

SHAKESPEARE'S IMAGINARY CONSTITUTION

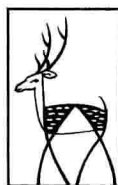
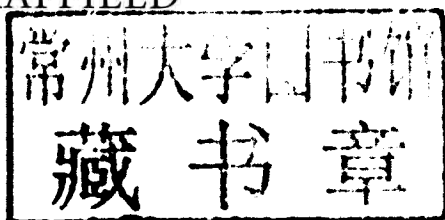
LATE ELIZABETHAN
POLITICS AND THE
THEATRE OF LAW

PAUL RAFFIELD

Shakespeare's Imaginary Constitution

Late-Elizabethan Politics
and the Theatre of Law

PAUL RAFFIELD



• H A R T •
PUBLISHING

OXFORD AND PORTLAND, OREGON
2010

Published in the United Kingdom by Hart Publishing Ltd
16C Worcester Place, Oxford, OX1 2JW
Telephone: +44 (0)1865 517530
Fax: +44 (0)1865 510710
E-mail: mail@hartpub.co.uk
Website: <http://www.hartpub.co.uk>

Published in North America (US and Canada) by
Hart Publishing
c/o International Specialized Book Services
920 NE 58th Avenue, Suite 300
Portland, OR 97213-3786
USA
Tel: +1 503 287 3093 or toll-free: (1) 800 944 6190
Fax: +1 503 280 8832
E-mail: orders@isbs.com
Website: <http://www.isbs.com>

© Paul Raffield 2010

Paul Raffield has asserted his right under the Copyright, Designs and Patents Act 1988,
to be identified as the author of this work.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system,
or transmitted, in any form or by any means, without the prior permission of Hart Publishing,
or as expressly permitted by law or under the terms agreed with the appropriate reprographic
rights organisation. Enquiries concerning reproduction which may not be covered by the
above should be addressed to Hart Publishing Ltd at the address above.

British Library Cataloguing in Publication Data
Data Available

ISBN: 978-1-84113-921-0

Typeset by Hope Services, Abingdon
Printed and bound in Great Britain by
TJ International Ltd, Padstow, Cornwall

SHAKESPEARE'S IMAGINARY CONSTITUTION

Through an examination of six plays by Shakespeare, the author presents an innovative analysis of political developments in the last decade of Elizabethan rule and their representation in poetic drama of the period. The playhouses of London in the 1590s provided a distinctive forum for discourse and dissemination of nascent political ideas. Shakespeare exploited the unique capacity of theatre to humanise contemporary debate concerning the powers of the Crown and the extent to which these were limited by law. The autonomous subject of law is represented in the plays considered here as a sentient political being whose natural rights and liberties found an analogue in the narratives of common law, as recorded in juristic texts and law reports of the early modern era. Each chapter reflects a particular aspect of constitutional development in the late-Elizabethan State. These include abuse of the Royal Prerogative by the Crown and its agents; the emergence of a politicised middle-class citizenry, empowered by the ascendancy of contract law; the limitations imposed by the courts on the lawful extent of divinely ordained kingship; the natural and rational authority of unwritten *lex terrae*; the poetic imagination of the judiciary and its role in shaping the constitution; and the fusion of temporal and spiritual jurisdiction in the person of the monarch. The book advances original insights into the complex and agonistic relationship between theatre, politics and law. The plays discussed offer persuasive images both of the Crown's absolutist tendencies and of alternative polities predicated upon classical and humanist principles of justice, equity and community.

