henry IV* begins because he has struck the Chief Justice. By the end of *Henry IV, Part 2*, Henry

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55. *Id.* act 2, sc. 4, ll. 461-67.

56. *Id.* act 2, sc. 4, l. 468.

57. *Id.* act 2, sc. 4, l. 70.

58. E.g., Kastan, *supra* note 30, at 47.

59. DANIEL J. KORNSTEIN, KILL ALL THE LAWYERS?: SHAKESPEARE’S LEGAL APPEAL 135 (2005).

embraces the Chief Justice against all expectation.

Falstaff and the Chief Justice are natural enemies, and recognize each other as such. Falstaff wins the early rounds. In the first Act of *Henry IV, Part 2*, the Chief Justice confronts Falstaff. The Justice takes the knight to task for ignoring a court summons for the robbery on Gad's Hill: "I sent for you when there were matters against you for your life, to come speak with me."<sup>60</sup> Falstaff easily side-steps this one: "As I was then advised by my learned counsel in the laws of this land-service, I did not come."<sup>61</sup> Falstaff hides behind his military service, which immunizes him from civilian law.

The Chief Justice acknowledges this excuse, and even credits Falstaff's service: "Well, I am loath to gall a new-healed wound. Your day's service at Shrewsbury hath a little gilded over your night's exploit on Gad's Hill. You may thank th'unquiet time for your quiet o'er-posting that action."<sup>62</sup> The Lord Chief Justice is balanced, even in his rhetoric—the "day" at Shrewsbury outweighs the "night" on Gad's Hill; the "unquiet" time of civil war justifies the "quiet" passing over of Falstaff's crime.

Even after withdrawing the summons, the Chief Justice tries moral exhortation. Falstaff repeatedly outsmarts him, making this scene come to the modern ear like a vaudeville act.

CHIEF JUSTICE: Your means are very slender, and your waste is great.

FALSTAFF: . . . I would my means were greater and my waist slenderer.<sup>63</sup>

CHIEF JUSTICE: There is not a white hair in your face but should have his effect of gravity.

FALSTAFF: His effect of gravy, gravy, gravy.<sup>64</sup>

CHIEF JUSTICE: Well, God send the Prince a better companion!

FALSTAFF: God send the companion a better prince! I cannot rid my hands of him.<sup>65</sup>

We might ask, with Escalus of *Measure for Measure*, "Which is the wiser here, Justice or Iniquity?"<sup>66</sup> Like Constable Elbow in *Measure*, some

60. HENRY IV, PART 2, *supra* note 4, act 1, sc. 2, ll. 131-32.

61. *Id.* act 1, sc. 2, ll. 133-34.

62. *Id.* act 1, sc. 2, ll. 146-50.

63. *Id.* act 1, sc. 2, ll. 140-42.

64. *Id.* act 1, sc. 2, ll. 159-60.

65. *Id.* act 1, sc. 2, ll. 199-201.

66. WILLIAM SHAKESPEARE, MEASURE FOR MEASURE act 2, sc. 1, l. 169 (J.W. Lever ed., Arden Shakespeare 2d ed. 1967) (1595).

Justices in the *Henriad* reflect their names. Justice Silence says almost nothing; Justice Shallow is Falstaff's gull. In contrast, the Chief Justice is indeed wiser than the iniquitous Falstaff. But Falstaff has three potent safeguards—the protection of the heir apparent, his own prodigious rhetorical gifts, and the confusion in the state created by the rebellion.

We see Falstaff use all his advantages in the next Act, when the Hostess of the tavern has Falstaff arrested for chronic nonpayment of debt. When the Chief Justice intervenes, Falstaff states:

My lord, this is a poor mad soul, and she says up and down the town that her eldest son is like you. She hath been in good case, and the truth is, poverty hath distracted her. But for these foolish officers, I beseech you I may have redress against them.<sup>67</sup>

Falstaff outrageously slanders the hostess by saying that she, in madness, has alleged the Chief Justice is the father of her oldest child. Falstaff excuses her because of her poverty, but seeks to sue the officers who have arrested him. Falstaff now seeks to "jure" the "grand jurors" in an even more literal fashion.

