

## **Rastell's *Pastyme of People*: Monarchy and the Law in Early Modern Historiography**

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QUEST. *What law is there to take upp Armes against the prince in Case hee breakes his Covenant?*

ANSWER. *Though there bee no written law for it yet there is Custome which is the best Law of the Kingdome; for in England they have allwayes done it.*

—Selden, *Table Talk*

The prevailing view among literary critics and historians is that early modern historiographers wrote conservative texts, monarchist in orientation, which unreflectively supported the legitimating myths of the Tudor dynasty.<sup>1</sup> Even though Annabel Patterson overturned this model in *Reading Holinshed's "Chronicles"* by providing copious evidence for reading the *Chronicles* as multivocal, ideologically capacious, and sympathetic to “instances of active social protest,” subsequent scholarship has, it seems, decided to remain unconvinced.<sup>2</sup> In *Engendering a Nation*, Jean Howard and Phyllis Rackin still maintain that early modern historiographers provided “a traditional rationale for newly acquired power and privilege. Invoking the legendary names of Brute and Arthur, Tudor historians produced fables of ancient descent and providential purpose to validate a new dynasty’s claim to the English throne.”<sup>3</sup> And in *Historiography and Ideology in Stuart Drama*, Ivo Kamps continues in this vein, arguing that early modern historiography is essentially “orthodox” and that it never “called for radical changes in the monarchy.”<sup>4</sup>

This refusal to accept Patterson’s conclusions about historiography in general and the *Chronicles* in particular certainly demonstrates how at times, not even overwhelming evidence can displace a deeply entrenched

critical paradigm that provides a highly seductive straw argument. An additional reason, however, for the resistance to Patterson's revisionary thesis might be her sense that contestatory historiography *begins* with the *Chronicles*, that this massive volume constitutes the exception rather than the rule.<sup>5</sup> One can find, however, similar positions to the ones Patterson rightly finds constitutive of *Holinshed's Chronicles* in much earlier texts, as in John Rastell's important but neglected *The Pastyme of People* (1529).<sup>6</sup> Like Thomas More's *History of King Richard III* (ca. 1515) and anticipating *Holinshed's Chronicles*, Rastell uses history as a vehicle for dissent, in particular to register his distaste for the domestic results of Henry VIII's French wars. Rastell's *Pastyme* demonstrates that English historical writing did not always construct "its readers as hereditary subjects of the English kings whose narrative of dynastic succession it recounts." Nor did it always endorse the proposition that "[t]o be English is to be a subject of the English king."<sup>7</sup> Quite the opposite, for Rastell's history is more about the customary limits on monarchical power and what happens when monarchs overstep the bounds set for them by English common law.

It is possible that the source for Rastell's ideological independence lies in his formative years in Coventry, as A. W. Reed suggests.<sup>8</sup> Following the family tradition (his father and grandfather were lawyers), Rastell attended the Middle Temple in London, and then returned home to Coventry to practice, where he succeeded his father as coroner. Rastell's immersion in local affairs is significant, for Coventry was a town in serious economic trouble due to the combined effects of the enclosure movement and the evaporation of the town's textile industry. The rapidly deteriorating economic decline led to an exodus of people seeking better opportunities elsewhere, including John Rastell.<sup>9</sup> But before he left, Rastell would have been fully exposed to the class and social tensions resulting from economic dislocation. The town had a history of enclosure riots (1421, ca. 1430, 1469, 1473, 1495, and 1509), and these led to "a general resentment under a sense of oppression," as Reed puts it.<sup>10</sup> Yet while Coventry provided Rastell with many examples of exploitation, it also provided instances of wealthier citizens taking the side of the less fortunate, and Rastell seems to have taken these role models to heart, for in his Coventry legal work "Rastell's sympathies appeared to be with the commoners and craftsmen against the ruling classes."<sup>11</sup> His practice "required him to participate in many chancery suits of which there are extant records. They show his interest in social reforms, particularly the dispute over the public grazing rights and the revolt of the citizens who wanted public instead of religious supervision of schools. On

both issues, Rastell sided with the commoners."<sup>12</sup> Reed no doubt exaggerates when he writes that "Rastell emerged from these and like experiences a radical reformer." Like More, Rastell involved himself far too much with the government to earn the epithet "radical." Yet Reed rightly senses that "there is little in the social criticism of his brother-in-law's *Utopia* with which he would not find himself in hearty agreement."<sup>13</sup>

Once he left Coventry, Rastell very quickly established himself as a lawyer and a printer catering to the legal trade, starting his press sometime between 1510 and 1519,<sup>14</sup> and while we will never know what exactly prompted Rastell to set up shop, it is clear that he regarded his publishing ventures as something more than just a good business opportunity, as his legal texts clearly furthered his earlier politics. Rastell evidently envisioned himself empowering the nonelite by making available England's legal traditions, and the *Pastyme* contributes to this project. Indeed, this text may be the first constitutional history of England as the *Pastyme* consistently insists on the contractual nature of monarchy and the legitimacy of deposing a monarch who rules by will rather than by law.<sup>15</sup>

## I

Near the start of the *Pastyme*, Rastell includes an extraordinary passage:

Also after that there was a new order & dygnyte made among the romayns which was callyd a Dictator . . . [who] was chaungeable every half yere & sometyme after at every thryd yeere as some wryters affyrme and some tyme at every .v. yere & when his yerys was past and he dyschargyd of his auctoryte *he shuld be answerable to all byllis & complayntis* that any of the people could alegge agayn hym and ponyshed for every thyng that he had done contrary to Justyce therefore there was ever so good & Indyfferent Justice usyd and had among the romayns that all the world spake of [the] honor and the executyng of which good and indefferent Justice cawsd them to grow in riches and to be of power & strength above any people in the world *therefore wold good it were so usyd at this day in the realme of England that every Jugege and other offyciers having auctoryte to execute the lawis or to governe or to rule in any office should be removable at .iiii. or .v. yere or lesse & then to answer to all complayntis that shuld be allegid agayns him and to be ponished for every offence that he had committid in his*

*rome and then ther wold not be so mich extorcione and oppresseione of the pore people nor so many injuries as is nowadays.* (213–14, my emphasis)<sup>16</sup>

This section demonstrates that Rastell's text does not fit any of the standard definitions of early modern historical writing. First, his attack on those who "rule in any office" shows that he has no interest in supporting the powers-that-be or in validating the Tudors' claim to the throne by praising the justice they and their magistrates dispense. Second, Rastell's overt condemnation of the oppression of the poor "nowadays" at the hands of those "having auctoryte to execute the lawis" demonstrates that the *Pastyme* in no way reflects a "conservative ideology of obedience, duty and deference to social and political hierarchy."<sup>17</sup> Far from exhibiting deference to hierarchy, Rastell uses history as an occasion to condemn abuses precisely by those the poor are supposed to obey without question. Furthermore, despite Kamps's assertion that historiography never called for "radical changes" in the structure of government, Rastell suggests that *everyone* charged with governing, in *any* office, a phrase that includes the monarchy (at the very least, Rastell does not exclude it from this formulation), ought to be answerable for their actions and punished for all offences. To my knowledge, no one had made such a claim in print before, and no one would again until the development of Protestant resistance theory in the 1570s, at the earliest.

