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[The 'Great Matter' of King Henry VIII.](#)

Journal of International Dispute Settlement 2017,

<http://dx.doi.org/10.1093/jnlids/idw029>

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Date deposited:

14/02/2017

Embargo release date:

08 January 2019



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The 'Great Matter' of King Henry VIII

Abstract

Scholars have long surmised that *The Famous Life of King Henry VIII* was very probably the last play that Shakespeare had a part in writing. The first recorded performance of the play was in 1613. The play was more closely about a particular 'moment' in the reign of King Henry VIII; the events which surrounded his divorce from Katherine of Aragon. Shakespeare chose this moment because he appreciated its larger significance. The consequence would be the Reformation and the establishment of the Anglican Church. *Henry VIII* remains a relatively neglected part of the Shakespearian canon. But there is, for scholars interested in the place of law within this canon, a particular significance in Shakespeare's final play. In all the other histories, there are lots of soldiers and lots of battles. There are none in *Henry VIII*. In place of war there is law.

Essay

In late summer 1525 Henry Tudor, King of England, first met Anne Boleyn. She was pretty and available.¹ He was irascible and charming, and used to getting his own way, with women and everything else. Henry was quickly besotted.² But though available, Anne was not willing in the same way that her elder sister Mary had been willing. She would not become the King's mistress. If Henry wanted to have sex with Anne he was going to have to marry her first. For a while Henry protested. He tried flattery, gifts, cajoling, and a bit of gentle bullying.³ But to no avail. And so he decided that he must divorce his first wife Katherine of Aragon. He was bored of her anyway, and increasingly concerned that God was frowning on their marriage. It was, he confided to Sir Thomas More, a 'great matter', and it must be resolved.⁴ The law however was not simple, and getting a divorce would not be easy. But in the end of course Henry got his way; he usually did. He got his divorce and he got Anne. They married, in secret, in November 1532. And the Catholic *res publica* was, as a consequence, torn apart.⁵ Shakespeare's *King Henry VIII* is about all this, the King, the wives, the divorce and the consequence.

It is perhaps surprising that *King Henry VIII* has tended to escape the attention of 'law and literature' scholars. Indeed, it has tended to escape the attention of a lot of scholars, assuming a relatively

¹ Aged just eighteen, but in the words of Geoffrey Elton already an 'experienced flirt'. See G.Elton, *Reform and Reformation: England 1509-1558*, (Edward Arnold, 1977), 105.

² Cardinal Campeggio would later report that Henry's love for Anne was 'something amazing' and 'really quite pitiable, and on it depends his life, and the destruction or survival of the kingdom'. In P.Gwyn, *The King's Cardinal: The Rise and Fall of Thomas Wolsey*, (Barrie & Fisher, 1990), 513. For further commentary on the extent of Henry's passion, and the extent to which it was, or was not, reciprocated, see Ives, *Boleyn*, 152-5.

³ For a discussion of Henry's courtship, within the contemporary conventions of courtly love, see D.Loades, *Henry VIII*, (Amberley, 2011), 191-2.

⁴ More famously recorded an occasion when, walking with his 'master' at Hampton Court in late 1527, the King had 'sodaynly' turned and expressed his anxiety regarding the 'great matter' of his marriage and the possibility of God's disfavour. See P.Ackroyd, *Sir Thomas More*, (Chatto & Windus, 1998), 262-3. In late 1528 Henry summoned a concourse of notables at Bridlewell, at which he proclaimed his greatest fear, that he had for twenty years lived in sin 'to God's great displeasure'. See J.Scarisbrick, *Henry VIII*, (Yale UP, 1997), 217, and Gwyn, *Wolsey*, 501. For further discussion of Henry's expressed anxiety see G.Bernard, *The King's Reformation: Henry VIII and the Remaking of the English Church*, (Yale UP, 2005), 2-4, 9-10, 30-2.

⁵ For a consideration of the longer term consequence see Gwyn, *Wolsey*, 501, 594-5.

modest, at times almost invisible, place in the grander Shakespearean canon.⁶ To an extent this can be ascribed to lingering uncertainties in regard to authorship. It is now established that the text is a collaborative work, written with his pupil John Fletcher.⁷ It is also a late composition, possibly Shakespeare's final. Critics have expressed further concern regarding style and structure. It is clearly Jacobean, adopting the contemporary fashion of the court-masque.⁸ It appears to be a history, but it is not like any of Shakespeare's other histories; a further consequence of its late position in the canon. It has been termed a 'romance' history.⁹ It is the only history in which there are no battles; a converse of the fact that it is the only history in which the characters attempt to resolve their disputes solely by negotiation, and legal process.¹⁰ The absence of battles, like indeed the relative absence of tragedy or comedy, might have disappointed the harder-core Shakespearean theatre-goer; and might still. But for the scholars interested in the closer relation of law and literature, and history, it makes the case for revisiting *The Famous History of the Life of King Henry VIII* all the more compelling.

As we shall see there is a series of 'trials' in Shakespeare's *Henry VIII*. In a literary sense they are interpretive trials, interrogations of 'truth' and judgment; the play carries the teasing subtitle *All is True*.¹¹ But there is a closer jurisprudential context too. The shape of English constitutional law was shifting, most especially that which moved around the discretion of the common law and the reach of prerogative. The constitution which Shakespeare presented to his audience in 1613, when the play was first performed, was different from that which he had contemplated whilst writing his earlier histories in 1590s. And it was different again from that which the eponymous Henry VIII was busy tearing up during the years in which Shakespeare set his play. The 'trial' which is most immediately relevant, in terms of both domestic and international jurisprudence, is the Legatine Court established to consider Henry's 'case' for divorce. Of course this 'trial' cannot be cleanly distinguished from the other trials which Shakespeare describes in his play. But it is the trial which in terms of historical as well as geographical reach is the most important; something which would have been still more apparent eighty years on. In *Henry VIII* Shakespeare reconvenes the Legatine Court so that it might consider the case for an appeal; and the audience will serve as his jury.

First Instance

In late summer 1527 Henry's Chancellor, Cardinal Thomas Wolsey, had conveyed the news to Rome, or what was left of it. The King, *fidei defensor* of the Roman Church, wanted to divorce his wife, and

⁶ There is no reference at all in Edward Tillyard's magisterial *Shakespeare's History Plays* (Penguin, 1962). For a comment here see H.Richmond, 'Shakespeare's *Henry VIII*: Romance Redeemed by History', 4 *Shakespeare Studies* 1968, 334, and also E.Berry, 'Henry VIII and the Dynamics of Spectacle', 12 *Shakespeare Studies* 1979, 229, 245.

⁷ For extensive discussion of authorship, see Richmond, 'Romance', 334-6, and also M.Mincoff, 'Henry VIII and Fletcher' 12 *Shakespeare Quarterly* 1961, 239-60.

⁸ For commentaries on genre, see Berry, 'Spectacle', 229-31, F.Schreiber-McGee, 'The View of Earthly Glory: Visual Strategies and the Issue of Royal Prerogative in *Henry VIII*', 20 *Shakespeare Studies* 1988, 191-200, and P.Rudnytsky, 'Henry VIII and the Deconstruction of History', 43 *Shakespeare Survey* 1990, 44-5..

⁹ See L.Micheli, 'Sit By Us: Visual Imagery and the Two Queens in *Henry VIII*', 38 *Shakespeare Quarterly* 1987, 465-6.

¹⁰ King James I, who was on the throne at the time of the play's composition, cherished his reputation as a master-diplomat and peacemaker. See W.Baillie, 'Henry VIII: A Jacobean History', 12 *Shakespeare Studies* 1979, 252-3.