The Chief Justice answers with commendable calm. He does not get distracted either by the preposterous claim that he has fathered the hostess's child or by Falstaff's claim of governmental misconduct. To the contrary, he observes that Falstaff's rhetorical moves are all too familiar:

Sir John, Sir John, I am well acquainted with your manner of wrenching the true cause the false way. It is not a confident brow, nor the throng of words that come with such more than impudent sauciness from you, can thrust me from a level consideration. You have, as it appears to me, practiced upon the easy-yielding spirit of this woman, and made her serve your uses both in purse and in person.<sup>68</sup>

The clear-eyed Chief Justice apprehends all. Rhetoric is not reality; audacity not authority. Falstaff's habit of "wrenching the true cause the false way" will not prevent the Chief Justice from giving a "level consideration," a phrase that recalls the scales of justice.

Falstaff then plays his other aces, observing that he must be freed so he can follow royal orders:

My lord, I will not undergo this sneap without reply. You call honourable boldness impudent sauciness; if a man will make curtsy and say nothing, he is virtuous. No, my lord, my humble duty remembered, I will not be your

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67. HENRY IV, PART 2, *supra* note 4, act 2, sc. 1, ll. 102-06.

68. *Id.* act 2, sc. 1, ll. 107-15.

suitor. I say to you I do desire deliverance from these officers, being upon hasty employment in the King's affairs.<sup>69</sup>

The Chief Justice is stymied. He cannot send Falstaff to jail without depriving the King of a military leader (such as he is). So he sends Falstaff to the war. For all his claims of haste, Falstaff invites a friend to lunch the moment he is freed.

When Falstaff learns that King Henry IV is dead and that Hal has become king, one of his first reactions is to seek revenge for the “sneap” (snub) he has received from the Chief Justice:

Boot, boot, Master Shallow. I know the young King is sick for me. Let us take any man’s horses. The laws of England are at my commandment. Blessed are they that have been my friends, and woe to my Lord Chief Justice!<sup>70</sup>

It is always dangerous when any individual claims the law of the land as his or her own. We see this earlier in Shakespeare’s corpus when the rebel Cade says: “Away, burn all the records of the realm: my mouth shall be the parliament of England.”<sup>71</sup> We see it later when *Lear*’s Goneril says “the laws are mine.”<sup>72</sup> Falstaff has long wished to declare victory over “old father Antic the law,” and here he believes he has achieved it.

When the Chief Justice learns of Henry IV’s death, he similarly fears the king’s demise has left him “open to all injuries.”<sup>73</sup> Lord Warwick concurs that he thinks “the young King loves you not.”<sup>74</sup> The Chief Justice replies: “I know he doth not, and do arm myself / To welcome the condition of the time, / Which cannot look more hideously upon me / Than I have drawn it in my fantasy.”<sup>75</sup> Shakespeare reveals the humanity of the Chief Justice here. We see him not as an abstract embodiment of justice, but as a human being who has an imagination, and who is afraid. The nobles around him sympathize with his plight. Lancaster says: “You stand in coldest expectation. / I am the sorrier; would ‘twere otherwise.”<sup>76</sup>

The predicted downfall of the Chief Justice is tied specifically to the predicted ascension of Falstaff. The Duke of Clarence states: “Well, you must now speak Sir John Falstaff fair, / Which swims against your stream

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69. *Id.* act 2, sc. 1, ll. 121-27.

70. *Id.* act 5, sc. 3, ll. 122-26.

71. WILLIAM SHAKESPEARE, KING HENRY VI, PART 2 act 4, sc. 7, ll. 11-13 (Ronald Knowles ed., Arden Shakespeare 3d ed. 1999) (1591).