As we will see, Rastell's implicit critique of Henry's bellicosity finds expression in other parts of the *Pastyme* as well as in Rastell's legal writings. However, while Rastell's promotion of term-limits for contemporary officials and his social conscience generally demonstrate the reversal of class bias and the sympathetic recounting of popular protest constituent of *Holinshed's Chronicles* as well as More's *Richard III* and Hall's *Chronicles*, their expression in 1529 arose from a specific set of circumstances. Few of Rastell's original readers would have missed the connection between the "extorcione and oppresseione of the pore people nowadays" and the unrest caused by Henry VIII's financial demands to pay for his invasions of France.<sup>18</sup>

Edward Hall's *Chronicle*, the most detailed source for this period, records how Wolsey's announcement that the king must war against France was met from the start with resistance, because everyone thought the king's demands for payment were too high: "therefore it was thought, the some was impossible to be levied, and if al the coyne were in the kynges handes, how should men live [?]" (656).<sup>19</sup> Moreover, the gentlemen in Parliament and the

rich merchants were not the only groups who considered the king's demands outrageous. When Parliament prorogued after acquiescing to some of Henry's financial demands, "the common people saied to the Burgesses, sirs, we heare saie you will graunt iii.s. of the pound, we advise you to do so that you maie go home, with many evill woordes, and threatenynge" (657). In October, Wolsey sent out commissions to collect the subsidy before it was actually due, and Hall makes clear both his and the people's attitude toward this new procedure: "This payment was called an Anticipacion, which is to say, a thing taken or a thing comyng before his tyme or season: This terme was new to the cominaltie, but they payd wel for theyr learnyng, for their money was paied out of hand without delay" (672). As a commissioner charged with collecting yet another subsidy (this one for the maintenance of the king's household), Rastell probably witnessed, if not personally experienced, some of this anger against both the amount and the method of taxation.

Wolsey exacerbated the ill will toward himself, the king, and the war by announcing in 1524 that he required even more money so that Henry himself could go to France in the appropriate style. Hall reports that "the poore curssed, the riche repugned, the light wittes railed, but in conclusion, all people curssed the Cardinal, and his coadherentes as subversor of the Lawes and libertie of Englande. For thei saide, if men should geve their goodes by a Commission, then wer it worse than the taxes of Fraunce, and so England should be bond and not free" (Hall, *Chronicle*, 696). Nor was Wolsey the only object of the people's anger; Hall also records that, after the commissioners were sent out, "in alle the realme were billes set up: Some billes saied, that the kyng had not paied that he borrowed: Some saied that the Subsedie amounted treble more than he bestowed" (697). Even after peace was concluded, the effects lingered, as "the people were so troubled with poverty for the great payments of money that were past" (721), and the troubles only increased after Henry exported the army's money:

yet when the English coyne was the common payment of the armye, it was then openly knowen: then many men sayd alas, so much mony spent out of the realme, and of this charge the realme shall not be one one peny the better, the kyng hath had of us a loan and that is not payde, and the great substedie was graunted to make the kyng riche and now is that money to helpe our olde enemies and the Pope which never shall do us good, this the people spake and much worse. (734)

The final outrage arrived in 1528, the year before Rastell wrote the *Pastyme*, when the House of Lords sent to the commons a bill absolving Henry of the debts incurred by his “subsedy” and his “anticipacion.”<sup>20</sup> The reaction, as one might imagine, was not only anger, but a general sense of having been cheated of money people had legitimately counted on:

When this reelease of the loane was knowen to the commons of the realme, Lorde so they grudged, and spake ill of the whole Parliament, for almost every man counted it his dette, and reconed suerly of the payment of the same, and therefore some made willes of the same, and some other did set it over to other for debt, and so many men had losse by it, which caused them so sore to murmur, but there was no remedy. (767)

Henry’s actions and Rastell’s blaming those “having auctoryte to execute the lawis for the extorcione and oppressione of the pore people . . . nowadays” also help to explain the remarkable absence of any praise for Henry VIII in the *Pastyme*. The ideal prince, significantly, is not one of the Tudors, but Edward III:

though that he was occupyed all the tyme of his lyfe in warre yet he was so cyrcumpsecte that he ever toke hede to the comen welthe of his realme and ordred and stablysshed his lawes mervelously well and had in his dayes .xxv or .xxvi parlyamentes where there were many good statutes and actes made for the commyn welthe of the lande as appereth in the bokes of his statutes. (354)

Although it would have been a simple matter to insert a couple of words on the matter, Rastell declines, thus, according to Albert Geritz, “completely missing the chance to write a panegyric on the early Tudor rulers.”<sup>21</sup> But where Geritz senses either a lost opportunity or a desire to avoid “unknowingly offending the king,” I suggest that Rastell’s silence on Henry VIII is deliberate and registers an implicit refusal to endorse either Henry or his policies. It is not accidental that he praises Edward III for his “lawes” and “good statutes”; that is to say, Edward III is Rastell’s ideal because he ruled in accordance with the law and created more good laws for the benefit of the commonwealth. Under Henry VIII, on the other hand, the situation is completely different. Now the law has become an instrument of predation, and those with authority to execute the laws use them to extort and oppress.

The prologue to Rastell’s *Book Assizes* (1513), for instance, begins by announcing that the law is the only legitimate avenue for a nation to achieve greatness: “Prologus Johannes Rastell: in laudem legum: quod respublica non consistit in divitiis, in potestate, nec honoribus, sed presertim in bonis legibus; Prologue of John Rastell: in praise of law: that the commonweal does not consist in riches, power, nor honors, but in good laws” (169).<sup>22</sup> Rastell’s reasoning is interesting, for he argues that achieving riches, power, and/or honors can only be done at someone else’s expense:

Then since that a man cannot well exercise himself increasing of his great riches, in augmenting his power, nor enhancing his honor without causing poverty, feebleness, or shame, which of themselves been evil things, it followeth well that riches, power, nor honor be not very perfect good things only of themselves, because as I said, they cannot be attained without causing of evil things to other persons. (170)

It follows that “the commonweal is that thing that is of itself merely good, it must needs ensue that the commonweal can neither stand only in riches, power, nor honor. Then it is needful to each wherein that the commonweal should stand,” (170–71); and the answer, of course, is the law, because the law leads to “peace and tranquility, in firm concord and agreement” (171) *without* abusing anyone else. Only the law, in other words, leads to a win-win situation (hence Rastell’s idealization of Edward III in the *Pastyme*).

In so praising the law, Rastell puts forward a vision of the commonweal radically at odds with the chivalric ideology of Henry VIII’s court, which dedicated itself in these years to the achievement of honor and military glory. While Rastell notes that one cannot achieve riches “without causing of poverty,” he focuses mainly on a critique of military glory, emphasizing the cost to the defeated:

[One cannot achieve] great honor nor glory without shame or reproof. For proof whereof, the great mighty people, the Romans, could never have won to themselves the great riches of the country of Persia and Carthage if they had not thereby the Persians and Carthaginians greatly impoverished. Nor the mighty, strong Greeks could never have augmented their power and strength so much as they did against the Trojans except that the Trojans by them had been vanquished and their city destroyed and so made more feeble and weak. Nor also the great, mighty, and famous

Alexander could never attained by his conquest to so great honor and glory except he had subdued other great, mighty kings, as Darius of Persia and Porus of India, and so brought them to captivity which they esteemed shame and reproof.<sup>23</sup>

Given that Rastell published the *Book of Assizes* in the middle of Henry VIII's first war in France, Henry's invasion is a likely subtext, and Rastell's sympathy for the defeated demonstrates his disapproval of Henry's military exploits, even, it must be said, as he contributed to the war effort.