¹¹ See Rudnytsky, 'Deconstruction', 47-8, and Richmond, 'Romance', 338-9.

he had scripture to back his case; or at least some scripture.¹² The news was hardly unexpected.¹³ It was however unwelcome. Pope Clement's situation in 1527 was precarious. He wanted to satisfy Henry, but was in no position to risk further annoying the Holy Roman Emperor, Charles V, who just happened to be Katherine's nephew, and whose troops had recently 'sacked' the Holy City.¹⁴ Cowering in the Castel Sant'Angelo Clement's discretion was constrained in the extreme, and there were anyway labyrinthine procedures to be followed. In accordance with the latter, Clement approved the establishment of a Legatine Court tasked with hearing the 'case'. But it was not the commission that Wolsey wanted. The Cardinal had hoped it would be a decretal commission, which would have vested authority to examine the case and make a final resolution of the King's 'great matter' from which, critically, there could no appeal.¹⁵ Much of 1527 and 1528 were spent squabbling over the matter of decretal jurisdiction.¹⁶ Clement however had no intention of allowing any commission to reach any kind of resolution, and he was certainly not going to leave it in Wolsey's gift.¹⁷ The Legatine commission would be 'general' in its jurisdiction, which meant that pending 'appeal' the final resolution would be remitted to Rome. Its stated purpose was to inquire into all the facts bearing on the legality or otherwise of the King's marriage. Its real purpose was to simply delay, long enough to allow Henry to have his way with Anne, get bored with her, and then move on; at which point the 'matter' would simply resolve itself.¹⁸ England had been part of the Roman *res publica* for a thousand years and more. It was just a matter of putting things off for long enough.

And the Pope had just the man for the job; Cardinal Lorenzo Campeggio, sometime Bishop of Bologna, Cardinal-Priest of Santa Maria in Trastevere, and serial Legatine procrastinator. Campeggio had served as Legate at the Diet of Nuremberg in 1524, where he had managed to forestall pretty much anything being resolved. He would later assume a similar position at the Diet of Augsburg in 1530 where he would eventually drive Melancthon to despair. He had already been sent to England

¹² In technical terms Henry sought a decree of nullity.

¹³ Not least because, unbeknownst to Wolsey, the King had already sent his secretary, William Knight, to Rome to secure a bull of dispensation allowing him to marry Anne Boleyn; necessary to avoid any impediments that might ensue from his previous extra-marital relationship with the elder Boleyn sister, Mary. This was granted, but only on the condition that his first marriage was proved invalid.

¹⁴ The 'sack' of Rome took place in May 1527, when the city ramparts were overcome by the Duke of Bourbon's unpaid and mutinous army. The troops went on a rampage for nearly a week raping and slaughtering thousands. Clement was confined to the Castel Sant'Angelo for nearly a year, before escaping to Orvieto. In the meantime he had been forced to hand over some of his Cardinals as security to the Imperial army. The rest, who became known for obvious reasons as the 'free' Cardinals, took up residence at Avignon under the protection of the French.

¹⁵ Save on grounds which suspected the integrity of the judges-delegate.

¹⁶ Taking the form of various embassies despatched to Orvieto, where Clement had found a temporary refuge following his escape from Rome, to argue the terms of the commission. Scarisbrick suggests that Wolsey's greatest problem in 1527 and 1528 was the relative weakness of his 'presence' in a Curia dominated by the Imperialist faction. At the same time, Wolsey was scheming to have himself elected papal deputy by the Avignon cardinals for the duration of the Pope's captivity, so that he could set in train the necessary procedures for establishing a decretal commission. See Scarisbrick, *Henry VIII*, 206-7, Bernard, *Reformation*, 9-10, Gwyn, *Wolsey*, 502-3 and 522-3, and also J.Gairdner, 'New Lights on the Divorce of Henry VIII', 11 n.44 *English Historical Review* 1896, 695-9.

¹⁷ It seems likely that Cardinal Campeggio, who Clement duly sent to England as co-Legate, carried a 'decretal' commission too; in effect being trusted to decide which commission was, in due course, most appropriate. If so, at some point he destroyed the 'decretal' copy.

¹⁸ See here Gairdner, 'Divorce', 675.

as a Legate in 1518 with the intention of garnering support for an alliance against the Turks. Wolsey had used the occasion to secure a complementary commission as Cardinal Legate; an office he would jealously maintain for the following decade, and which made him effective head of the Catholic Church in England.¹⁹ Campeggio had returned to Rome, with little more than a few vague promises. It was all he expected. But in 1529 he was back, with a much tougher assignment, and his co-Legate would again, and inevitably, be Wolsey.

Campeggio had already delayed arriving in England as long as he reasonably could; claiming a peculiarly debilitating attack of gout. The strategy was set. As soon as he arrived in Dover he fell ill again. The position of papal envoy and Legate was rarely easy. The principle skills, aside from doing as little as possible as slowly as possible, were amelioration and a preparedness to convey bad news. The circumstance of 1529 was however peculiarly tortuous. In regard to the veracity of his case Henry was intransigent. Before finally convening the Commission, Campeggio had wasted more time trying to forge some kind of reconciliation. First he held a four-hour interview with the King, after which he reported back to Clement that an 'angel descending from Heaven would be unable to persuade' the King from pursuing his chosen course.²⁰ He then visited Katherine in the hope of getting her to take a vow of chastity and enter a nunnery; something which might release Henry from his marriage vows. She was no more amenable. Meanwhile Clement peered out from ramparts of Castel Sant'Angelo and surveyed the consequences that flowed the last time he had disappointed the Emperor. The limits of amelioration were only too apparent, the conveyance of bad news inevitable.

The original idea for a Legatine Court was, ironically, Wolsey's. He had never liked Katherine, and she had never liked him.²¹ And he knew that his master was bored, and edgy.²² Whilst their marriage had initially seemed almost idyllic, Henry had begun to have affairs, and Katherine had begun to get old. Henry craved a male heir, and Katherine had certainly tried. She had been pregnant on at least six occasions, and had produced one heir. But it was a girl, Mary Tudor. By the mid-1520s it was apparent that Katherine was past child-bearing age. Her days were spent in devotion, Henry's in frustration. Either he settled for an essentially sex-less, decidedly male-heir-less marriage; or he got rid of Katherine. The fact that Anne Boleyn was determined on marriage confirmed the strategy. Wolsey had not envisaged the younger daughter of a minor Kentish aristocrat becoming Henry's second wife. He had rather hoped to source a suitably fertile French princess.²³ He was also discomforted by the barely concealed sympathy which Anne, and the rest of her family, evinced

¹⁹ Wolsey had prevented Campeggio's passage across the Channel until the Pope agreed to his terms and commission. Aside from the power, the commission also made Wolsey very wealthy, allowing him to hold a number of bishoprics alongside his most important holding, as Archbishop of York. See Elton, *Reform*, 70-1.

²⁰ In Ives, *Boleyn*, 115. For a further commentary on Campeggio's strategy, see Loades, *Henry VIII*, 198-201.

²¹ For a commentary on the tension which existed between their rival courts, see Elton, *Reform*, 104-5. For Wolsey's enthusiasm in regard to asking the Papacy to establish a Legatine commission, see J.Gairdner, 'The Fall of Cardinal Wolsey', 13 *Transactions of the Royal Historical Society* 1898, 80-1.

²² Evidence suggests that Wolsey had begun to prepare the divorce strategy as early as May 1527, establishing a 'secret' tribunal to make a preliminary assessment of the likely status of the marriage. See Loades, *Henry VIII*, 192, and Gwyn, *Wolsey*, 522.

²³ Gairdner, 'Divorce', 681.

towards protestant reformism.²⁴ But circumstances shifted, and in the spring of 1529 his interest and that of his master were aligned. They needed a divorce.