To my mother, Vyvyan, with love

PREFACE

When I was a law student I joined one of the Inns of Court, intent upon a career as a barrister. Dining at Gray's Inn, I started to learn about the entangled histories of law and theatre. After graduating, I jumped ship. I trained and earned a living as an actor, and so began my professional association with the plays of Shakespeare. From my first appearance in a Shakespearean production, as the Officer in *The Comedy of Errors* at Nottingham Playhouse (at the first preview I also played a nun, but that's a story for another book), to my current engagement with Shakespearean scholarship, I have been fascinated at the impact his plays have made on the intellect, the emotions and the imagination. For many years, though, I thought that my twin interests in Shakespeare and the law would run parallel to each other, never to converge. Then I returned to the study of law. Things had moved on since my undergraduate days. At Birkbeck I embarked on a doctoral thesis, examining the culture of the legal community at the early modern Inns of Court, and in particular the use of drama to embody emerging ideas and debates surrounding Crown, common law and constitution. Shakespeare was incidental to the project, although as a member of Gray's Inn I could not have overlooked the infamous performance there in December 1594 of *The Comedy of Errors*.

I arrived at Warwick in 2004 and there I have remained. Stratford-upon-Avon is just down the road and what remains of the Forest of Arden is all around. Was this a sign? The law school at Warwick has been renowned since its foundation for the strong emphasis it places on the study of law in context, and I was encouraged to apply my knowledge and experience of law and theatre to the development of interdisciplinary projects, both in research and teaching. In 2007 I co-organised an international conference on Shakespeare and the Law, hosted by Warwick law school. And that was the start. Galvanised by the enthusiastic response of colleagues and scholars from a wide range of academic disciplines, the book developed from a conference paper (on *Titus Andronicus* and the abuse of executive power) to its present form. The undergraduate courses which I teach have contributed significantly to the formulation of ideas for this book. 'Origins, Images and Cultures of English Law' examines the foundations of common law and constitution in the immemorial myths of nationhood, as propounded by the patriarchs of English law: Sir John Fortescue, Sir Edward Coke *et al.* The relevance of 'Shakespeare and the Law' is obvious. Tort may seem a less conspicuous source of inspiration, but the dramatic narratives of its case law incorporate levels of human suffering and political dilemmas that are Shakespearean in their scope. It

Preface

is appropriate, therefore, that my first acknowledgment is to my undergraduate students, past and present. Their intelligence, curiosity and humanity have added immeasurably to my understanding of matters both legal and Shakespearean.

It is difficult to be certain about when the idea for the book was planted, but evenings spent teaching 'Law and Literature' at Birkbeck were seminal. That they were productive and enjoyable is largely due to the other teachers on the course: Costas Douzinas, Adam Gearey and Piyel Haldar. It was at Birkbeck that I got to know Peter Goodrich. Now based on the other side of the Atlantic, Peter remains a valued colleague and friend. I am grateful to him for his scholarship, support and generosity of spirit. At Warwick law school I must thank Gary Watt for his enthusiastic encouragement and for sharing my interest in Law and Literature. Gary and I co-organised the 2007 conference on Shakespeare and the Law. Together we founded and edit the journal *Law and Humanities*. Our teaching interests reflect belief that the study of literature and the arts is a crucial feature of a humane legal education. My thanks are due to Hugh Beale for his comments on chapter two, John Snape for his observations on chapter five, Alan Norrie for reading drafts of chapters one and two, Lee Bridges for his love of theatre, and John McEldowney for our many informal discussions on literature and constitutional history. In the Department of English I am indebted to Carol Rutter for her remarks on chapter one. Carol is a true Shakespearean and an extraordinary teacher. It was her idea that we should jointly teach a course on Shakespeare and the Law, available to English students and Law students . . . so we did. Beyond Warwick, I owe thanks to Andrew Hadfield for his helpful suggestions on chapter five, to Kenji Yoshino for his perceptive insights into Shakespeare and the representation of justice, and to Emily Jackson for her inspiration by example. I must again thank Ian Ward for the keen encouragement he has offered another of my literary ventures. Richard Hart and his team at Hart Publishing have been unstinting in their support throughout this project: I couldn't wish for a more sympathetic publisher. Going further back, I shall always be appreciative of David Conville and the New Shakespeare Company for giving me my break in Shakespeare. Simon Potter, my English teacher at Wimbledon College, awakened generations of students to the genius of Shakespeare. His example has been a constant factor in my career.