72. WILLIAM SHAKESPEARE, KING LEAR act 5, sc. 3, l. 156 (R.A. Foakes ed., Arden Shakespeare 3d ed. 1997) (1603).

73. HENRY IV, PART 2, *supra* note 4, act 5, sc. 2, l. 8.

74. *Id.* act 5, sc. 2, l. 9.

75. *Id.* act 5, sc. 2, ll. 10-13.

76. *Id.* act 5, sc. 2, ll. 31-32.

of quality.”<sup>77</sup> This brings out the best in the Chief Justice:

Sweet princes, what I did I did in honour,  
Led by th’ impartial conduct of my soul.  
And never shall you see that I will beg  
A ragged and forestalled remission.  
If truth and upright innocency fail me,  
I’ll to the King my master that is dead,  
And tell him who hath sent me after him.<sup>78</sup>

The Chief Justice would rather follow his old master Henry IV into death than submit to the Lord of Misrule.

#### IV. HAL’S CHOICE

At the end of *Henry IV, Part 2*, Hal is put to his choice among these three father figures. He calls the Chief Justice to account for sending him to prison: “How might a prince of my great hopes forget / So great indignities you laid upon me? / What, rate, rebuke and roughly send to prison / Th’immediate heir of England?”<sup>79</sup> The Chief Justice mounts an eminently legal defense of his actions. Yet unlike the lawyerly speeches of Portia, he speaks with perfect integrity:

I then did use the person of your father  
The image of his power lay then in me.  
And in th’administration of his law  
Whiles I was busy for the commonwealth,  
Your Highness pleased to forget my place,  
The majesty and power of law and justice,  
The image of the King whom I presented,  
And struck me in the very seat of judgment,  
Whereon, as an offender to your father,  
I gave bold way to my authority  
And did commit you. If the deed were ill,  
Be you contented, wearing now the garland,  
To have a son set your decrees at nought?  
To pluck down justice from the awful bench?  
To trip the course of law and blunt the sword  
That guards the peace and safety of your person?  
Nay more, to spurn at your most royal image  
And mock your workings in a second body?  
Question your royal thoughts, make the case yours;

77. *Id.* act 5, sc. 2, ll. 33-34.

78. *Id.* act 5, sc. 2, ll. 35-41.

79. *Id.* act 5, sc. 2, ll. 68-71.

Be now the father and propose a son,  
Hear your own dignity so much profaned,  
See your most dreadful laws so loosely slighted,  
Behold yourself so by a son disdained,  
And then imagine me taking your part  
And in your power soft silencing your son.  
After this cold considerance, sentence me,  
And, as you are a king, speak in your state  
What I have done that misbecame my place,  
My person, or my liege's sovereignty.<sup>80</sup>

In Henry V's time, as well as in Shakespeare's time, the judiciary was not independent of the executive.<sup>81</sup> To the contrary, the Chief Justice was an agent of the king. The Chief Justice emphasizes this point in his speech. He observes that he punished Hal not because Hal struck him as an individual, but because Hal struck him as Henry IV's representative.

But the Chief Justice was Henry IV's representative at the time only because Henry IV was king. The two men interacted in their official capacities, not as individuals. Now that Hal has become Henry V, the Chief Justice can represent him. So the Chief Justice asks Henry V what he would want if his own son were "to spurn at [his] royal image / And mock [his] workings in a second body." Hal has already indirectly answered this hypothetical, while playing at being his father in the tavern scene. When asked whether he would banish Falstaff, he says "I do, I will." We know Hal would want his son to be disciplined.

Indeed, the Chief Justice's capacity to impose the law impartially is exactly what Henry V needs. In *Othello*, the Duke shows legal integrity when he promises to enforce the dictates of the "bloody book of law" even against his own son.<sup>82</sup> Yet the Duke cannot live up to his own ideals—he immediately retreats from this pronouncement when he realizes the defendant is a general invaluable to the Venetian state. In contrast, the Chief Justice has proven his integrity by sentencing, if not his own son, his sovereign's son.