Katherine however would not go easily. She rather relished the idea of being a martyr to virtue; though not so much that she was persuaded to make the supreme sacrifice to her God and become a nun, as Wolsey and Campeggio had rather hoped.²⁵ She was a Spanish Queen and her arrogance was piqued. She was reported 'stiff and obstinate'.²⁶ And she had a good case in law too, as we shall see. There would be no compromise, no negotiation. The scene, literally and metaphorically, was set. The Legatine Court convened for the first time, at Blackfriars, on 15th June 1529. Three days later, Katherine arrived with a retinue of four bishops. Henry appeared in proxy. On the 21st they both arrived in person. It was this scene which Shakespeare would refashion eight decades later. Katherine, on her knees, pleaded her wifely devotion and asked Henry not to dishonour her or their daughter. Henry, sat beneath a canopy of gold, was unrelenting. Katherine retired, ignoring the request of the crier to return to court. She did not attend again. Instead she invoked her right to make an appeal to Rome; which was precisely what Campeggio expected and what Wolsey dreaded.²⁷ The appeal, permitted by the 'general' jurisdiction of the Court, made further progress impossible. On the 23rd the Curia published a formal request for revocation, made by her nephew, the Emperor. On the 31st Campeggio took the opportunity to adjourn the Court on the grounds that it was a delegate instrument of the Roman Rota, and so it was time for the summer holidays.²⁸ Knowing that he had been outmanoeuvred, Henry responded in his customary fashion; by going into a blind fury and blaming everyone else.²⁹

Aside from the political situation which militated against resolution, Henry's legal case was anyway uncertain. It rested on two passages from Leviticus which suggested that a man could not marry his brother's widow. Katherine had been previously married to Henry's elder brother, Arthur.³⁰ The first text, 18:16, read: 'Thou shalt not uncover the nakedness of thy brother's wife; it is thy brother's nakedness'. The second, 20:21, confirmed: 'If a man shall take his brother's wife, it is an impurity; he hath uncovered his brother's nakedness; they shall be childless'. Unfortunately there was scriptural

²⁴ Later Anne famously gifted Henry a copy of Tyndale's *Obedience of a Christian Man*. It clearly impressed the King, who declared it to be 'a book for me and all kings to read'. See Scarisbrick, *Henry VIII*, 247, and also Ives, *Boleyn*, 59-61 and 157-63, discussing the extent of Anne's influence on Henry's faith, and her enduring reputation as a key player in promoting the cause of protestant reformation.

²⁵ The oft-cited precedent here was Jeanne de Valois, sometime wife of Louis XII of France, who had retreated to nunnery.

²⁶ Wolsey made repeated visits to Katherine to plead for her acquiescence, on one occasion sinking to his knees in tears. See Scarisbrick, *Henry VIII*, 194, 214-15.

²⁷ She had already written, in secret, to the Pope in April intimating that she intended to do precisely this. The letter had been conveyed by envoys from Charles.

²⁸ Clement had already sent instruction, on the 13th, that the Court must be prorogued. It was, as Scarisbrick concludes, a suitably 'farical note' upon which to end proceedings. See his *Henry VIII*, 227.

²⁹ His anger was conveyed to Campeggio by the Dukes of Suffolk and Norfolk in person. It was reported that the former 'gave a great clap on the table and said "by the Mass, now I see that the old said saw is true, that there was never legate nor cardinal that did good in England"'; an observation that probably unsettled Wolsey at least as much as it did Campeggio. See Scarisbrick, *Henry VIII*, 227, and also Bernard, *Reformation*, 35-40.

³⁰ Arthur had died, aged just 16, in April 1502. The cause of death, still uncertain, was recorded as being a 'malign vapour'. His father, Henry VII, had briefly considered stepping into the breach. He had been widowed shortly after. In the end however he decided to pass Katherine on to his second son. Until that moment Henry had been destined for a Burgundian princess, Eleanor, who happened to be Katherine's niece.

authority that ran precisely to the contrary. *Deuteronomy* 15:5 established what was commonly known as the 'levirate' custom: 'When brethren dwell together, and one of them dieth without children, the wife of the deceased shall not marry another; but his brother shall take her, and raise up seed for his brother'. The custom was designed to perpetuate the family line; a subject which was of course dear to Henry's heart. And Katherine had certainly been childless in 1502. Henry's father had not been inclined to leave the legitimacy of his son's marriage to the chance of scriptural interpretation. A papal bull of dispensation was sought against the impediment of affinity in the first degree collateral; an impediment that could have arisen if the marriage had been consummated, *ex copula carnis*.³¹ Katherine testified that it had not. Even so the bull which Pope Julius II duly signed granted dispensation 'forsan consummatum', even if 'perhaps consummated'. The equivocation was intended to preclude any further dispute.³² It precluded nothing, as the events of 1528 and 1529 were to show; but it made Henry's case that bit more difficult.

Henry's legal case in summer 1529 depended not just on the superior authority of the Leviticus passages, but on the admission that the original papal bull, issued by Julius in 1503, was invalid.³³ The former remained however uncertain, whilst Katherine remained adamant. The very fact that she and Henry had not been 'childless', even if she had not produced a son, militated against the fact that God was disapproving.³⁴ The situation was further confused when Katherine's advisers produced a different version of the 1503 bull, the so-called 'Spanish brief', in November 1528. It furnished dispensation for any 'other reasons'. Henry's advisers immediately dismissed it as a forgery.³⁵ But Campeggio, predictably enough, did not. The Universities and seminaries of Europe buzzed. It was arguable that *Deuteronomy* 15:5 was merely ceremonial. It was conceivable that Pope Julius had indeed made an error in law, possibly even acted *ultra vires* in granting his bull of dispensation.³⁶ As the process wore on, and it became crisply apparent that the two biblical texts could not be accommodated, attention focussed ever more closely on this latter possibility. At the same time it was suggested that Katherine and Henry were bound by an impediment of 'public honesty' which, regardless of consummation, suggested that a marriage was lawful if formally established *proximatus animorum* at the moment of betrothal. At a variant, St Thomas Aquinas had

³¹ The marriage between Henry and Katherine had been originally contracted in June 1503. He was twelve, she was seventeen. It projected a marriage in 1505, as soon as Henry reached the age of fifteen. Katherine's parents were, at that point, to supply a further thousand crowns as a marriage portion.

³² Scarisbrick further suggests that it insinuates some doubt on the part of Julius, who may well have suspected that non-consummation of a marriage which had lasted seven months was unlikely. See his *Henry VIII*, 189.

³³ There was a further which would have lain at the back of Clement's mind. The Papacy was anyway moving towards the possibility of a general bull of infallibility; for which reason he would have been reluctant to agree that an earlier predecessor had been somehow wrong.

³⁴ Henry of course thought otherwise. The evidence suggests that he maintained a close watch on the development of his legal case during 1527 and 1528. In 1527 he summoned a convocation of lawyers and clerics to Hampton Court to consider the possibilities. Bernard suggests that the writing of Henry's 'brief' might be best thought of as a 'team effort, with the king as a very active captain'. See his *Reformation*, 15-16.

³⁵ Probably correctly. See Gwyn, *Wolsey*, 509, suggesting that Katherine or her advisers probably connived its sudden appearance on the scene.

³⁶ Majority opinion tended to move against Henry. But then majority opinion emanated from Universities and seminaries with reach of the Emperor's officials and inquisitors. The most significant of the few voices which argued in Henry's favour was that of Hildebert of Tours. According to Hildebert, the Pope had overreached his jurisdiction in seeking to dispense with the Levitical injunctions. For a commentary on the contemporary intellectual debate which moved around the veracity of Henry's brief, see Bernard, *Reformation*, 17-22.

further suggested that an affinity might arise simply by a couple living together, *societas conjugalis*. Katherine had been aware of the risks that moved around these potential impediments back in 1503, and her lawyers had argued the case for getting a bull of dispensation on these grounds; and they would assume later form in the broader dispensation articulated in the tendentious 'Spanish brief'. But her prospective father-in-law had preferred to seek the dispensation solely on grounds of affinity *ex copula carnis*.³⁷

There was then much for Europe's jurists to debate.³⁸ But academic chatter did not help Henry much. In a pragmatic sense the jurisprudence was moot. Papal politics anyway precluded resolution.³⁹ But if the irresolution crippled Henry's case, it was precisely what Clement and Campeggio needed. His mission complete, in a sense that was sufficient, Campeggio scampered back across the Channel, to spend the remaining decade of his life serving on various Papal embassies and enjoying the monetary rewards that came with successive bishoprics at Huelca and Crete.⁴⁰ Foxe would later report that the Cardinal 'craftily shifted himself out of the realm' as quickly as he could.⁴¹ It is the 'crafty' Cardinal who, as we shall see, Shakespeare reinvests. Wolsey would spend what little left of his life in disgrace. In October 1529 he was banished from Council, and shortly after served with a writ of *praemunire* by the attorney-general. It alleged that the Cardinal had derogated from the sovereignty of the Crown by the very exercise of his legatine commission.⁴² He had already surrendered his seal, and then his person and possessions to the uncertain 'mercy' of his King. Wolsey confessed the *praemunire*.⁴³ Henry dithered, but in the end pardoned his disgraced Cardinal. Wolsey retreated to York.⁴⁴ A year later he was summoned back to Court to answer charges of treason. It was perhaps fortunate that he died on the way, alone in a Leicester tavern.⁴⁵ In the end

³⁷ For a commentary see here Scarisbrick, *Henry VIII*, 184-5, 192-6, suggesting that Henry VII and his advisers had thought it 'safer' to do so, but were clearly in 'error'. Interestingly, as the 'matter' became ever more intractable in summer 1529, Wolsey had suggested that they might revisit this particular impediment as something of final throw of the dice. But Henry was as stubborn as his father, quite sure that the only impediment that mattered was that of affinity, and just as sure that his case was unarguable on this ground. Here again Scarisbrick suggests that it was a critical error of judgement; as Wolsey probably realised.