I am grateful to The University of Warwick for granting me two consecutive terms of study leave in which to complete this book. The second term of leave was financed by a generous research award from the Arts & Humanities Research Council. Finally, my lasting thanks go to the actors and directors with whom I worked in so many productions. The path I set out on is not the one on which I have ended up, but some of the happiest and most productive times of my life were spent in performance, in rehearsal rooms and backstage in theatres. My career as an actor informs many of the ideas on community, friendship and society which I discuss in this book.

Paul Raffield
Spring 2010

ACKNOWLEDGEMENTS

The introduction and conclusion include brief extracts from an article in 31(4) *Cardozo Law Review* (2010); a version of chapter one was published in P Raffield and G Watt (eds), *Shakespeare and the Law* (Oxford, Hart Publishing, 2008); part of chapter two was published in 3(2) *Law and Humanities* (2009); the final section of chapter two was included in an article in 17(1) *Law & Literature* (2005); a shorter version of chapter five was published in 22(1) *Law & Literature* (2010). I am grateful to the publishers and editors of the above publications for permission to publish here.

I am pleased to acknowledge the generous financial support of the Arts and Humanities Research Council.



Arts & Humanities
Research Council

LIST OF ILLUSTRATIONS

Plate section between pages 110 and 111

- 1 Richard II presented to the Virgin and Child by his Patron Saint John the Baptist and Saints Edward and Edmund. 'The Wilton Diptych' (c 1395–99). Unknown artist. © The National Gallery, London.
- 2 Infra-red detail of orb (right interior panel). 'The Wilton Diptych' (c 1395–99). Unknown artist. © The National Gallery, London.
- 3 Royal arms of England and France Ancient, impaled with the arms of Edward the Confessor, surmounted by helmet with cap of maintenance and lion passant guardant (left exterior panel); white hart lying among branches of rosemary (right exterior panel). 'The Wilton Diptych' (c 1395–99). Unknown artist. © The National Gallery, London.
- 4 'The Coronation portrait' of Elizabeth I (c 1600, copy of lost original, c 1559). Unknown artist. © National Portrait Gallery, London.
- 5 Portrait of Richard II, wood panel painting (c 1395). Unknown artist. © Dean and Chapter of Westminster.
- 6 Anonymous, *Robin Good-Fellow, His Mad Prankes, and merry Iests, Full of honest Mirth, and is a fit Medicine for Melancholy* (London, F Grove, 1628) Title-page. This item is reproduced by permission of the Huntington Library, San Marino, California.
- 7 Monument to Sir John Fortescue (c 1397–1479), the parish church of St Eadburgha, Ebrington, Gloucestershire.

‘Do I dream? Is this new feeling
But a visioned ghost of slumber?
If indeed I am a soul,
A free, a disembodied soul,
Speak again to me.’

Percy Bysshe Shelley, *Queen Mab*

SUMMARY CONTENTS

<i>Preface</i>	vii
<i>Acknowledgements</i>	ix
<i>List of illustrations</i>	xv
Introduction	1
1 ‘ <i>Terras Astraea reliquit</i> ’: <i>Titus Andronicus</i> and the Flight of Justice	18
2 <i>The Comedy of Errors</i> and the Meaning of Contract	51
3 Reflections on the Art of Kingship: <i>Richard II</i> and the Subject of Law	82
4 The Poetic Imagination, Antique Fables and the Dream of Law	117
5 The Ancient Constitution, Common Law and the Idyll of Albion: Law and Lawyers in <i>Henry IV, Parts 1 and 2</i>	153
6 The Congregation of the Mighty: the Juridical State and the Measure of Justice	182
Conclusion	218
<i>Bibliography</i>	223
<i>Index</i>	245