Rastell's prologue to *An Abridgement of the Statutes* (1527) also provides an important context for the *Pastyme's* silence concerning Henry VIII and his denunciation of the poor's abusers. After recounting the reasons why the laws of England were first written in French, Rastell launches into a panegyric on the present king's late father:<sup>24</sup>

But yet besides this, now of late days, the most noble Prince, our late sovereign lord, King Henry VII, worthy to be called the second Solomon (which excelled in politic wisdom all other princes that reigned in this realm before his time), considering and well perceiving that our vulgar English tongue was marvelously amended . . . had translated and made many noble works into our English tongue, whereby there was much more plenty and abundance of English used than there was in times past. (174)

Henry VIII, on the other hand, rates no such praise: "Which discreet, charitable, and reasonable order, our most dread sovereign lord, that now is, King Henry VIII, hath continued and followed" (175). While one probably should not overly stress the differences in tone among the terms used for sovereigns, it is still worth noting how Rastell piles compliment upon compliment on Henry VII, yet restrains his rhetoric when writing about his son, who presumably is in a much better position to do Rastell good than the late king. Moreover, the adjective Rastell uses about Henry—"most dread"—while no doubt conventional, nonetheless connotes fear, awe, and power rather than love.

To return to the *Pastyme*, the treatment of Henry V's portraiture not only manifests Rastell's distaste for military glory, it also delivers an oblique condemnation of the present king. As Roy Strong notes in *Tudor and Jacobean Portraits*, Henry V's iconography had been established by the late



Figure 1.  
Henry V by an  
unknown artist. By  
courtesy of the  
National Portrait  
Gallery, London.

fifteenth or very early sixteenth century, and although, according to Strong, his images depict a person rather than a type, his portraits are clearly positive, as for example, in figure 1.<sup>25</sup> Rastell's woodcut, on the other hand, depicts a man with a broken nose, an aggressive posture, and a raised sword (see fig. 2), an iconography that highlights Henry's brutality and, so far as I know, is unprecedented. Yet the resonances are even more pointed, given Henry V's personal and symbolic importance to the Tudors. In 1513, as part of the propaganda campaign to justify his invasion of France, Henry VIII commissioned an English translation of Tito Livio's *Vita Henrici Quinti*, and Henry VIII took his model sufficiently to heart to ride around his rain-drenched camp, encouraging his soldiers on the night before a battle.<sup>26</sup> Therefore, by breaking with convention and depicting Henry V in a less than idealized manner, Rastell implicitly denounces both the original and his follower, as does his treatment of Joan of Arc. Robert Fabyan's *New Chron-*

Figure 2.  
Henry V.  
Woodcut from  
Rastell's  
Pastyme of  
People (Lon-  
don, 1529),  
sig. E1v.  
London,  
British Library,  
shelfmark  
C15c6. By per-  
mission of the  
British Library.



*icles of England and France*, Rastell's main source for the *Pastyme*, has nothing but contempt for Joan, dismissing the story that her armor "was founde myraculously" as "so darke and fantastycall, [that] therewith me lyst not to blot my booke, but suffre to passe by." Fabyan accuses her of "sorcery and develyshe wayes" and rejoices that she was ultimately "brent for her demerites" (641–42).<sup>27</sup> Rastell, on the other hand, clearly sympathizes with both Joan and the French. In a text where God is strikingly absent, Rastell twice mentions—without rebuttal—that the French called her "le pusel de dieu, the mayde of god" (*Pastyme*, 373), and he alludes positively to the claim that "she was sent to [Charles] by god to help to releve the misery of Fraunce" (373)—misery, of course, being caused by Henry V and repeated by Henry VIII.

## II

Rastell's use of historiography as a vehicle for protest, however, is part of his larger project of writing a history of England that emphasizes the "ancient constitution," meaning the English common law traditions dating "from time out of mind" concerning the division of powers between the monarch and the people. While humanism is clearly an important shaping presence in Rastell's history (Rastell's desire for accountability in government is couched in terms of reviving a classical custom), his legal training is equally, if not more, important. Nor is it coincidental that Thomas More and Edward Hall, who as I have already noted wrote histories exhibiting the same ideological priorities as Rastell's, were lawyers. So were three contributors to *Holinshed's Chronicles*—John Hooker, Francis Thynne, and Abraham Fleming—and Raphael Holinshed, while a cleric by trade and not a lawyer, nonetheless was "extremely interested in what we now call rights theory, specifically in constitutional and legal rights."<sup>28</sup> Although there has been increased attention lately to the competition between various political vocabularies in early modern England among historians,<sup>29</sup> literary critics still tend to consider absolutism the predominant ideology of the period.<sup>30</sup> This model, however, insufficiently recognizes that the English monarchy was, at least until the Stuarts arrived, not an absolutist, but a mixed institution. That is to say, the claims of royal prerogative from at least the tenth century onward were balanced, in both theory and practice, by the recognition that it is the "king-in-parliament," not the king alone, who rules in England.<sup>31</sup>

To be sure, there is ample evidence that monarchs often claimed that they were answerable only to God, and all parties admitted that the monarch could act without restraint in certain areas (e.g., foreign policy) and under certain conditions, such as a national emergency.<sup>32</sup> Yet even Francis Bacon, proceeding from a background of civil law and no enemy of monarchical privilege, admits the sovereign's limits in effecting fundamental changes in the law:

if the parliament should enact in the nature of the ancient *lex regia*, that there should be no more parliaments held but that the king should have the authority of the parliament, or, *e converso*, if the King by Parliament were to enact to alter the state, and to translate it from a monarchy to any other form; both these acts were good.<sup>33</sup>

Bacon grants Parliament the right to bring about fundamental change, and he grants the same to “the king *by* Parliament,” yet Bacon never says that the king *by himself* could enact to alter the state. That act, to paraphrase the last sentence, were *not* good. Concomitantly, if the subjects had to obey the monarch, obedience depended upon the monarch respecting the people’s liberties and the rule of law. In the event of the monarch breaking this unwritten yet widely recognized contract, as both the 1327 Parliament and Selden (see this essay’s epigraph) recognized, tradition allowed for deposition.<sup>34</sup>

Bacon, obviously, writes nearly a century after Rastell, but these principles were expressed at least as far back as the twelfth century. For example, Glanville records, concerning a property dispute in 1185, how he told the court “that our customary rights had been established reasonably and wisely, that nothing excessive could be found in them, *and that the lord king neither wishes nor dares* to go against customs in some measure so ancient and so just or to change anything respecting them.”<sup>35</sup> Glanville notes that the king’s acquiescence stems from more than his desiring to be agreeable. Clearly, Henry sensed the possibility of dire consequences if he defied custom. Glanville’s “customary rights” concern matters of property, and a large part of the common law is devoted to guaranteeing the right to own property without interference from the crown or anyone else. Yet larger constitutional issues also underlie this problem. A century after Glanville, Bracton would assert that the English coronation oath binds the monarch to govern “according to the laws which the people have chosen” (*quas vulgus elegerit*). Thus, says Bracton, it is only when an expression of the prince’s will is in conformity with this *lex regia* that his will becomes a binding law.<sup>36</sup> Even further, Bracton explicitly states that the people, not the monarch, make law, and the monarch is “under God and the law, because *the law makes the king*” (my emphasis).<sup>37</sup>