³⁸ And for modern historians to still debate. See Scarisbrick, *Henry VIII*, 163-97, and Loades, *Henry VIII*, 223-5..

³⁹ In private, the ever-pragmatic Clement had admitted 'I have quite made up my mind to become an imperialist and live and die as such'. He knew precisely what he could do, and more importantly what he could not. See Scarisbrick, *Henry VIII*, 223, and also Bernard, *Reformation*, 23-26 for a broad commentary on political dimension.

⁴⁰ Though not before he suffered the indignity of having his luggage searched by the King's agents, presumably in the hope of finding a decretal commissions stuffed somewhere amongst his undergarments. Campeggio was later made Bishop of Huelca in 1530 and then Bishop of Crete in 1536. The fact that he was appointed as Legate to the Diet of Augsburg in 1530 confirms that he remained in high regard for his ambassadorial skills. He was not held in such lingering regard in England. In 1534 he was stripped of the bishopric of Salisbury, which had been given to him a decade earlier. Campeggio died in 1539.

⁴¹ Quoted in text note at p.102 of the Arden edition of *Henry VIII*.

⁴² The writ accused Wolsey of securing various papal bulls in breach of the common law of the realm. It was, according to Scarisbrick, an 'outrageous abuse of law'. See his *Henry VIII*, xiv, and also Gwyn, *Wolsey*, 593.

⁴³ He reportedly confessed to the same charge once again in a subsequent bill of attainder which was preferred against him in the House of Lords. The derogation of sovereignty was the first of forty-three such charges in the bill. See Gairdner, 'Wolsey', 96-8, and also Gwyn, *Wolsey*, 612-13.

⁴⁴ Given permission to do so by the King. He had never previously visited York, despite being Archbishop since 1514.

⁴⁵ It was Thomas Cromwell who, it seems, had saved Wolsey in late 1529; or at least persuaded Henry that internal banishment to York was sufficient punishment. He could not save him a year later. Along with the

the Cardinal was brought down by the usual toxic mix, sex and money; more precisely the King's lack of both. The gift of Hampton Court had come too late and the gift of Anne Boleyn not at all.⁴⁶

The fate of Wolsey's nemesis Queen Katherine would remain uncertain for another four years. It was sealed in early 1533 with news of Anne's pregnancy. The annulment of Henry's marriage to Katherine was confirmed by an archiepiscopal court on 23rd May. Parliament was cowed and the new Archbishop, Thomas Cranmer, obliging.⁴⁷ Five days later Cranmer confirmed the legality of Henry's marriage to Anne, which had already taken place in secret on 25th January. Henry's second marriage would last just a thousand days. Queen Anne Boleyn proved no more capable of providing a male heir, and Henry as predicted lost interest. Convicted of adultery, witchcraft and incest, she met her fate on Tower Hill on 19th May 1536. By then Henry had fallen in love again, with Jane Seymour, who became his third wife. On 20th May they were betrothed. Jane died within weeks of giving Henry what he wanted most of all, a male heir. There would be three more Queens. Henry died in 1547, to be succeeded by his only son, the teenage Edward VI. He in turn would be succeeded by his half-sisters, first Mary, then Elizabeth, the respective daughters of Katherine and Anne Boleyn. The fortunes of one chronically dysfunctional family shaped the destiny of a nation. Small wonder then, that Shakespeare should be drawn to the 'history' of *King Henry VIII*. A Greek tragedian could not have imagined better; an emotionally unstable King and an over-mighty subject, squabbling prelates, a fevered court and a fractured family, rival Queens and a series of 'trials'; and the benefit of hindsight, which already intimated that the consequence of 1529, and its apparent irresolution, would be a defining moment in the shaping of English constitutional history.⁴⁸

The Appeal

There was however a rather obvious concern. Writing about the Tudors in late sixteenth and early seventeenth century England required a peculiar sensitivity. Shakespeare had of course alluded to his own Queen on many occasions during the 1590s, and would continue to do so in the decade which followed. Elizabeth's 'cultural presence' in a number of the comedies, such as *Twelfth Night* and *A Midsummer Night's Dream*, is readily apparent.⁴⁹ And he had made all the right noises in regard to dynastical legitimacy in his earlier histories such as *Richard III*. When Henry Tudor

rumours, which also supposed that the Cardinal was marching around Yorkshire accompanied by hundreds of soldiers, more damning evidence was discovered when ciphered correspondence with the Imperial ambassador, Chapuys, was discovered on the person of his Venetian physician. It is not however obvious that anything in the correspondence, which appeared to discuss the merits of seeking a papal prohibition of any pending marriage between Henry and Anne, was actually treasonable. See here Gwyn, *Wolsey*, 602-9.

⁴⁶ It must be further noted that Wolsey had, perhaps inevitably, made an awful lot of enemies, including not just all the Boleyns, but more importantly the Dukes of Norfolk and Suffolk, who had long resented the power and influence of the man they called the 'butcher's cur'.

⁴⁷ Cranmer had replaced the rather less amenable Archbishop Warham. Warham assumed an equivocal position in truth, initially accepting Henry as supreme head of the English Church 'so far as the law of Christ allows', before taking a firmer stance against subsequent legislation designed to further suppress the clergy. He died in August 1532. Cranmer forged a critical alliance with Henry's soon-to-be new Chancellor, Thomas Cromwell. Both urged the King to press on with an alternative divorce strategy during 1532 and 1533. On Henry's strategic use of Parliament both in the matter of securing his divorce and then pursuing the policy of reformation, see Loades, *Henry VIII*, 215-9.

⁴⁸ To add to the Greek flavour of the dramatic occasion, Scarisbrick hazards that Henry was probably suffering from an Oedipal complex, more especially an obsessions with incest. See his *Henry VIII*, 17.

⁴⁹ L.Montrose, 'Shaping Fantasies: Figurations of Gender and Power in Elizabethan Culture', 1 *Representations* 1983, 62, 81-2.

vanquishes the tyrant Richard at Bosworth Field he does so as God's 'captain', and heaven, the audience is assured, will 'smile' upon 'God's fair ordinance'.⁵⁰ It is also now generally accepted that he contributed to a composite play, dating from around 1600, entitled *Sir Thomas More*.⁵¹ More, who had succeeded Wolsey as Chancellor in 1529, was a potentially controversial subject. Having been executed in 1536 for refusing to attest to the Supremacy Oath he had rapidly attained the status of Catholic martyr. Writing about the Tudors was not then precluded; but it required the utmost care. Raising Anne's ghost in particular would require considerable sensitivity. Two days before her execution, Archbishop Cranmer had confirmed the consequent bastardization of her daughter. The question of Elizabeth's legitimacy had been a rather larger issue during the earlier years of her reign; and as the end drew nearer, during the later 1590s, it had begun to matter again.