CONTENTS

<i>Preface</i>	vii
<i>Acknowledgements</i>	ix
<i>List of Illustrations</i>	xv
Introduction	1
1 ‘Terras Astraea reliquit’: Titus Andronicus and the Flight of Justice	18
I. Law, Justice and the Exercise of Executive Power	18
II. Late-Elizabethan Imperial Government and the Common Law	23
III. Order, Harmony and Musicality	29
IV. The Depiction of Troynovant	33
V. Ritual, Religion and the Culture of Signs	37
VI. Sacrifice, Tradition and Unwritten Law	42
2 The Comedy of Errors and the Meaning of Contract	51
I. Errors and Confusion, Disorder and Tumult	51
II. The Promise: ‘Dictum Meum Pactum’?	55
III. The Chain: Symbol of Commerce, Love and Law	59
IV. Consideration, Conscience and the Gray’s Inn Revels, 1594	65
V. Breaking the Bonds of Servitude: Trade, Markets and the Law	73
3 Reflections on the Art of Kingship: Richard II and the Subject of Law	82
I. ‘Landlord of England’ or ‘deputy elected by the Lord’?	82
II. <i>The Commentaries or Reports</i> of Plowden: Land and the Sacred Body of Law	88
III. Through a Glass, Darkly: Treason, Law and the Discovery of Self	101
IV. Theatre, Mimesis and the Counterfeiting of Monarchy	112
4 The Poetic Imagination, Antique Fables and the Dream of Law	117
I. Festival, Subversion and Misrule	117
II. Satyrs, Fairies and the Oneiric Imagination	126
III. Violence on the Edge	133
IV. A Most Rare Vision	145
5 The Ancient Constitution, Common Law and the Idyll of Albion: Law and Lawyers in Henry IV, Parts 1 and 2	153

Contents

I. Kill <i>All</i> The Lawyers?	153
II. Common Lawyers and the Pastoral Idyll	159
III. The Education of a Prince and 'the rusty curb of old Father Antic the law'	173
IV. Patriarchal Symbolism and the Common Law	178
6 The Congregation of the Mighty: the Juridical State and the Measure of Justice	182
I. Prerogative Power and the Impression of Legitimacy	182
II. The Divine Lawgiver and the Eye of the Law	191
III. Religion, Conscience and Conflicts of Jurisdiction	204
Conclusion	218
<i>Bibliography</i>	223
<i>Index</i>	245

Introduction

If then the world a Theater present,
As by the roundnesse it appeares most fit,
Built with starre-galleries of hye ascent,
In which *Iehove* doth as spectator sit.¹



THESE LINES FROM *An Apology for Actors* were written by Thomas Heywood in 1612, some 12 years after Jaques' declaration that

All the world's a stage,
And all the men and women merely players . . .²

An actor and dramatist, Heywood shared with Shakespeare evident fascination with the idea of theatre as microcosm, an observation instanced in the above extract by his description of the circular shape of the playhouse and proximity of the stage to the heavens.³ I refer throughout this book to the representational depiction of human existence in Elizabethan England. In particular, I consider the practice of politics and the enactment of government as a type of aesthetics, which in the late-Elizabethan period found a close correlation with the poetic drama of Shakespeare. As Stephen Greenblatt observed of Shakespeare's Prince Hal, the 'poetics of Elizabethan power' was indivisibly linked to 'a poetics of the theatre.'⁴ Figurative art speaks directly to the visual sense, but poetry also appeals to the visual imagination by its capacity to conjure pictures into the minds of its audience. Sir Philip Sidney noted in *The Defence of Poesy* that the facility to write verse and rhyme words was not in itself the identifying feature of the poet (any more, he argued, than a long gown was the identifying feature of the advocate); rather 'it is that feigning notable images of virtues, vices or what else, with that delightful teaching, which must be the right describing note to know a poet by'.⁵ Above all, the use of appropriate metaphor enables text to speak to the imagination as much

¹ T Heywood, *An Apology for Actors* (London, Nicholas Okes, 1612), 'The Author to his Booke'.