The conflict for supremacy between *lex* and *rex* lies at the root of the quarrel between the barons and King John that resulted in the promulgation of Magna Carta, and, significantly, Rastell included twenty-four chapters of Magna Carta in the *Great Abridgement*, including the most celebrated section on accusation: “no man shall be takyn or imprisonyd or any wyse destroyed nor we shall not go nor sit upon hym but by the lawfull iudgement of his peerys or *by the law of the land*” (Rastell’s translation; my emphasis).<sup>38</sup> As John Guy notes, the term *lex terrae*, or “the law of the land,” refers to law made with the counsel and consent of the king’s subjects.<sup>39</sup> The barons “protested that John governed by his ‘will’ and not by ‘law,’ since the touchstone of ‘feudal’ law was that its legality derived from the ‘counsel

and consent’ of the magnates.<sup>40</sup> In other words, Magna Carta implicitly declared that laws made without this consent are not valid. Richard II, among others, found out what could happen when a monarch assumed that he made the law, not vice versa, as the charges against Richard included trying to govern by his *voluntas*, his will. Everyone’s life and goods were, so the indictment ran, “at his will . . . contrary to the laws and customs of England,” and worst of all, he claimed that “the laws were in his own mouth.”<sup>41</sup> Given these charges, it is perhaps no wonder that in Henry IV’s first Parliament, Archbishop Arundel declared that the king would govern not by his “singular opinion, but by common advice, counsel, and consent.”<sup>42</sup> By the late fifteenth, early sixteenth century, the monarch was widely considered a “limited” ruler, and the theory of mixed monarchy received systematic treatment by Sir John Fortescue and Christopher St. German, both of whom Rastell regarded very highly.<sup>43</sup>

Although St. German does not deal overtly with the problem of deposition in *Doctor and Student*, he nonetheless makes clear that the monarch is subject to the law, and not vice versa. The *Student* gives six overlapping sources for England’s laws: reason, God, custom, maxims, local customs, and statutes. St. German defines custom thus: “The third ground of the law of England standeth upon divers general *customs* of old time used through all the realm, which have been accepted and approved by our sovereign lord the king, and his progenitors, and all his subjects” (17–18).<sup>44</sup> The validity of a custom is based upon accordance with the laws of God, reason, and immemoriality. Furthermore, in this context custom can become common law: “And because the said customs be neither against the law of God, nor the law of reason, and have been alway taken to be good and necessary for the commonwealth of all the realm; therefore they have obtained the strength of a law, insomuch that he that doth against them, doth against justice: and these be the customs that properly be called the *common law*” (18). St. German concludes this part of the discussion by explicitly stating that the monarch cannot change the common law. Perhaps with Bracton in mind, St. German registers the inviolability of custom when he writes that “our sovereign lord the king, at his coronation, among other things, taketh a solemn oath that he shall cause all the customs of his realm faithfully to be observed” (18). The final ground of England’s law is the statute, and again, St. German implicitly limits the monarch’s power. Following Magna Carta, the *Student* asserts that statutes are made “by our sovereign lord the king and his progenitors, and by the lords spiritual and temporal, and the commons in divers parliaments” (36). For St. German, the highest authority is not the

king; rather, the “king-in-parliament” is the “high sovereign over the people” (317). All law, St. German argues, must be made by king, lords, and commons assembled *together* in Parliament, “for the Parliament so gathered together representeth the estate of all the people within this realm” (340).

Rastell and St. German were certainly acquainted by 1508, and Rastell would publish in 1528 the first Latin edition of *Doctor and Student*,<sup>45</sup> which makes this a key text for understanding the legal and constitutional context for the 1529 *Pastyme*. Sir John Fortescue also put forward a theory of England as a mixed monarchy in his highly influential *De laudibus legum angliae* and in his English version of his chapters on government, *On the Governance of England*, and we know that Rastell deeply admired his views on English law as well.<sup>46</sup> In the prologue to *The Book of Assizes*, Rastell writes that

the laws of this realm of England been ordained and made to the great commonweal and ease of the people of the same as much as the laws of any other realm, nation, or country as by the book that is compiled, *De Laudibus Legum Angliae* by the right honorable Master Fortescu, sometime Judge in this realm, more plainly is showed and by reason approbate, argued, and well declared. (170)

In the ninth chapter of the *De laudibus*, Fortescue distinguishes between two types of kingdoms, the royal (*dominium regale*) and the political (*dominium politicum et regale*). In the first, the monarch rules without regard to anybody else, and Fortescue uses France as an example. In the second, however, the king cannot alter the law at will and cannot impose taxes without the people’s consent:

For the king of England is not able to change the laws of his kingdom at pleasure, for he rules his people with a government not only royal but also political. If he were to rule over them with a power only royal [as in France], he would be able to change the laws of the realm, and also impose on them tallages and other burdens without consulting them; this is the sort of dominion which the civil laws indicate when they state that “What pleased the prince has the force of law.” But it is far otherwise with the king ruling his people politically, because he himself is not able to change the laws without the assent of his subjects nor to burden an unwilling people with strange impositions, so that, ruled by

laws that they themselves desire, they freely enjoy their goods, and are despoiled neither by their own king nor any other.<sup>47</sup>

In the next chapters, Fortescue gives the origins of the two systems of monarchy. The first kind of kingdom, the *dominium regale*, results from a Hobbesian state of constant danger. The people, “thinking it better to be under the government of one, whereby they were protected from others, than to be exposed to the oppressions of all those who wished to attack them,” chose a leader who then “usurped to themselves the name of king” (19). Such kings, however, rule only by power and by oppression of the people: “So Nimrod first procured for himself a kingdom, though he was not himself a king, but is called by holy scripture a mighty hunter before the lord, because, as a hunter compels beasts enjoying their liberty to obey him, so did he compel men” (19).

Fortescue does not give an origin story for the second type of state. Instead he turns to a literalization of the “body politic” that privileges the parts over the head, the people over the monarch, and by implication, the law over the monarch’s will:<sup>48</sup>

Just as in this way, the physical body grows out of the embryo, regulated by one head, so the kingdom issues from the people, and exists as a body mystical, governed by one man as head. And just as in the body natural, as the Philosopher said, the heart is the first living thing, having in itself the blood which it sends forth to all the members, whereby they are quickened and live, so in the body politic the intention of the people is the first living thing, having in it the blood, namely, political provision for the interest of the people, which it transmits to the head and all the members of the body, by which the body is nourished and quickened. . . . And just as the head of the physical body is unable to change its sinews, or to deny its members proper strength and due nourishment of blood, so a king who is head of the body politic is unable to change the laws of that body, or to deprive that same people of their own substance uninvited, or against their wills. (20–21)

According to Fortescue, therefore, England is a mixed monarchy in which the king cannot rule, tax, or alter the laws without the consent of the governed, and the purpose of the law is to protect the persons and property of the governed. Furthermore, England has been a mixed monarchy since its mythical



origins,<sup>49</sup> and none of England's subsequent conquerors changed this system. To rule by power alone, by conquest, or by "will"—which, we might recall, is what Richard II was accused of doing—means that the monarch is a tyrant. When, therefore, Rastell refers to *will* in the *Pastyme*, the term not only refers to a faculty that ought to be restrained by reason, which is how Erasmus uses the term in the *Education of a Christian Prince*, it also has a specific legal meaning. If, in other words, the monarch's desire is "will," it is the Parliament which constitutes the restraining force of "reason."