So Henry V, contrary to all expectations, including the Chief Justice's own, embraces him:

You are right, justice, and you weigh this well.  
Therefore still bear the balance and the sword.  
And I do wish your honors may increase  
Till you do live to see a son of mine

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80. *Id.* act 5, sc. 2, ll. 73-101.

81. See Gohn, *supra* note 9, at 946 ("The King . . . was the chief magistrate and source of all judicial power.").

82. WILLIAM SHAKESPEARE, OTHELLO act 1, sc. 3, l. 68 (E.A.J. Honigmann ed., Arden Shakespeare 3d ed. 1997) (1603).

Offend you and obey you as I did.  
 So shall I live to speak my father's words:  
 "Happy am I that have a man so bold  
 That dares do justice on my proper son;  
 And not less happy, having such a son  
 That would deliver up his greatness so  
 Into the hands of justice." You did commit me,  
 For which I do commit into your hand  
 Th' unstained sword that you have used to bear,  
 With this remembrance: that you use the same  
 With the like bold, just, and impartial spirit  
 As you have done 'gainst me. There is my hand.  
 You shall be as a father to my youth,  
 My voice shall sound as you do prompt mine ear,  
 And I will stoop and humble my intents  
 To your well-practiced wise directions.<sup>83</sup>

Hal has finally chosen a father: "You shall be as a father to my youth."

The Chief Justice is an ideal father for Hal because he can best defend the new King from both the lawlessness of Henry IV and the lawlessness of Falstaff. Hal recognizes that he has a superior claim to legitimacy than his own father, because he has inherited the crown through legal means. Hal can stand for the law as his father could not, and the Chief Justice can help him do so. The Chief Justice is enough like Henry IV to represent him, but also enough unlike Henry IV that he can outlive him to represent Hal.

As Ernst Kantorowicz demonstrates in his book *The King's Two Bodies*, medieval political theory split the atom of sovereignty into two "bodies."<sup>84</sup> One body was the king's natural body, which was a mortal body susceptible to decay like any other human being's. The other was the king's political body, which was immutable and eternal, representing the unity of the nation. Shakespeare was clearly aware of this theory. He explicitly invokes it in *Hamlet*, where the Prince, after killing the King's advisor Polonius, observes that "[t]he body is with the King, but the King is not with the body."<sup>85</sup> Here, the Chief Justice observes that when Hal struck the Chief Justice, he struck the King in his "second body." The

83. HENRY IV, PART 2, *supra* note 4, act 5, sc. 2, ll. 102-21.

84. ERNST KANTOROWICZ, THE KING'S TWO BODIES: A STUDY IN MEDIAEVAL POLITICAL THEOLOGY 7 (1957) ("[T]he King has in him two Bodies, viz., a Body natural, and a Body politic. His Body natural . . . is a Body mortal, subject to all Infirmities that come by Nature or Accident . . . But his Body politic is a Body that cannot be seen or handled, consisting of Policy and Government, and constituted for the Direction of the People, and the Management of the public weal, and this Body is utterly void of Infancy, and old Age, and other natural Defects and Imbecilities, which the Body natural is subject to, and . . . cannot be invalidated or frustrated by any Disability in his natural Body." (quoting EDMUND PLOWDEN, COMMENTARIES OR REPORTS 212a (1816))).

85. HAMLET, *supra* note 37, act 4, sc. 2, ll. 25-26.

Chief Justice is the King's "second body" because as the nation's highest judicial officer, he represents the immutable and eternal law that constitutes the nation. The Chief Justice offers Hal nothing less than the immortal political body of the king, now that the mortal natural body of Henry IV no longer contains it.