Moreover if Shakespeare needed any further reminder of the possible risks, it was vividly provided in early 1601. On 6th February that year, the Lord Chamberlain's Men had put on a special performance of *Richard II*, complete with deposition scene. It was commissioned by the Queen's former favourite Robert Devereux, Earl of Essex. The following day Essex gathered his supporters and marched through London, with the apparent intention of taking the throne. A few weeks later he was meeting the same fate as Elizabeth's mother, at the same place, Tower Green.⁵² The rebellion emphasised three things. The first is that Essex was a fool, and the second that questions of succession and legitimacy were corrosive of good order. And the third was that dramatists needed to be careful. On hearing of the performance of *Richard II* Elizabeth is said to have exclaimed 'I am Richard, know ye not that?' Shakespeare laid low and appears to have escaped censure. It can only be imagined how Henry VIII, in one of his less temperate moods, might have reacted.

It may be that the idea of writing about Henry VIII had not previously occurred. But it probably had. For whatever reason, Shakespeare waited. It is not known precisely when he conceived the idea of writing a play about Henry's divorce from Katherine of Aragon, or when he set about the composition, or indeed how much of the play he wrote. As noted earlier it is now generally recognised that parts of the text were written by John Fletcher, and sourced in the main from the 1587 edition of Holinshed's *Chronicles*.⁵³ It was probably drafted during the early months of 1613, most likely prompted by the pending marriage of Princess Elizabeth to Prince Frederick, the Elector Palatine. The marriage, contracted in May 1612, was celebrated the following February, and was intended to confirm the union of the strongest protestant powers in Europe; for which reason an

⁵⁰ Shakespeare, *Richard III*, 5.3.109, 5.5.20, 31, 34. For the classic commentary here see E.Tillyard, *Shakespeare's History Plays*, (Peregrine, 1964), 205-18.

⁵¹ For commentaries on the possible extent of Shakespeare's contribution to this obviously composite work, see J.Nosworthy, 'Shakespeare and *Sir Thomas More*', ns.6.21 *Review of English Studies* 1955, 12-25, and J.Tobin, 'Shakespeare, Nasshe and *Sir Thomas More*', 53 *Notes and Queries* 2006, 59-62. The date of composition remains a matter of contention, some preferring to date it as early as 1592.

⁵² The last indeed to be executed in the Tower.

⁵³ It is also supposed that Fletcher and Shakespeare co-wrote another later play which hovers at the edge of the canon, *Two Noble Kinsmen*, as well as the now lost *Cardenio*. Some have further suggested Fletcher's influence in some of Shakespeare's later so-called 'problem' comedies. Fletcher would, following Shakespeare's death in 1616, assume managerial responsibilities for the King's Players. Quite how much of *Henry VIII* he wrote, and quite how much Shakespeare wrote, remains a matter of critical contention. Interestingly the question of authorship did not arise until the mid-nineteenth century. Up to that point no one had thought to question Shakespeare's sole responsibility.

anti-Catholic theme would have presented itself as eminently suitable.⁵⁴ The play was certainly in production by summer 1613.⁵⁵ It was a performance of the play, in June of that year, which famously caused the Globe theatre to burn down.⁵⁶

Gloriana had then been dead for a decade. But her cultural presence saturates the play. It finds rhetorical expression of course in Cranmer's closing prophecy in Act 5 Scene 4:

This royal infant (heaven still move about her)

Though in her cradle, yet now promises

Upon this land a thousand blessings,

Which time shall bring to ripeness...

In her days every man shall eat in safety

Under his own vine what he plants, and sing

The merry songs of peace to all his neighbours.

God shall be truly known, and those about her

From her shall read the perfect ways of honour,

And by those claim their greatness, not by blood. (5.4.17-20, 33-8)

Cranmer's appeal is of course designed to engage the related issues of legitimacy and succession; which mattered so much to the Tudors, and just as much to King James I.⁵⁷ As Cranmer insinuates the legitimacy of the Stuart succession stands, or falls, on that of their Tudor predecessors. Towards the end of his baptismal oration Cranmer confirms that Elizabeth will 'leave her blessedness' to a successor who will be known by the 'greatness of his name' (5.4.43, 51), who:

shall flourish

⁵⁴ See here Baillie, 'History', 248-52, 256-60, F.Waage, 'Henry VIII and the Crisis of the English History Play', 8 *Shakespeare Studies* 1975, 297-303, S.Kurland, 'Henry VIII and James I: Shakespeare and Jacobean Politics', 19 *Shakespeare Studies* 1988, 204-6, and D.Hamilton, *Shakespeare and the Politics of Protestant England*, (University of Kentucky Press, 1992), 162-4, 182-5, each discussing the implications of contemporary context including the marriage of Princess Elizabeth, as well as the death the previous year of Prince Henry. A further context, aside from the usual machinations of Jacobean court politics, was the scandal surrounding the Essex divorce case and the trial of Thomas Overbury; the divorce theme carrying an obvious resonance. Rudnytsky, discusses the same contexts in 'Deconstruction', at 55-6, but further notes the inherent ambivalences; with the overriding protestant theme compromised by a catholic 'cynicism' in regard to Henry's motivations for divorce.

⁵⁵ It was first printed at the end of the history plays in the first folio edition of 1623.

⁵⁶ In a contemporary account Sir Henry Wootton recorded that 'canons being shot off' during the masque scene set the thatch on fire 'consuming within less than an hour the whole House to the very ground'. See W.Shakespeare, *Henry VIII*, Introduction, at xxviii.

⁵⁷ See L.Tennenhouse, 'Strategies of State and political plays', in J.Dollimore and A.Sinfield (eds) *Political Shakespeare: New Essays in Cultural Materialism*, (Manchester UP, 1985), 123-5.

And like a mountain cedar, reach his branches

To all the plains about him: our children's children

Shall see this and bless heaven. (5.4.52-6)

Whilst Cranmer's presence only assumes moment in the closing scenes of the play, in his earlier provisions of 'opinions, which/ Have satisfied the king for his divorce' and taking such 'pain/ In the king's business', his 'worthy' character is already commended (3.2.64-5, 72-3).

Elizabeth's presence can of course be just as readily discerned in the elusive character of Anne Bullen.⁵⁸ Historians have long surmised the extent to which mother and daughter might have shared certain character traits. Eric Ives identified a common love of fashion and ostentation, which translated itself into a 'similarity of attitude towards the projection of monarchy, and of themselves as chosen by God to rule'.⁵⁹ Shakespeare makes similar surmises. He could not really do other. Whilst she does not assume a large textual presence in the play, what Shakespeare's Anne says is carefully couched. Contemporary protestant chroniclers would bestow on Anne a species of martyrdom. In his *Acts and Monuments* John Foxe would record 'What a zealous defender she was of Christ's gospel all the world doth know, and her acts do and will declare to the world's end'.⁶⁰ It is this Anne who Shakespeare writes.⁶¹ She is possessed of a 'gentle mind,/ And heav'nly blessings follow such creatures', as the Lord Chamberlain confirms, commending in particular her sympathy towards Queen Katherine, 'a gentle business, and becoming/ The action of good women' (2.3.54-6). Sympathy and compassion are common traits in Shakespeare's later 'problem' plays, and *Henry VIII*, as the Prologue confirms, is a play for 'Those who can pity' (Prol.5). Here it leads the Chamberlain to wonder somewhat mistily, if not mystically, what kind of child 'gentle' Anne might one day produce:

I have perused her well;

Beauty and honour in her are so mingled

That they have caught the king: and who knows yet

But from this lady may proceed a gem

To lighten all this isle. (2.3.75-9)

Everyone it seems, except for Wolsey of course, seems to like Anne. She is an 'angel' possessed of the 'sweetest face I ever look'd on', the 'goodliest woman/ That ever lay by man' (4.1.43, 69-70).

In contrast with Anne, Shakespeare's Henry cuts a more ambivalent figure. There is no doubting Henry's vigour; a trait which can be discerned in Holinshed's account. But the ambivalence is Shakespeare's. On occasion it seems that Henry is indeed animated by a genuine anxiety regarding the legality of his marriage. But to others the seeming suggests differently. When, early in Act 2, the Chamberlain suggests 'It seems the marriage with his brother's wife/ Has crept too near his

⁵⁸ Shakespeare uses the original spelling of the family name.

⁵⁹ Ives, *Boleyn*, 273.