In addition to his overt praise of Fortescue and his publishing of St. German's *Doctor and Student*, Rastell's absorption of these principles is also evident from his introductions to his legal texts. In the prologue to *Expositions of the Terms of English Laws* (1525?), Rastell asserts that a nation's continuance in "unity and peace" must result from some degree of compulsion, but the source is the common law, not the monarch: "Wherefore a good law observed, causeth every good people: and a good, reasonable common law maketh a good, common peace and a commonwealth among a great community of people."<sup>50</sup> A ruler is necessary, but the law *precedes* the ruler, and the ruler must enforce the law. Echoing Bracton, the charges against Richard II, and Fortescue, Rastell warns "when that every governor will have the law after his mind, bringeth one multitude of people to variance and division" (176–77).

Significantly, in the *Great Abridgement*, Rastell justifies his translation and abridgment of these laws using a key term that will return in the *Pastyme*. In order for the laws to benefit the commonwealth, they must first be equally understood by everyone, not just by an elite. Hence, after

that the use of the French tongue in this realm began to minish . . . therefore the wise men of this realm caused to be ordered that the matters of law and actions between parties should be pleaded, showed and defended, answered, debated and judged in the English vulgar tongue; and, moreover, that written and entered of record in the rolls in the Latin tongue, because that every man generally and *indifferently* might have the knowledge thereof, as appeareth by a statute made in the .xxxvi. year of [the reign of] Edward III, cap. I. (Nugent, 174; my emphasis)

In the *Pastyme of People*, immediately after the passage denouncing the "extorcione and oppresse of the pore people," Rastell expresses his admira-

tion for how the Romans conducted their elections, and he again takes the opportunity to compare ancient Rome to contemporary England:

These Romayns in ellection of theyr consullys & other offycers had sometyume varyaunce amonge them self For pacyfyeng wherof & for trew & *indifferente* eleccyons to be had they ordeynyd & made secret elleceyons & that no man shuld gyve his voys openly by mouth nor by wrytyng wherby it shuld be knowyn to whom he have his voyce. . . . which order if it were usyd in this realme wold cause that ther shuld not be so mych troble and bysynes nor so mych anger & malyse as growth and followith in our elleccyons as we se dayly by experyence. (215–16; my emphasis).

As Patterson points out, "indifference" entailed much more than simple fairness or impartiality: "it comes to stand for a set of values which extend far beyond historiographical objectivity, into the territories of politics, law, economics, religion, citizenship, of relations between the classes, and even perhaps between the sexes."<sup>51</sup> "Indifference," in other words, stands for *impartiality*, for the rule of law as opposed to the rule of an individual's (or a monarch's) will. As we will see, this principle shapes Rastell's history.

### III

Rastell begins the *Pastyme of People* in an eminently orthodox fashion by announcing his didactic purpose. He will rehearse the story of "Galfridus" not because he wants anyone to believe it:

But because that in the same story reding a man may see many notable examples of divers noble princes that wisely & vertuesly governed there people which may be an example to princis now living to use the same & also a man reding in the same shall see how that the stroke of god fell over uppon the people other by battel dardh or death for their vice and misleving and also how divers princis and grete men exaltid in pride and ambicion using tyranny & crueltie or elles being neclygent in governing theyre people or giffing them self to vicious liffing were ever by the stroke of god ponished for the same. (206)

Yet Rastell never carries through on his promise to deliver a providential history. God, in fact, is notoriously absent in this text, but Rastell provides an alternative source for punishing the wicked: the rule of law and the people. Usually, Rastell defines “the people” as those possessing property or the nobility, yet at other times he will broaden the term to include those without property. It is the monarch’s treatment of the people, however slipperily defined, by which he means not only how nice he or she is to them, but how well the monarch observes the limits on monarchical prerogative, that constitutes the standard by which he or she is judged. Furthermore, the people, not God, provide the appropriate punishment, and they do so while invoking political, not providential, justifications. Tarquin, for instance, “was the furst that usurped and took upon him to be king without Eleccion of the people or of the perris” (212). That, plus his rape of Lucretia, not only led the Romans to depose Tarquin, but forever tarnished the office of kingship among them, preferring instead a leader restricted by term limits: “the romayns did put downe the sayd Tarquinius superbus from his dignyte of kyngdome . . . and after they had the name of a kyng in as gret hatred as the name of a thief wherfore in stede of a kyng they made .ii. Consulles to govern the peopull whose Auctorytis shuld last but for one yeer” (212). Rastell’s treatment of Tarquin is not so much a moral as a political exemplum, and its lesson is the supremacy of two aspects of mixed monarchy. First, the people along with the peers confer monarchy. Second, both have the right to depose a tyrant. Despite his initial assertion of providentialism, Rastell never affirms that rebellion constitutes an offense against God and the state. Rather, it is the law which provides order and the mechanisms for maintaining order (i.e., deposition). These rules may ultimately derive from God, but in Rastell’s narrative, God remains entirely uninvolved in earthly politics.

Rastell establishes that, almost from the start of their history, the English chose their monarchs rather than having them imposed upon them. At first, Rastell writes that so and so “reyned,” and that the crown passed from father to son (e.g., “Leyre son to Brute reyned next. . . . Bladud son to Ludibras reyned next . . . Leyre son to Bladud reyned next [210]). But after the passage on Tarquin, Rastell’s diction shifts remarkably. Starting with Arthegall, Rastell now emphasizes the people’s choice and their right to depose a tyrant:

Arthegall broder to Gorbonian reyned next he was a cruell man & coveteouse wherfore his people deposyd him & made his broder Elidurus or Heleodorus kyng & he became so good & mercyfull

that he was callyd the kyng of pyte For when he had reynyd .v. yearys he made his brother Arthegall kyng agayn & so forsoke the crowne & after that became a good man. (216)

From here on, Rastell generally marks shifts in rule by writing that a man is *chosen* king. For example, “Elidurus his brother was than chosyn king,” and when he died “the bryttens dyd chose agayn Elidurus to by kyng” (216–17). After these two, Rastell reports, come a number of unremarkable kings, except for “Eunianus. which usyd so mych tyranny that the people deposyd hym & made king his cosyn Idwallus” (217). Other examples: “Cassibelan brother to lud as so good a man & so wel belouyd that he was chosyn king next” (219); “Arviragus the yonger son of Kinbelynus & broder to Guiderus was then made king . . . he was hardy & wyse he bilded cities & townes & subduid the people by good laws & justyce” (224); “Maurus sone to Arviragus was made next kyng of Brytayne” (225); “Asclepiodotus as sone was he was chosyn kyng” (234).

By way of contrast, Rastell leaves out any mention of choice when recounting French kings from the same period. Rather, it is clear that the crown passes from father to son without any say from the people: “Francus the .ii. was the furst king of the Frenchmen” (220); “Clogion son of Francus was next king of Frenchmen” (220); “Odemer sone of Rychemere was after his fader kyng of the [Frenchmen]” (226); Mercomer sonn to odemer [*sic*] was after his fader king of frenchmen” (228). This sequence recalls Fortescue’s comparison of French despotism with English mixed monarchy, as Rastell continuously emphasizes that the English monarchs are accountable to those they rule, while no such accountability binds French rulers.