The Chief Justice can also defend Hal against the threat Falstaff poses from below. When Falstaff approaches Hal, he addresses him in the old familiar way: "God save thy Grace, King Hal; my royal Hal."<sup>86</sup> He puts it sharply enough—it is still "Hal" rather than "Henry," and Falstaff amends this to a possessive: "*my* royal Hal." Hal at first ignores him, but Falstaff will not be so easily put off: "God save thee, my sweet boy!"<sup>87</sup> So the new King turns to his new legal representative to avoid a direct confrontation: "My Lord Chief Justice, speak to that vain man."<sup>88</sup> The Chief Justice swiftly provides the needed assistance: "Have you your wits? Know you what 'tis you speak?"<sup>89</sup> There may be payback here—recall that Falstaff falsely accused the Hostess of madness in the Chief Justice's presence, when the Chief Justice was able to do little about it.

Falstaff disregards the Chief Justice. He has already bested his adversary while Hal was a mere prince. Now that Hal is King, Falstaff must surely believe he will outrank any officer of the law. He does mend his speech a little, switching from "my sweet boy" to "My King! My Jove! I speak to thee, my heart!"<sup>90</sup> But he never surrenders his familiarity—"I speak to thee" (the more familiar form of "you," just as "Hal" is the more familiar form of "Henry"). Falstaff forces Hal to address him directly. Finally and terribly, Hal does:

I know thee not, old man. Fall to thy prayers.  
How ill white hairs becomes a fool and jester!  
I have long dreamt of such a kind of man,  
So surfeit-swell'd, so old, and so profane;  
But being awak'd I do despise my dream.  
Make less thy body hence, and more thy grace;  
Leave gormandizing; know the grave doth gape  
For thee thrice wider than for other men,  
Reply not to me with a fool-born jest;  
Presume not that I am the thing I was;  
For God doth know, so shall the world perceive,  
That I have turn'd away my former self;  
So will I those that kept me company.

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86. HENRY IV, PART 2, *supra* note 4, act 5, sc. 5, l. 37.

87. *Id.* act 5, sc. 5, l. 39.

88. *Id.* act 5, sc. 4, l. 40.

89. *Id.* act 5, sc. 5, l. 41.

90. *Id.* act 5, sc. 5, l. 46.

When thou dost hear I am as I have been,  
 Approach me, and thou shalt be as thou wast,  
 The tutor and the feeder of my riots.  
 Till then I banish thee, on pain of death,  
 As I have done the rest of my misleaders,  
 Not to come near our person by ten mile.  
 For competence of life I will allow you,  
 That lack of means enforce you not to evils.  
 And, as we hear you do reform yourselves,  
 We will according to your strengths and qualities,  
 Give you advancement. [to CHIEF JUSTICE] Be it your  
 charge, my lord  
 To see performed the tenor of my word.—  
 Set on.<sup>91</sup>

Hal's resolve is not as strong as it sounds. He slides into the joshing mode of the tavern when he refers to Falstaff's obesity: "know the grave doth gape / For thee thrice wider than for other men." This is Hal's most vulnerable moment in this speech, for it opens him to the old daffy banter. We reflexively anticipate Falstaff's response, which we wish we were clever enough to formulate (some pun on "grave" and "graver men"?). Hal recognizes the danger, and hastily preempts Falstaff's return: "Reply not to me with a fool-born jest." Hal distances himself first not from Falstaff, but from his former self—"Presume not that I am the thing I was." Only after he has accomplished this self-estrangement can he banish the friend of his youth: "That I have turn'd away my former self; / So will I those that kept me company." Tellingly, Hal does not banish Falstaff from England, but from coming within ten miles of his person. The most direct threat Falstaff poses is not to the nation, but to Hal, wherever Hal is.

The rejection is necessary. As Anthony Nuttall says, "[h]e is doing this for us."<sup>92</sup> But it is no more bearable for being indispensable. Again, the Chief Justice bears what no mortal could—Hal turns to him, in stoic misery, to carry out his orders: "Be it your charge my Lord / To see performed the tenor of my work." Then, banishing plump Jack and all the world, Hal sets on.

Critics revere or revile Falstaff. Yet Falstaff is *both* an extraordinarily seductive figure and an extraordinary threat to the rule of law. The relationship Hal has to Falstaff is similar to the relationship Plato's Socrates had to the poet in *The Republic*.<sup>93</sup> Aristotle did not love the poet,

91. *Id.* act 5, sc. 5, ll. 39-63.