⁶⁰ See Ives, *Boleyn*, 302, and also 327 discussing Foxe's rather fantastical estimates of the amount of money which Anne disbursed on protestant causes.

⁶¹ See Micheli, 'Imagery', 463.

conscience', Suffolk responds with an acidic aspersion, 'No, his conscience/ Has crept too near another lady' (2.2.16-18). The Blackfriars scene, later in the same Act, comes to a close with Henry appealing to the audience, relating how his 'conscience first received a tenderness,/ Scruple and prick', how the fear that he 'stood not in the smile of heaven' did make him 'tremble' (2.4.168-9, 181, 185). Katherine's failure to produce a son was no longer simple misfortune, but the 'judgement' of God (2.4.192). And so he 'did steer/ Toward this remedy whereupon we are/ Now present here together' (2.4.198-9). And, in a closing plea which Suffolk at least would have found difficult to take seriously, Henry closes with the observation that if the Court should have found his marriage to be 'lawful' after all he could not have been better 'contented' (2.4.224-5). But the scene is not quite finished. As the Court prepares to adjourn, Henry turns aside to the audience and rails against the entire proceeding, the 'dilatatory sloth and tricks of Rome' (2.4.235). What the King says in public and what he says in 'private' are very different things.

Henry VIII, it might be surmised, is another of Shakespeare's 'self-fashioning', dissimulating princes. Too much time is spent in guise, performing in masques or hiding behind curtains 'reading pensively' or simply spying on others (2.2.61). For much of the play he watches whilst the formal processes of law struggle to resolve disputes. The respective trials of Buckingham and Wolsey are travesties of justice, if not legal form. The former is condemned by the prejudiced testimony of an aggrieved former employee, 'upon the premises but justice', the latter by the prosaic consequence of the failed Legatine Court (2.1.63). Their fates might be confirmed by legal process, but Henry's presence shadows both. As he despatches Buckingham to trial by his peers, he has already decided that the unfortunate Duke is a 'traitor to th'height' (1.2.214). Only finally does he stir, in Cranmer's case, to intercede and reinvest a principle of justice. Justice depends on the reach of prerogative, and the coincidence of whim. A parallel might be made with another of the 'dark' magistrates who tend to habituate the later 'problem' plays, the Duke of Vienna in *Measure for Measure*. Like Henry, the Duke is only too keen to pass the reins of power to someone else in order to distance himself from the responsibilities of governance; and the consequence is the same, corruption and injustice.

The most dramatic of the legal proceedings in *Henry VIII* is of course the Legatine trial, presented in Act 2 Scene 4. It is the only formally convened, and thus staged, trial in the play, the stage-directions for which are amongst the most extensive in the canon. It is in fact a masque-trial, and little is to be left to the discretion of future directors.⁶² The scene, as we have noted, re-enacts the particular events of 21st June, when Henry and Katherine both attended in person. But even here Henry assumes an oddly ambivalent presence. He is not a judge, but sat beneath his 'cloth of state' it is only too apparent that he is there to judge. And he is quick to intervene, to 'spare that time' and move things on (2.4.2-4). He cuts through the pretence, and yet is so obviously defined by it. The entire trial is of course pretence, a masque of justice within a play which is structured as a sequence of court-masques.⁶³

Shakespeare reconvenes the Legatine court for two, necessarily related, purposes. The first is to insinuate the pretence of legal process in general, and the processes of 'Romish' legatine courts in

⁶² The same might be said of the stage directions for the 'order' of Anne's coronation in Act 4; far more extensive than similar directions for coronations elsewhere in the canon. The precision of stage directions in the play reinforce the sense that the play is written in the genre of a court-masque.

⁶³ The play opens with Norfolk's account of Henry's meeting with the French king at the Field of the Cloth of Gold in 1520. It was a 'masque' that 'was cried incomparable' (1.1.26-7).

particular. The very fact that Wolsey is so enamoured of his commission, so 'just and noble', is condemnation enough (2.2.91). The audience knows what Wolsey is about. It knows that the Court, far from being 'unpartial' is a masque for his political ambitions (2.2.106). And it would know too that the Court resolved nothing, and because it resolved nothing God's 'chosen people', as a consequence, would in time establish their own Church and reaffirm the exclusive jurisdiction of their own common law. Henry's aside, at the close of the Blackfriars scene, assumes a distinctly prophetic tenor. It is time England was rid of Rome, its trifling Cardinals and its legal trickery. But the matter of legal procedure, and irresolution, is of course secondary to Shakespeare's larger purpose, to facilitate closer contemplation of the human tragedy. It is the place where 'mightiness meets misery' (Prol.30). All the lead characters are present, the King, the Queen, the two Cardinals. Campeggio is more conspicuous in his silence.⁶⁴ He too prefers to watch, and wait, his only significant contribution being to adjourn 'this court till further day' (2.4.230). His role is rather larger in the following scene, at the beginning of Act 3 in which, along with Wolsey, he visits Katherine in the hope of persuading her to put her 'cause into the King's protection' (3.1.93). Except that he does not really hope, or indeed think, that she will. He does not try very hard. Shortly afterwards he is said to have to have 'stolen away to Rome' to the King's reported displeasure (3.2.57).

Wolsey tries the harder, for obvious reasons; his life depends on it. His role in the play is of course much the greater. *Henry VIII* is not really about Henry, or even Anne. It is about Wolsey, and the consequence of his vaulting ambition. The Cardinal is to play the stage villain, a man whose 'heart/ Is cramm'd with arrogancy, spleen and pride', who aspires by his own admission to 'gain the popedom and fee my friends in Rome' (3.2.211-12).⁶⁵ It is Wolsey rather than Henry who is held to be at the 'end' of the injustice suffered by Buckingham, and before him by report the respective fates of Kildare and Surrey (1.1.68; 2.1.40-4, 2.4.107-8). And he is held to be responsible for the fate that will befall Katherine. The 'king-cardinal' has nurtured Henry's anxieties regarding his marriage to his 'good queen' as 'revenge' for the Emperor's refusing to bestow upon him the Archbishopric of Toledo (1.1.174-93; 2.1.162-4; 2.2.19). And so now he is corrupting England with all things French instead, including a prospective new queen, the 'French king's sister' (2.2.41). 'All the commons', it is reported 'Hate him perniciously' (2.149-50). Even after the trial, the falling Wolsey continues his desperate negotiations with the 'Pope against the king', animated by an equal hatred of Anne and the 'heretic' Cranmer (3.2.102, 287). Shortly after his 'mutiny' is discovered, by his own 'negligence' (3.2.120, 213). A 'secret' letter is discovered and England, 'this bewailing land', will have its revenge (3.2.215, 255).⁶⁶

The dominant figure in the Act 2 Scene 4 is however neither Wolsey nor Henry. It is Queen Katherine. Against Henry's impatience Katherine is calm and collected, against his bluster and pretence she is human and pitying. In an earlier Scene, she pleads eloquently for the 'poor condition' of her husband's subjects, their plight exacerbated by Wolsey's 'exactions' (1.2.19, 25, 48). Her treatment is repeatedly condemned as 'woeful' and unjust (2.1.167). Her rhetoric in Scene 4 is characterised by its simple eloquence. She pleads for a justice founded on Christian pity, on her integrity as a 'true and humble wife/ At all times to your will conformable' (2.4.21-2). Notably she

⁶⁴ Campeggio appears as Campeius in the play; a Latinized version of his name.

⁶⁵ At times a character invested with 'demonic' powers according to Berry, in 'Spectacle', at 234-5. Wolsey had been a serious contender for the Papacy on two previous occasions.

⁶⁶ Wolsey ascribes his 'fall' to a 'cross devil', something which reinforces the sense of the demonic in his political being (3.2.214).

turns her anger towards Wolsey, rather than Henry, rejecting his office as 'my judge' (2.4.80). Wolsey responds by reaffirming his 'commission' from the 'consistory of Rome' (2.4.90-1). But it is the same authority to which Katherine will duly appeal, and there is nothing Wolsey can do to prevent her. She departs, with her husband's praise ringing in the ears of the audience, so possessed of 'rare qualities, sweet gentleness' and her 'parts/ Sovereign and pious else' (2.4.135, 137-8). It is possible to discern a narrative which writes Katherine's divorce, and subsequent misery, as a sacrifice necessary for the subsequent births of protestant England and Princess Elizabeth. It is also possible to read it as a thinly veiled expression of Catholic 'cynicism'.⁶⁷ Either way Shakespeare's 'queen of earthly queens' is written to unsettle (2.4.139).