One can more clearly see Rastell’s sense of the importance of the people and the law when comparing passages from the *Pastyme* to their originals in Fabyan’s *New Chronicles*. First, I want to look at the matter of Sigeburt’s deposition. Fabyan describes this event diffusely, and while Sigeburt committed some grievous acts against his subjects, Fabyan’s diction shows that he does not particularly like what they did to their monarch:

He was cruell and tyrannous to his subjettes, & turnyd theyr laws and customes of his forefaders after his owne wyll & pleasure: and for that, one of the noble men of his domynouon, somedeal sharply advertysyd hym to change his maners, and to have hum more predentlye toward his people, he therfore malyciously cauysd him to be put to cruell deth. . . . Than it folowith for soo moche as the

kynge Sigeburt contynuyd in his ill mayyce, & cruell condicions, his subjetiſ conspyrd agayn him, and put hym from all kyngly dignite, soo that he fell after to great dissolacion and mysery, in such wyse, that he was founden after in a wood or desolate place, wandryng alone without comferte: where he beyng so founden by a swyne herde or vylane, some tyme belongynge to the erle of Conbranus, that he before tyme wyckydlye had slayne, in avengement of his sayd lordes death, slewe hym in the sayd place. (137–38)

When dealing with Sigeburt's crimes, Rastell quotes Fabyan word for word.<sup>52</sup> Yet Rastell's emphasis shifts slightly but significantly when treating the deposition: "[Sigeburt] put one of his lordis to deth which advertisyd him to be reformed wherefore his subjectis *by one assent* wyth the eyd of one kenulphus deposed him" (271). Fabyan describes Sigeburt's subjects as *conspiring* against him, implying that whatever Sigeburt's offences, overthrowing a monarch needs to be condemned. Rastell, on the other hand, turns Fabyan's conspiracy into an example of appropriate, collective action in the face of a king who defied the ancient constitution and replaced the law with his will, and Rastell adds two additional elements more generally ascribed to later developments in political thinking: the principles of consultation and unified action. Whereas Fabyan seems to repeat the fault of many chroniclers of unreflective inclusivity, Rastell emplots his narrative to demonstrate how monarchs are subject to the law. By eliding Fabyan's intervening comments on the contributions of Egbert, archbishop of York, to the commonwealth, including the establishment of a library,<sup>53</sup> Rastell concentrates his narrative on the bad reign and rightful deposition of an evil monarch.

Fabyan's and Rastell's treatments of King Alfred also emphasize the importance of the king working with his subjects.<sup>54</sup> Both idolize this king, yet for slightly different reasons. According to Fabyan, "When this Alfred was admytted to be kynge, he well consydered the great daunger that his lande was in. Wherefore he gadyred to hym his lordes, & suche as he myght nat wyne without stryfe, he wanne with great justyce and fayre hestes; so that he shortly assembled a stronge hoost," and two months later, defeated the Danes (166). What Fabyan considers an act aimed at foreign policy (repelling invaders) Rastell construes as a self-contained, domestic policy that includes all the kingdom's classes: "he causid his lordis & *people* to be obedient to hym more by justyce & fayre beheste than by war or crueltie" (279, my emphasis).

The treatment both authors give to the events leading to the creation of Magna Carta also highlights Rastell's emphasis upon the limitations on the monarch's prerogatives. According to Fabyan:

In this. xiiii yere of the kynge, for that he wolde not holde the lawes of seynt Edward, and also for dyspleasure that he bare to dyverse of them, for they wolde not favor hym agayne the pope, and for other causes, whiche here be not manyfested, the kynge fell at dyssencion with his lordis, in so moche, that great people were reysed on eyther parties. (320)

Rastell, on the other hand, elaborates on his source:

Also about the .xiiii. yere of his reyne kynge John fell at a great disencyon with his lordes[;] one cause of that varance [was] for that the kynge wolde nat holde the lawes of seynt Edward *but wolde holde no lawe but do all thinge at his owne wyll & dyd disinheryte many men without assent of his lordes or of any other counsell.* (319, my emphasis)

Rastell follows Fabyan in pointing to John's failure to maintain the legal reforms supposedly instituted by Edward the Confessor.<sup>55</sup> Yet where Fabyan privileges John's foreign quarrels (the lords "wold not favor hym agayne the pope") and describes in detail the arguments between him and the earl of Chester, Rastell privileges constitutional issues. Fabyan seems to allude to these causes, but chooses to not talk about them ("whiche here be not manyfested"); Rastell, on the other hand, not only makes them explicit, but puts at the center of his narrative King John's insistence upon acting without consultation and his preemptory confiscation of property. He would, as Rastell says, "do all thinge at his own wyll." Replacing law with will is the one unforgivable sin for Rastell because it means that the monarch is acting unilaterally, without the consent of the governed, and once more, using language that echoes Fortescue and St. German, Rastell emphasizes that the monarch's prerogatives do not extend to doing whatever he wants.

#### IV

Most treatments of early modern historiography assume that these texts served to disseminate the Tudor myth (Lawrence Manley, for instance, calls Hall, Holinshed, and others "encomiasts of the new nation-state")<sup>56</sup> and so

I want to conclude by examining Rastell's treatment of the politically sensitive episodes of Richard II's deposition and Henry IV's accession to the throne, events presumed central to Tudor mythology. Certainly, by 1529, the "Tudor myth," which more or less began in the works of Bernard André, who called himself Henry VII's "court poet and historiographer royal," and which received its fullest expression in Polydore Vergil's *Anglica Historia*, constituted one of the dominant themes of historical writing.<sup>57</sup> Richard's deposition in particular is a key moment in Tudor providentialism since it putatively invoked God's wrath, which led to the war that Henry Tudor brought to a close. Rastell's treatment, however, is remarkable because it is *not* remarkable, that is to say, he treats Richard's deposition no differently from any of the earlier ones. In other words, the deposition of this monarch did *not* set in motion a chain of events that would lead to the divinely sanctioned accession of Henry VII.

Once more, Rastell's revision of Fabyan is revealing. The latter writes:

In this .xxi. yere of kynge Richarde, the people of the lande murmuryd & grudgyd sore agayne the kyng & his counceyll, for so moch as the goodys belongyng unto the crowne were dysperblyd and gevyn to unworthy personys; by occasyon whereof dyverse charys and exaccuons were put uppon the people; also for that the chefe rulers about the prynce were of lowe birthe and of small reputacion, and the men of honoure were kept out of favoure; also for that the duke of Gloucetyr was secretlye murdred without processe of the lawe, and many thynges ellys mysordryd by the last parlyament. (543)

But according to Rastell:

Also in the .xxi. yere the people of the lande greatly murmured and grudged at the mysorder of the kynge for dyvers causes[;] one was for that he levyd many exaccyons and charges of the people and wasted it & gyven it to lyght persons. And also for because that the duke of Glocester was secretly murdred without proces of the lawe. And also for that he wolde chose shryffes and other offycers at his owne wyll and pleasure without advyse of any discrete [counsel]. Also another cause was that he wolde rebuke the Judges yf they gave any jugement contrarye to his mynde wherfore they gave many judgementes contrary to the order of the lawe. (359)

Rastell replaces Fabyan's worries about the class of the people surrounding the king with concern for their moral quality. Second, Rastell revises Fabyan's account to focus attention on Richard's offenses against the conventions of mixed monarchy, or to use Fortescue's phrase, the *dominium politicum et regale*, and he adds the charge of not respecting the independence of the judiciary. Both writers record and protest Richard's choice of judges, but their different emphases reveal their distinct, if also overlapping, concerns. According to Fabyan, Richard chose people whom he thought "wolde lene more to his weale than to the common weale of his lande or his subjectys" (543). Rastell also notes that Richard would "rebuke the Judges yf they gave any jugement contrarye to his mynde," but, continues on to denounce how because of monarchical pressure they rendered decisions "contrary to the order of the lawe."<sup>58</sup> Whereas Fabyan's concerns are limited to favoritism, Rastell's extend to undermining "the lawe," with the obvious implication that "the lawe" ought to remain independent of and superior to the monarchy.