92. A.D. NUTTALL, SHAKESPEARE THE THINKER 154 (2007) (internal quotation marks omitted).

93. See Kenji Yoshino, *The City and the Poet*, 114 YALE L.J. 1835, 1841-60 (2005). Socrates distinguishes between the imitative poet, who inhabits and performs the roles he represents, and the narrative poet, who recites poetry from a third-party perspective. PLATO, THE REPUBLIC OF PLATO 397a-b (Allan Bloom ed. & trans., 2d ed. 1991). Socrates drives the imitative poet from the city but

but let him stay.<sup>94</sup> Plato, in contrast, loved the poet and banished him because of, rather than in spite of, that love. It was because Plato loved the mimetic poet that he understood the poet's incredible charisma, his capacity to shape our views against the dictates of law.<sup>95</sup> Similarly, Hal comes to recognize Falstaff as the most sublime of scofflaws. Falstaff is the fattest lamb literature ever sacrificed on the altar of the law.

## V. THE FOURTH FATHER: THE KING OF FRANCE

By *Henry V*, the next and final play in the *Henriad*, the Chief Justice has disappeared without explanation. Hal takes legal advice at the inception of the play, but from the Archbishop of Canterbury. Seeking to invade France, Hal wishes to know whether he has any legal right to do so. In contrast to the Chief Justice, the Archbishop is deeply partial in this case. The Parliament is about to pass a bill that would decimate the church's coffers. The Archbishop believes that if Henry V invades France, Parliament will not pass the bill. So he gives a horribly convoluted (almost unreadable) rendition of the "Salic law." By the end, his disquisition has all listeners willing to accept whatever he recommends, so long as he will stop talking. His conclusion, of course, is that Henry can legally invade France.

Hal does caution the Archbishop not to bend the law to suit his convenience:

And God forbid, my dear and faithful lord,  
That you should fashion, wrest or bow your reading  
Or nicely charge your understanding soul  
With opening titles miscreate, whose right  
Suits not in native colours with the truth.<sup>96</sup>

However, the opinion the Archbishop tenders feels like a foregone conclusion based on the self-interest he has already revealed. This raises the suspicion that Hal, like many an executive, is making an authority out of the body which will serve up the opinion he wants.

If King Henry V has lost the roguishness of youth, he may also have lost its integrity. The King's decision to invade France seems driven less by the law than his father's deathbed advice: "Be it thy course to busy giddy

permits the narrative poet to stay. *Id.* at 398a-b.

94. Aristotle, *Poetics*, in 2 THE COMPLETE WORKS OF ARISTOTLE: THE REVISED OXFORD TRANSLATION 2316, 2322-23 (Jonathan Barnes ed., 1984) (contrasting the historian, who describes "the thing that has been," with the poet, who describes the "thing that might be").

95. Socrates observes that if an imitative poet came to the city, we would "fall on our knees before him as a man sacred, wonderful, and pleasing." PLATO, *supra* note 93, at 398a. Yet after doing so, "we would say that there is no such man among us in the city, nor is it lawful for such a man to be born there." *Id.*

96. HENRY V, *supra* note 5, act 1, sc. 2, ll. 13-18.

minds / With foreign quarrels, that action, hence borne out / May waste the memory of the former days.”<sup>97</sup> We fear that just as Henry IV wished to go on a Crusade to paper over his troubled history, Henry V is invading France to quiet any remaining questions about his legitimacy.

This charge of illegitimacy still haunts Henry V. He has acquired the crown through inheritance from his father, but the question remains as to whether this purges the original taint of usurpation. For instance, Archdeacon Edmund Ghest asked “whether a long possession can make the Conqueror’s title good.”<sup>98</sup> His answer was that “no length of time makes that lawful, which was not so from the beginning.”<sup>99</sup> The only exceptions would be if the passage of that time had extinguished all the proper heirs.<sup>100</sup> When Henry V attacked France, this was not the case.