Wolsey is left desperately seeking the King's absolution. Much of Act 3 is taken up with the account of the Cardinal's inevitable 'decline' (3.2.375). His deceit is discovered, and the terms of his *praemunire* confirmed by a gloating Suffolk. It is an 'odious' treason, and a 'long farewell to all my greatness' (3.2.331, 351). Henry meanwhile is left seeking the absolution of his God and his audience, which is entitled to wonder just why he should have wanted to divorce such a 'noble' and generous 'wife' (3.1.38).⁶⁸ Much of Acts 4 and 5 are given over to Henry. But his absolution is not as convincing as it might seem. The perception of the literary critic will differ from that of the legal historian. The latter might ponder jurisprudential insinuations, whilst the former prefers to contemplate the presentation of human frailty. It is a common dichotomy in Shakespearean trials, found elsewhere in *The Merchant of Venice* for example, *Measure for Measure* or *The Winter's Tale*. Different audiences will extract different interpretations, and different significances; a necessary complexity to which we will now turn.

Judgement

In the end neither the lawyers nor the priests were able to resolve the King's 'great matter' at Blackfriars. The latter barely tried, unless of course irresolution represented a species of resolution; which to Campeggio and Clement in a sense it did. Unsurprisingly Shakespeare's Cardinals and their lawyers fare no better. Shakespearean lawyers rarely resolve anything much, whilst few Shakespearean prelates emerge with anything that might be mistook for honour. Indeed, it might be argued that few Shakespearean trials inspire much confidence in the surety of justice. There are too many miscarriages of justice, too many magistrates who seem too often incapable of reaching judgement. And yet there are plenty of trials, both explicit and allusive. In this at least *Henry VIII* is not unusual. But what is unusual about *Henry VIII*, as we have already noted, is the number of trials and the extent to which the questions of veracity and judgement pervade. The play is, finally, about judgement and its disappointments. And the judgement to which Shakespeare appeals is ultimately the judgement to which all dramatists appeal; that of his audience.

The appeal mounted in *King Henry VIII* is addressed to a series of audiences or juries; of which two are most readily distinguished. The first is the jury of 1613. It would have had much to ponder, not least the extent to which its England had changed, and not necessarily for the better. Tudor England might by then have seemed a rather attractive memory. It would have been difficult to listen to

⁶⁷ See here Baillie, 'History', 261-2, Rudnytsky, 'Deconstruction', 50-2, and also Waage, 'Crisis', 298, commenting on the 'curious treatment' of Katherine.

⁶⁸ A question that would be reinvested in the scene which immediately follows. Visited by the two Cardinals in Act 3 Scene 1 she exhibits once again all the same virtues of patience and dignity.

Cranmer's prophetic appeal without indulging in a little wistful nostalgia.⁶⁹ James Stuart had struggled, only too obviously, to inspire the kind of devotion which seemed to come so easily to his predecessor. Those whose legal instincts were more acute, and there would have been plenty in Shakespeare's audience, might have further contemplated the more particular constitutional consequences which had flowed since 1529, and which were still to ebb. The most immediate of these 'momentous' consequences, as Frederick Maitland would later term them, was the assertion of exclusive common law jurisdiction; insinuated by the very title of the successive Acts in Restraint of Appeals and in Restraint of Annates.⁷⁰ No longer would an English clergyman be allowed to appeal to Rome, and no longer would he be required to pay taxes to Rome. And no longer would anyone be cited out of England by papal letters.⁷¹ So far as Church courts would continue to operate, Henry had declared in correspondence with a recalcitrant bishop of Durham, they would only do so under 'our sufferance'.⁷² And just to impress the fact Henry would later have a number of senior clergy served with cautionary writs of *praemunire*.⁷³

The precise reach and nature of the common law was a hot topic in England in 1613, as was the complementary role of Parliament as a potential break on the executive.⁷⁴ On this occasion it was not a matter of describing the jurisdiction of the Church, but of situating the prerogatives of the Crown. But the broader legal referent was too obvious to miss.⁷⁵ Relations between the King and his Chief Justice, Sir Edward Coke, had steadily deteriorated since the latter's judgement in the 1607 *Case of Prohibitions*. In his determination to exercise jurisdiction over Crown prerogative, Coke had become a hero to the mass of common lawyers seated in Parliament, and on the bench. James conversely came to loathe his Chief Justice, first transferring him to the Court of King's Bench in late 1613, in the hope that might make him more obedient to the royal will, and when that failed dismissing him from office in 1616. And the cause of the tension could be traced directly back to the ambivalences written into the associated Reformation statutes which excluded Papal jurisdiction and established the 'supremacy' of the English Crown. According to the two Acts in Restraint and the subsequent Acts of Succession and of Supremacy, the King explicitly derived his spiritual authority direct from God, but implicitly invested his civil authority in the legal fiction of the 'king-in-parliament'.⁷⁶ It was not obvious what this meant in 1534. And it was no more obvious in summer 1613.

Those who had read Christopher St German might have reached an opinion, of sorts; as indeed might those who had attended performances of Shakespeare's *Henry IV part 2*. In 1531, St German

⁶⁹ See here A.Leggatt, 'Henry VIII and the Ideal England', 38 *Shakespeare Survey* 1985, 131-2 and also *Shakespeare's Political Drama*, (Routledge, 1988), 233. The same nostalgia is noted in Richmond, 'Romance', 336-7.

⁷⁰ F.Maitland, *Roman Canon Law in the Church of England*, (Methuen, 1898), 92.

⁷¹ An assertion which Henry's jurists had based on the medieval Constitutions of Clarendon and Northampton; the more famous former event reaching back to 1164, when Henry II sought to limit ecclesiastical privileges and the jurisdiction of church courts. Annates were fees paid by newly incumbent bishops to Rome, usually amounting to one or two year's income.

⁷² In Scarisbrick, *Henry VIII*, 279-80.

⁷³ See Bernard, *Reformation*, 45-50.

⁷⁴ See here Hamilton, *Shakespeare*, 168-73.

⁷⁵ See here Baillie, 'History', 254-5 and Kurland, 'Politics', 209-10.

⁷⁶ The Act of Succession was specifically enacted to ensure the legitimacy of any children that Anne and Henry might have.

had added some 'new additions' to his celebrated 1518 treatise entitled *Doctor and Student*, and had further contributed to a document published in 1530 under the title *Collectanea*. It had brought together the thoughts of a number of jurists sympathetic to the King's position. St German, who was employed by Cromwell to help in drafting the Reformation statutes of 1533 and 1534, had said a lot of the right things in his these writings, most notably that, with the exception of sacramental matters, the authority of the Church was founded on parliamentary statute and common law. 'The King-in-Parliament' St German maintained is 'the high sovereign over the people which hath not only charge on the bodies but also on the souls of his subjects'.⁷⁷ It was certainly the kind of sentiment which would have earned his King's approval. Commenting on *Hunne's Case*, which moved around the application of *praemunire* writs against canon courts, Henry had opined that 'Kings of England in time past have never had any superior but God alone'.⁷⁸ But between the King and his Parliament, St German was rather more evasive. There is little point in devising a constitutional fiction, and then trying to define what it means. Half a century later, Shakespeare addressed the same fiction in the closing scene of *Henry IV part 2*, in which the newly crowned Henry V reinvests the authority of his Lord Chief Justice. Whether or not this investment infers an obeisance to the common law is a matter of conjecture. It is tempting, at first glance, to suppose that it might. But then Henry V is the supreme 'self-fashioning' Shakespearean prince, the master of rhetorical evasion; much like Henry VIII it might be supposed, and pretty much all Shakespeare's princes, and Cardinals.⁷⁹

The second jury is of course us. Four centuries on we should be in a more informed position to assess the constitutional consequences of 1529, and to sense resonances. The idea that the 'King-in-Parliament' might be the 'keystone' of the British constitution was approved in Albert Venn Dicey's influential late Victorian treatise *An Introduction to the Study of the Law of the Constitution*. Dicey refashioned the late medieval principle into a theory of 'continuing' parliamentary sovereignty, and for much of the last century it assumed a place of near-unimpeachable authority in law school lecture halls. More recently however the veracity of Dicey's theory of parliamentary sovereignty has been compromised, and the reason for this is quite simple. England, as the more irascible Euro-sceptic might claim, has returned to the 'dilatatory sloth' of Rome. As the twentieth century progressed the UK found itself increasingly obligated to various inter-national legal orders; the most obvious of which are European, the Convention and the Union. It is difficult, at this point, to resist writing a very large history; which sees Britain's break with Rome a temporary event, occasioned as a consequence of 1529 and brought finally to a peaceful resolution with its re-joining the European *res publica*, in the form of the European Community in 1972 and the European Union in 1990. Whether or not such a history can be sustained, it can certainly be argued that there is an enticing constitutional resonance.