² *As You Like It* (2.7.140–41). *As You Like It* was entered in the Stationers' Register on 4 August 1600.

³ The 'starre-galleries' refer not only to the sky but to the 'heavens': a protective cover that extended over the stage of the Elizabethan playhouse, supported by pillars and painted on the underside with stars. On the design of Elizabethan playhouses, see A Gurr, *The Shakespearean Stage, 1574–1642* (Cambridge, Cambridge University Press, 1992) 115–54.

⁴ S Greenblatt, 'Invisible bullets: Renaissance authority and its subversion, *Henry IV* and *Henry V*' in J Dollimore and A Sinfield (eds), *Political Shakespeare: Essays in Cultural Materialism* (Manchester, Manchester University Press, 1994) 44.

⁵ Sir Philip Sidney, 'The Defence of Poesy' in G Alexander (ed), *Sidney's 'The Defence of Poesy' and Selected Renaissance Literary Criticism* (London, Penguin, 2004) 12.

as it does to the intellect. In Sidney's words, poetry is 'a speaking picture—with this end: to teach and delight'.⁶

Figurative art, in the form of royal portraiture, remained a dominant propagandist tool within the exclusive environs of the royal court during the reign of Elizabeth I. Court painters continued to depict members of the Tudor dynasty as the personification of divinely-ordained, imperial kingship.⁷ Insofar as the authority of law has been linked to the affective capacity of the image to control and direct the gaze of its audience,⁸ the depiction of the monarch as *Imago Dei* remained a potent rhetorical instrument. The royal portrait lent visible, tangible form to the mystical basis of the law's authority.⁹ The iconic power of such portraiture notwithstanding, the audience for this particular art form was necessarily limited, restricted as it was to the royal court and its visitors. The themes addressed by the court painters were circumscribed by the conventions of the genre. Artists addressed the public interests of their royal clients and were therefore inevitably concerned with projecting images of irrefutable, providential authority.

Performance art of the early modern period also incorporated visual imagery of a type which eulogised its royal subjects, especially in the court masques of the Elizabethan and Jacobean eras.¹⁰ But in the playhouses of late-Elizabethan

⁶ *Ibid* at 10.

⁷ See, eg, the large portrait of Elizabeth I (241 × 152cm) by Marcus Gheeraerts the Younger (c 1592, National Portrait Gallery), in which the Queen floats over a map of England, thunderous skies behind her and bright sunlight in front. Sir John Harington wrote of Elizabeth I: 'When she smiled, it was a pure sun-shine, that every one did chuse to bask in, if they could; but anon came a storm from a sudden gathering of clouds, and the thunder fell in wondrous manner on all alike', quoted in C S Smith, *The National Portrait Gallery* (London, National Portrait Gallery, 2000) 46. See also 'The Coronation portrait' (c 1600, copy of lost original, c 1559, National Portrait Gallery), ch 3, fig 4, below. On portraits of Elizabeth I, see S Doran, 'Virginity, Divinity and Power: The Portraits of Elizabeth I' in T F Freeman and S Doran (eds), *The Myth of Elizabeth* (London, Palgrave Macmillan, 2003) 171; see also, ch 3, text to nn 128–31, below.

⁸ On the capacity of the image to 'capture' the subject of law, see P Goodrich, *Languages of Law: From Logics of Memory to Nomadic Masks* (London, Weidenfeld & Nicolson, 1990) 260–96.