This suggests another reason (besides distracting the English from domestic affairs) why Henry V might wish to wage war on France. Under the theory of conquest, Henry V could bolster his legitimate title to kingship by reclaiming lands lost earlier in France. C.T. Allmand reminds us that “[b]y long tradition one of the positive characteristics expected of a king was that he should be a soldier. The ability to lead in battle and defeat the enemy was an essential element of medieval monarchy.”<sup>101</sup> Allmand further claims that Henry V’s “military achievement did more than anything else to raise both him, and monarchy, high in the esteem of his people.”<sup>102</sup> This elaboration on the theme of conquest explains Henry V’s pregnant utterance immediately before departing for war: “No King of England, if not king of France!”<sup>103</sup>

The disappearance of the Chief Justice does not mean that Hal departs from the law entirely. In France, one of the Gad’s Hill robbers, Bardolph, is caught stealing a pyx from a church.<sup>104</sup> Henry V insists he be hanged according to the law.<sup>105</sup> Kenneth Branagh’s steely rendition gets this scene right.<sup>106</sup> As King Henry V, Branagh allows his friend to be executed, but watches the execution through tears. As Branagh’s film underscores, Bardolph stands for Falstaff, who has already died offstage.

At the same, time, however, Henry V’s actions in battle are sufficiently ruthless that they arguably violate the law. For instance, Henry V’s order

97. HENRY IV, PART 2, *supra* note 4, act 4, sc. 5, ll. 213-15.

98. EDMUND GHEST, AN IMPARTIAL DISQUISITION, HOW FAR CONQUEST GIVES THE CONQUEROR A TITLE (1688).

99. *Id.*

100. *Id.*

101. C.T. Allmand, *Henry V the Soldier, and the War in France*, in HENRY V: THE PRACTICE OF KINGSHIP 117, 118-19 (G.L. Harriss ed., 1985).

102. *Id.* at 199.

103. HENRY V, *supra* note 5, act 2, sc. 2, l. 194.

104. *Id.* act 3, sc. 6, l. 40.

105. *Id.* act 3, sc. 6, ll. 107-13.

106. HENRY V (British Broadcasting Co. 1989).

to kill all prisoners of war is often redacted out of film versions of the play because it puts the sovereign in such a negative light. Theodore Meron's excellent book explores whether this order could have been justified either on grounds of reprisal (the French had done the same) or necessity (the French POWs still represented a threat, as they could be rescued).<sup>107</sup> Meron rejects both rationales under the law of war as it stood.

After Henry V miraculously defeats the French at Agincourt, he proclaims it will be a capital crime to give credit to anyone but God for the victory. This seeming act of humility also solidifies Henry V's claim to divine designation to be ruler of France. But it is not only France to which Henry V seeks to lay claim. He offers a truce to the defeated French King, which consists in part of marrying the French princess Catherine. The arranged marriage is played off almost charmingly enough to cover up the naked political bargain it represents. The one sticking point in this bargain, on which Henry insists, is that the French King address him with the title "our most dear son Henry, King of England, and inheritor of France."<sup>108</sup> The French King ultimately accedes to this demand.

In this exchange, the French King becomes Henry V's fourth and final father. Like the Lord Chief Justice, we do not get a clear sense of his personality, in stark contrast to his splenetic and immature son, the Dauphin. What the French King can offer Henry is an external recognition that he is king of England, as well as the future king of France. In this sense, Henry has actually conquered not just France, but also England, at Agincourt. It is a political stratagem that would have made his father proud.

At the same time, however, the French King contrasts sharply with the Lord Chief Justice in being Henry V's father-in-law rather than his legal father. We see that the French King only acknowledges Henry V as his "most dear son" grudgingly. The French King's initial reluctance publicly to acknowledge Henry V as his son-in-law recapitulates the initial reluctance of Henry IV to do so. Father-in-law and biological father share more with each other than either does with the Lord Chief Justice.