Furthermore, Rastell's treatment of Henry's accession echoes Fortescue's sense that kingdoms have their origins in the will of the people (*De laudibus*, 20). While Richard was in Ireland, Rastell reports, the exiled Henry Bolingbroke landed at Ravenspur "and proclaymed hym selfe duke of Lancaster and *with that moche people resoorted unto hym*" (360, my emphasis). As one might expect, Richard is deposed by the people's representatives, and Henry gets the crown through their agency:

And than the kynge by the hole consent of all the lordes & the commons in the sayd parlyament was deposed of his kyngly dignyte & all they by one assent chase the sayd Henry duke of Harforde for the great manhode and wysedome that they sawe in hym above all other to be kynge of Englande. (361)

While Fabyan's narrative goes step by step through the process of Richard's deposition, giving "verbatim" reports of the speeches concerning Richard's deposition as well as the archbishop's sermon upon Henry's accession (550–51), Rastell compresses the events. In doing so, he makes two interesting changes. First, in Fabyan's version, as soon as Richard is deposed and the state "stood voyde without hede or governour," Henry stands and claims the throne (549). In Rastell's version, however, the *Parliament* "by one assent" (again emphasizing the principle of unanimity set out in Rastell's treatment of Sigeburt's deposition) chooses Henry without any precipitating action on his part. Rastell's version emphasizes the agency and supremacy of Parliament

insofar as it appears to choose Henry of its own volition rather than in response to his coming forward and asserting his kingship. Second, Fabyan's version makes clear the differences between the lords and the commoners:

than the lordys apperceyunge and heryng this clayme thus made by this noble man, eyther of them fraynyd of other what he thought, and after a dystaunce or pause of tyme, the archebyssshop of Cauntorbury havng notycion of the lordys myndes, stode up and askyd of the commons if they wolde assent to the lordys, which in their myndys thought the clayme, by the duke made, to be ryghtfull and necessary for the weale of the realme and of them all; whereunto with one voyce they cryed "ye, ye, ye."  
(549–50)

Fabyan's version, in other words, while perhaps more accurate (it is certainly more detailed), nonetheless reinforces class difference. The lords first hear the claim, and then send the archbishop to the commons in order to ask them if they will "assent" to what the lords have decided. Granted, Fabyan depicts consultation, and the lords do not act on their own. Nonetheless, his narrative emphasizes how the political and social hierarchy worked. Rastell, on the other hand, emphasizes the unity of both the commons and the lords. They act as one and choose "by one assent." The division, if there is one, lies between the monarch and the subjects, not among the subjects themselves. Rastell thus departs entirely from the Tudor myth by never hinting at divine retribution for the deposition of an anointed monarch or blaming Richard's murder for the War of the Roses. Clearly, Rastell's larger purpose is not to endorse the Tudor regime, but to demonstrate Fortescue's and St. German's point that ultimate sovereignty rests in the law and in Parliament.

Finally, Rastell's treatment of the conclusion of the War of the Roses, in particular Henry Tudor's landing, the Battle of Bosworth Field, and the moment Henry becomes king, contrasts with his source. Fabyan, as one would expect, emphasizes Henry Tudor's religiosity:

when he was commyn unto the lande, he incontyently knelyd downe upon the erth, and with meke countenance and pure devocion began this psalme: "Judica me Deus. . . ." The whiche whenne he hadde fynysshid to the ende, and kyssed the grounde mekely and reverently, made the signe of the crosse upon hym, he commaundyd such as were aboute hym boldly in the name of God and seint George to sette forwarde. (672)

But Rastell elides all mention of Henry's piety, preferring instead to narrate the events with no commentary or special praise for him: "upon whiche agreement thus concluded provycyon was made for the landynge of the erle of Rychemonde in Englande. . . . At whose landynge dyvers gentylnen of the contrey resorted [to him]" (401). As for the battle itself, Fabyan highlights the desertion of the king's forces as the decisive factor:

he [Richard] mette with the sayd prynce nere unto a vyllage in Leycetershyre, named Bosworth, nere unto Leyceter, where atwene theym was foughten a sharpe batayll, and sharper shulde have been if the kynges partye had ben fast to hym; but many towarde the felde refucyd hym, and yode [went] unto that other partie, and some stode houynge a ferre of, tyll they sawe to which partye the victory fyll. (673)

Rastell, however, *drops* Fabyan's account of Richard III's troops joining the other side while retaining the account of those who stood by, waiting to see who would win: "[the outcome of the battle] were nat all sure to hym [Richard] for some stode styll and loked upon the felde and wolde nat fyght tyll they sawe to which partye the victorye fell" (401). There is, in other words, no sense of Richard's soldiers fleeing to the side of right. And while Rastell does conclude his account by stating that Richard ruled "by rygour and tyrrannye" (401), he still softens Fabyan's final words: "And thus with misery endyd this prynce, which ruyld mostwhat by rygour and tyrrannye, when he in great trowble and abonye had reigned or usurped by the space of ii. yeres. ii. monethes &. ii. dayes" (673). Rastell's treatment of Henry is oddly cool, and if he nonetheless still judges Richard a tyrant, the woodcut of this king departs from the Tudor myth by having him standing upright, with sound limbs, and a somewhat woebegone expression on his face (see fig. 3). It is a jarringly sympathetic portrait. And the reason for Rastell's refusal to give a providential account of the originary moment of the Tudor dynasty lies, I think, in when and how Henry claims the throne.