⁹ The above sentence is derived from Montaigne's argument that 'laws remain respected not because they are just but because they are laws. That is the mystical basis of their authority', M de Montaigne, 'On Experience' in Michel de Montaigne, *The Complete Essays*, (tr) and (ed) M A Screech (London, Penguin, 2003) 1216. In the original French, the phrase reads '*fondement mystique de l'autorité*'; for a discussion of Montaigne's essay and its relevance to the foundation of the western legal tradition, see J Derrida, 'Force of Law: The "Mystical Foundations of Authority"', (tr) M Quaintance (1990) 11 *Cardozo Law Review* 919, 937–39. For a discussion of law and the suggestive power of the image in figurative art, see C Douzinas and L Nead (eds), *Law and the Image: The Authority of Art and the Aesthetics of Law* (Chicago, University of Chicago Press, 1999); also, C Douzinas, 'Whistler v Ruskin: Law's Fear of Images' (1996) 19 *Art History* 353; C Douzinas and R Warrington, *Justice Miscarried: Ethics, Aesthetics and the Law* (London, Harvester Wheatsheaf, 1994) 265–309.

¹⁰ See, eg, the description of Elizabeth I as the goddess Astraea in *Certaine devises and shewes*, written and performed in 1587 by members of Gray's Inn in the presence of the Queen: 'A dame there is whom men Astrea terme, / She that pronounceth oracles of lawes', N Trotte, 'The Introduction' in T Hughes, *Certaine Devises and shewes presented to her Maiestie by the Gentlemen of Grayes-Inne at her Highnesse Court in Greenwich* (London, Robert Robinson, 1587); see also the comparison of James I to Brutus, the legendary founder of Britain, in Anthony Munday's *The Triumphes of re-united Britania*, produced by the Company of Merchant Taylors in 1605: 'Brute thus having the whole Land in his owne quiet possession, began to build a city neer to the side of the River Thamesis, in the second yeare of his raign, which he named *Troynovant*', A Mundy, *The Triumphes of re-united Britania* (London,

Introduction

London an unprecedented form of performance art was evolving, characterised especially by large public audiences and an unusually eclectic range of subject matter. The substantive theme of this book is poetic drama of the late 16th century and its capacity to embody emergent political ideas through the synthesis of aural and visual imagery. Specifically, I examine six plays of Shakespeare from the last decade of Elizabethan rule, all of which depict the psychological complexities of the autonomous subject of law in the constitutional and political context of the sovereign nation-State. Drama is an inherently discursive medium: its imperative is conflict. The existence of dialogue immediately complicates the depiction of human relationships. Of course, the meaning of any work of figurative art is determined to an extent by the subjective gaze of the viewer; but in the theatre, before its reception by an audience, the meaning of dramatic text is liable first to interpretation by the actor. Dramatic text is therefore intrinsically ambivalent. When an actor utters a line of dialogue, his character invites dispute and debate. Dialogue (or its absence) in drama is one of the means through which characters communicate with the inhabitants of 'the great globe itself',¹¹ but Shakespeare's poetic drama is concerned not only with the telling of stories through dialogue; it is concerned also with the dialogue of human ideas, of which dramatic text is only a part. As Shelley argued in his essay, *A Defence of Poetry*:

The drama, so long as it continues to express poetry, is a prismatic and many-sided mirror, which collects the brightest rays of human nature and divides and reproduces them from the simplicity of their elementary forms, and touches them with majesty and beauty, and multiplies all that it reflects, and endows it with the power of propagating its like wherever it may fall.¹²

It is noteworthy that Shelley should emphasise the importance of a poetic presence in order that drama may enable the transformative process of which he speaks, whereby characters and actions become multifaceted and multidimensional. It is to a political and ethical intent that he appeals in asserting the correlation between poetry and drama, as he reveals later in the same essay: '[T]he connection of poetry and social good is more observable in the drama than in whatever other form'.¹³ This statement has much in common with the assertion of Sidney, in his own *apologia* for the poetic art, that a poet is not to be recognised by his ability to versify, but rather by his imaginative representation of 'virtues' and 'vices'.¹⁴ Both Sidney and Shelley describe an ideal coalescence of form and content, whereby the

W Jaggard, 1605) A3.v. On the masques of this period, see D Lindley (ed), *The Court Masque* (Manchester, Manchester University Press, 1984); also, D M Bergeron, *Elizabethan Civic Pageantry, 1558–1642* (London, Edward Arnold, 1971). On Elizabethan and Jacobean masques at the Inns of Court, see P Raffield, *Images and Cultures of Law in Early Modern England: Justice and Political Power, 1558–1660* (Cambridge, Cambridge University Press, 2004) 124–56.