But *Henry VIII* is not simply about the closer jurisprudential consequences which attended the Tudor 'revolution' in government. It also asks larger questions of critical temper. Here again it might be thought that distance would lend clarity. Generations of scholars have poured over the respective lives of Shakespeare and his Henry, and all the ancillary characters, the two Queens, the two

⁷⁷ See Ives, *Boleyn*, 185-9, suggesting that St German, along with Tyndale and Cranmer, effectively provided Cromwell with the intellectual muscle which he required in order to chide Parliament into supporting the constitutional reformation.

⁷⁸ In J.Guy, 'Henry VIII and the Praemunire Manoeuvres of 1530-1531', 97 *English Historical Review* 1982, 481, 497.

⁷⁹ See here I.Ward, *Shakespeare and the Legal Imagination*, (Butterworths/Cambridge UP, 1999), 55-62.

Cardinals, Cranmer, Cromwell, all the bitter and twisted lords. The events of 1529 have been revisited time and again, their history written and rewritten. At the same time though these histories have been corrupted, by all the attendant mythologies which have been spun around the violent and tragic lives of those involved. The death of few Queens has fascinated quite so much as the death of Anne Boleyn, whilst the lives of few Kings have continued to stimulate such fierce contention as that of Henry VIII. And for this of course no one is perhaps more responsible than Shakespeare. Now, no less than in 1613, the subtitle of Shakespeare's final play teases us. 'All is true'. But in what sense is anything in *Henry VIII* 'true'?

The very start of the play is unsettling.⁸⁰ What follows, the Prologue advances, will present a 'chosen truth' (Prol.18). If the truth lies in the text, as Shakespeare might be insinuating, then it is certainly the kind of truth which challenges the precepts of historical chronology.⁸¹ The play purports to open immediately following the meeting of Henry with Francis I at the Field of the Cloth of Gold in 1520. Buckingham regrets not being present, for reason of an 'untimely ague' (1.1.4). A few lines later he is arrested for treason. In fact, he was present at the Field, and he was not then arrested until nearly a year after. The truth in the 'history' of *Henry VIII* will be made to fit the story. By the end of the first Act it is 1526 and Anne Bullen has arrived on the scene. By the middle of Act 2 the audience has been transported to Blackfriars and it is 1529. By the middle of the following Act Wolsey has been arraigned, and Henry is reported already married to Anne. At the beginning of Act 4 she is Queen and it is early 1534. The history is slippery, and so is the rhetoric. There is, as the Lord Chamberlain says of Wolsey, 'witchcraft' in language (3.2.18). And ultimately it is the discovery of this craft which precipitates Wolsey's fall in Act 3 Scene 2. He is too 'full of heavenly stuff', his rhetorical spirituality a mere pretence to treason (3.2.137). And nothing Henry says is quite what it seems. It is tempting to revisit the sentiments with which Shakespeare has Prospero contemplate the art of politics in another of his final 'problem' plays, *The Tempest*. Prospero likens magistracy to masque, to 'an insubstantial pageant faded', where mere rhetoric 'melts into thin air'.⁸² The very idea of a 'masque' of 'truth' is necessarily incongruous.⁸³ We may not know that much about Shakespeare's final years. We do not in truth know that much about any of his other years. But we can draw one conclusion at least; the older he got the more he liked to tease.

It is in the final Act of *Henry VIII*, with Cranmer's 'trial', that the audience is directed to concentrate most closely on the 'matter' of truth. In Act 5 Scene 1 Henry first counsels his new Archbishop on the need to look about him. His 'enemies are many, and not small'. And he should know that 'not ever/ The justice and the truth o'er the question carries/ The due o'th' verdict with it' (5.1.128-31). Justice is never guaranteed, no matter how true the cause. Later in Council the chief of his enemies, Bishop Gardiner of Winchester, accuses Cranmer of being a 'sectary,/ That's the plain truth' (5.2.104-5). In due course Henry saves his Archbishop, thus restoring his own reputation as a magistrate, quite literally as *fidei defensor*, and securing the reformation to come.⁸⁴ It is what prerogative is for; or so

⁸⁰ See Rudnytsky, 'Deconstruction', 46-7, and Baillie, 'History', 247-8.

⁸¹ See Leggatt, 'England', 142, commenting on the 'confusion of history' and its implications, and also J.Hart, '*Henry VIII*: The Play as History and Anti-History', 3 *Aevum* 1991, 561-70.

⁸² W.Shakespeare, *The Tempest*, 4.1.150-6.

⁸³ Berry, 'Spectacle', 229-31.

⁸⁴ See Berry, 'Spectacle', 241-2, C.Sleights, 'The Politics of Conscience in *All is True (or Henry VIII)*', 43 *Shakespeare Survey* 1990, 59-61, 65, and also Richmond, 'Romance', 346-8, arguing that the successive trials in the play chart Henry's education as a magistrate, reaching their apogee in Cranmer's 'case'.

the audience is to suppose. It might be imagined what King James, busy trying bring his Lord Chief Justice to heel, thought of the insinuation. And it throws into sharper relief the events at Blackfriars, where Henry's attempt to bring resolution was thwarted by the 'tricks of Rome'.⁸⁵ Following Henry's intervention on Cranmer's behalf, the scene moves back to court and the baptism of the Princess Elizabeth. The masque of courtly celebration follows on the masque of judgement. Cranmer gives his oration; and all will be well:

Let me speak sir,

For heaven now bids me; and the words I utter,

Let none think flattery, for they'll find 'em truth. (5.4.14-16)

A few lines later Cranmer returns to the theme. 'Truth shall nurse' the future Queen (5.4.28). It is not supposed to be a contentious assertion; on the contrary. But it is all the same an assertion that is invested in poetics, and the prejudice of history; and not much else.⁸⁶

The insinuation that any legal trial is rhetorical and, in some part at least, theatrical is hardly new. And neither, it might be added, is the complementary suggestion that the theatricality militates against the pretences of resolution or jurisprudential 'truth'. But there is perhaps an especial resonance in regard to the resolution of international disputes; or, as was the case with the Legatine Commission of 1529, irresolution. International lawyers are accustomed to the peculiar frustrations which come with the attempt to resolve disputes which cut across national borders. So much more depends on a shared willingness to come to terms. And so much the greater the frustrations can be if neither party seems inclined to compromise. In such instances the theatrical pretence becomes everything. The proceedings of the Legatine Commission are best understood in precisely this jurisprudential and cultural context. Henry might have clung to an alternative, diminishing, hope, even as it became ever more apparent that the Commission was never intended to resolve anything. But there was still an argument to be won; not just in 1529 but in 1613 too. And Shakespeare did everything he could to ensure that his audience would leave the theatre with a 'true' appreciation of England, its reformation and its historical destiny; not matter how ironic the truth might be.

⁸⁵ Foxe's *Book of Martyrs* interpreted the case in these terms; as a triumphant exercise of prerogative.

⁸⁶ See here Leggatt, 'England', 135-7.