## CONCLUSION

A battle as fierce as Agincourt has raged in the critical literature between the followers of Falstaff and the followers of Henry V. Those who favor Falstaff see him as an embodiment of joy, while viewing Hal as a force of ruthless, calculating aggression.<sup>109</sup> Those who favor Henry see

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107. THEODOR MERON, HENRY'S WARS AND SHAKESPEARE'S LAWS: PERSPECTIVES ON THE LAW OF WAR IN THE LATER MIDDLE AGES 154-71 (1994).

108. HENRY V, *supra* note 5, act 5, sc. 2, ll. 333-34.

109. See, e.g., HAROLD BLOOM, GENIUS: A MOSAIC OF ONE HUNDRED EXEMPLARY CREATIVE MINDS 22 (2002) ("[Hal is] cold, unloving, hypocritical, [and] Machiavellian . . ."); W.H. AUDEN,

his repudiation of Falstaff as a necessary part of his maturational process.<sup>110</sup> As Kastan has pointed out, our judgments have changed over time—until the twentieth century, *Henry IV* was Falstaff's play, while in the twentieth century and beyond, the entire tetralogy belongs increasingly to Hal.<sup>111</sup> We may live in a sterner age, but curiously, this has led to a celebration of Hal rather than of the Chief Justice, who is, once again, hard to find.

Why has the Chief Justice been replaced by the Archbishop as the expositor of law in *Henry V*? I believe Shakespeare wished to leave the Chief Justice with an untarnished reputation. No other legal figure in Shakespeare is permitted this distinction. In presenting the Chief Justice in this way, Shakespeare allows the law to have its moment. The Chief Justice could not have remained the ideal figure we inherit today if he had been forced into the more complex political realities of *Henry V*.

The Lord Chief Justice is like Lady Justice with her scales—idealized, hardly human, fiercely impartial. To borrow E.M. Forster's distinction, he is a "flat" rather than a "round" character.<sup>112</sup> No speech of his will be anthologized in the way that Portia's "quality of mercy" speech has been. But that should lead us back to the observation that the Chief Justice represents legal integrity in a way Portia cannot. As Bloom said long before he became Falstaff's attorney, "to be judicious is to be weak, and to compare, exactly and fairly, is to be not elect."<sup>113</sup> The Chief Justice is boring. But this could be said of actual judges as well.

Elaine Scarry has suggested a relationship between justice and beauty—between the two senses of "fairness."<sup>114</sup> This insight seems correct and helpful—to take but one instance, justice is often funded by the idea of symmetry, which human beings seem to find innately appealing. But it may be too utopian to insist (she does not) on the inevitability of any relationship between ethics and aesthetics. There is an ethics of boredom that is closely related to justice. When Hal embraces the Chief Justice as his father, he wraps his arms, however briefly, around this idea.

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Henry IV, Parts One and Two, and Henry V, in LECTURES ON SHAKESPEARE 101, 108 (Arthur Kirsch ed., 2000) ("[Hal] is the Machiavellian character, master of himself and the situation . . . Hal has no self.").

110. See, e.g., DAVID BEVINGTON, SHAKESPEARE 95 (2002) ("[Hal] le[aves] behind . . . Falstaff from whom he has learned much but who somehow lacked his sagacity and judgement to mature fully. Whether we like him or not, Hal is the success story of this saga."); GARBER, *supra* note 6, at 342 ("[Hal] learn[s] . . . that [kingship] demands a shutting-away of feeling as well as an expression of it.").

111. Kastan, *supra* note 35, at 96.

112. E.M. FORSTER, ASPECTS OF THE NOVEL 67 (Houghton Mifflin Harcourt 1985) (1923).

113. HAROLD BLOOM, THE ANXIETY OF INFLUENCE: A THEORY OF POETRY 19 (2d ed.1997).

114. ELAINE SCARRY, ON BEAUTY AND BEING JUST 91-92 (1999) (observing that the word "fair" in the sense of "just" derives etymologically from the word "fair" in the sense of "beautiful").