¹¹ *The Tempest* (4.1.153).

¹² P B Shelley, *A Defence of Poetry* in H A Needham (ed), *Sidney, An Apology For Poetry; Shelley, A Defence of Poetry* (London, Ginn & Co, 1931) 83–84.

¹³ *Ibid* at 85.

¹⁴ See text to n 5 above.

ethic is subsumed by the aesthetic and the two become indivisible.¹⁵ It is because of their participation in the eternal and the infinite, and their understanding and expression of humanity, that poets are described by Shelley as ‘the institutors of laws, and the founders of civil society’.¹⁶ Much the same claim was made for poets by Martha Nussbaum at the end of the 20th century. With reference to Walt Whitman’s ‘By Blue Ontario’s Shore’, Nussbaum cites the ‘poet-judge’ as the embodiment of equitable justice.¹⁷ This ‘equable man’ is the personification of equity in law.¹⁸

The mention of equity in a book on the subject of late-Elizabethan politics and law obviously calls to mind the parallel system of justice administered in Shakespeare’s day by the Court of Chancery, which developed and expounded a body of doctrine and rules that came to rival (and in 1616 to supersede) the jurisdictional sovereignty of the common law.¹⁹ Although I consider the development of Equity in the formal context of the English legal institution,²⁰ in relation to the expression of juristic ideals in the plays of Shakespeare I share Nussbaum’s broad interpretation that equity is more to do with the literary imagination than it is with legal norms and judicial reasoning. To write of the equitable principles of common law in medieval and early modern England may seem oxymoronic to lawyers and legal historians, to whom Equity and common law are rival (and at times incompatible) jurisdictions.²¹ But the statement is entirely consonant with the claims made for English law by juristic commentators of the period, whose understanding of equity was founded in the Aristotelian tradition of *epieikeia* rather than in the judicial pronouncements of the Court of Chancery. When Whitman wrote of the poet that

[h]e is no arguer, he is judgment, (Nature accepts him absolutely,)

He judges not as the judge judges but as the sun falling round a helpless thing²²

he was prolonging the tradition of an earlier generation of jurists who equated English law with natural moral authority, of immemorial provenance. In *De Laudibus Legum Angliae*, Sir John Fortescue stated that English law was ‘deduced

¹⁵ Writing in the vanguard of the Law and Literature movement, but in the tradition of Sidney and Shelley, Weisberg notes that ‘the carefully crafted utterance (in law and literature) unites the message with the medium—indeed, is so constituted that the medium of linguistic expression is the meaning’, R Weisberg, *Poethics: And Other Strategies Of Law And Literature* (New York, Columbia University Press, 1992) 4.

¹⁶ Shelley, above n 12, at 71.

¹⁷ M Nussbaum, *Poetic Justice: the Literary Imagination and Public Life* (Boston, Mass, Beacon Press, 1995) 80.

¹⁸ ‘Of these States the poet is the equable man’: Walt Whitman, ‘By Blue Ontario’s Shore’ in Walt Whitman, *Leaves of Grass*, (ed) J Loving (Oxford, Oxford University Press, 2009) 269.

¹⁹ See J H Baker, ‘The Common Lawyers and The Chancery: 1616’ in J H Baker, *The Legal Profession and the Common Law: Historical Essays* (London, Hambledon, 1986) 205; more generally, see M Fortier, *The Culture of Equity in Early Modern England* (Aldershot, Ashgate, 2005).

²⁰ See ch 6, text to nn 144–67, below.

²¹ See ch 1, text to n 11, below.

²² Whitman, ‘By Blue Ontario’s Shore’ 269.