According to Fabyan, Henry Tudor becomes king *after* the battle, and his use of the passive voice implies that Henry was offered the crown by the nobility: "And then [i.e., after Richard III's death] was the noble prynce Henry admytted for kyng, and so proclaymed kyng by the name of Henry the. vii." (673). But Rastell clearly had different information, and according to his sources, Henry Tudor took the crown *before* Richard was dead, and, more importantly, without the prior permission of and consultation with the

Figure 3.  
Richard III.  
Woodcut  
from Rastell's  
*Pastyme of  
People*, sig.  
G1r. London,  
British  
Library,  
shelfmark  
C15c6. By  
permission of  
the British  
Library.



people: “At whose landyngge dyvers gentylnen of the contrey resorted whiche erle *than proclaymed hym selfe* as he went kynge Henry the .vii. kynge of Englande” (401). As we have seen, Rastell supports the right of “the people” to depose a tyrant and to make someone else king: Sigeburt’s subjects “by one assent” depose him; Edwin’s subjects “depryvyd hym from all kingly dygnyte” (285); and Arthegall’s “people depoyd him & made his broder [king]” (216). So, it is not the act of deposition that bothers Rastell. However, in the previous episodes, it is the people or Parliament who makes the decision, not the person who ultimately becomes king. Edward IV, for instance, goes to Parliament and *asks* “yf they wolde admytte hym to contynue as kynge” (388). Following Fortescue, Rastell sees power as emanating from the people. Henry Tudor, in stark contrast, takes the throne without first obtaining permission. Consequently, Rastell never calls him a

“noble prince,” as Fabyan does. While Rastell is not going to condemn Henry VII (he was not suicidal), he nonetheless withholds the kind of praise one would expect at this juncture and which Rastell lavishes on Henry in the *Abridgement*. In the latter text, Rastell praises the king for supporting England’s legal traditions. But in declaring himself king, rather than accepting the crown from the nobility, Henry defies the principles of mixed monarchy and the ancient constitution, and that Rastell cannot approve. Far from an encomiast of the newly fledged Tudor state, Rastell’s narrative of the Tudor dynasty’s origins undercuts rather than supports their legitimacy.

Rastell’s *Pastyme of People* depicts a country governed by the rule of law. Rather than narrating how God inevitably punishes tyrants, a perspective which quite explicitly denies subjects the right to take up arms against bad rulers, Rastell shows how the constitutional principles articulated by Fortescue and St. German and seconded in his own legal works, keep order by regulating the monarch’s power. In sum, Rastell’s England is a country where the law reigns supreme, not the monarch, and where the people have the right, often exercised, to depose a monarch who rules by will and not by law. Rastell’s *Pastyme* thus joins Thomas More’s *History of Richard III*, Hall’s *Chronicles*, and *Holinshed’s Chronicles* to enlarge the body of historical writing that adopts ideological positions quite different from those promoted by the ruling dynasty. All of these texts do *not* identify the monarch’s interests with the nation’s, and all of them are perfectly capable of critiquing the reigning monarch. Taken together, they demonstrate how we need to revise our notions of the genre of English historical writing, which is far from the conservative monolith it is generally taken to be, and there are further implications. First, this revised vision of early modern historiography challenges the usual view of the relationship between historiography and other genres, such as the drama. Shakespeare and others do not so much transform the (conservative) raw materials of chronicle history as dramatize insights *already present* within their source material. In other words, when Shakespeare interrogates the Tudor myth in the *Henriad*, or when Massinger and Fletcher expose the machinations of power in *The Tragedy of Sir John Van Olden Barnavelt*, to give but two examples, they are not challenging their historiographic sources, but highlighting what is already there in these supposedly “background” texts.<sup>59</sup>

Rastell’s text also challenges the popular notion among critics working within the theoretical frameworks of new historicism that ideology is monolithic, that “power” is singular, and that contestation necessarily arises

from the margins. Rastell was a lawyer who sought to thrive through government service. He is as embedded within the mainstream as one could be, and he clearly has no problem with overtly denouncing the abuse of the poor and criticizing Henry and his court's chivalric obsessions. Challenges to the monarchy's policies, in other words, belong much closer to the *center* of early modern culture than many older and newer historicist versions of this period allow.<sup>60</sup> Rastell's ability to write in this vein stems less, however, from personal courage or a refusal to conform and more from his reliance upon the foundation of the ancient constitution, and so the *Pastyme* further demonstrates the variety of political philosophies circulating throughout early modern England. While many argued for the supremacy of the monarchy, other voices argued for the principles of mixed monarchy, and they did so well before the reactions by Edward Coke and others against King James VI/I's explicit endorsements of absolutism. Rastell's *Pastyme of People*, his affirmations of limited monarchy, his reluctant praise of Henry VII, his refusal to say anything about Henry VIII, and his sharp denunciation of the poor's oppression "nowadays," taken together not only demonstrates early Tudor historiography's ideological independence, but also the complexity of early modern England's political culture.

37

## Notes

This essay owes a great debt to Cyndia Clegg, Constance Jordan, Sandra Sherman, and Paul J. Voss, all of whom provided essential bibliographical, editorial, and moral support. Thanks also to Teri Roudenbush of San Diego State University's Interlibrary Loan Office for securing me an essential renewal of Fabyan's *Chronicles*, and I gratefully acknowledge a Faculty Development Program grant from the College of Arts and Letters at San Diego State University which gave me the time and resources to complete my research. In quotations of early modern sources, I have slightly modernized the uses of *ij* and *u/v*, eliminated diagonals, and spelled out abbreviations.

- 1 See, for example, F. J. Levy, *Tudor Historical Thought* (San Marino: Huntington Library Press, 1967), 3–8. Phyllis Rackin gives the same assessment: "Marginalized in the historical record, both women and common men were visibly present in the theater audience. The exclusive protocols of historical writing reproduced the divisions of the traditional social hierarchy. . . . Authoritative and univocal, historical writing mystified and obscured cultural contradictions. . . . Although historical texts were the products of collaborative effort, the conventions of historical writing tended to obscure the plurality of voices that went into their production. . . . Monologic,

[historical writing] obscured the differences between the disparate authorial voices, opposed discursive positions, divergent accounts, and contradictory interpretations that were incorporated in the historiographic text" (*Stages of History: Shakespeare's English Chronicles* [Ithaca: Cornell University Press, 1990], 23, 25).

- 2 See Annabel Patterson, *Reading Holinshed's "Chronicles"* (Chicago: University of Chicago Press, 1994), 189, and *passim*.
- 3 Jean E. Howard and Phyllis Rackin, *Engendering a Nation: A Feminist Account of Shakespeare's English Histories* (New York: Routledge, 1997), 46. Steve Longstaffe also notes that "the most important study of Shakespeare's histories in a position to assimilate Patterson's book makes very little of her reevaluation of the Shakespearean source" (*Renaissance Forum* 2.2 (1997); available at <http://www.hull.ac.uk/renforum/v2no2/longstaf.htm>; par. 8).
- 4 Ivo Kamps, *Historiography and Ideology in Stuart Drama* (Cambridge: Cambridge University Press, 1997), 26. Kamps cites D. R. Woolf's assertion that "[a]ll Tudor and early Stuart historical writing reflects a conservative ideology of obedience, duty, and deference to social and political hierarchy" (Woolf, *The Idea of History in Early Stuart England* [Toronto: University of Toronto Press, 1990], xiii, my emphasis), but Woolf has subsequently backed away from this blanket statement: "I would now agree that Holinshed and indeed other Tudor chronicles ought not to be tarred with the same conservative brush as the humanist historians of the first half of the seventeenth century; it may be that the model of historical discourse I advanced in *The Idea of History in Early Stuart England* requires some revision in application to the 1570s and 1580s" ("Narrative Historical Writing in Restoration England: A Preliminary Survey," *The Restoration Mind*, ed. W. Gerald Marshall [Newark: University of Delaware Press, 1997], 241). See also Woolf's "Rewriting the History of Early Modern Historical Culture," *Storia della Storiografia/History of Historiography* 32 (1997): 41 n. 16. Nonetheless, Woolf and I still disagree about the early Tudor historiographers.
- 5 See, for example, Patterson, *Reading Holinshed's "Chronicles,"* 131.
- 6 See Peter C. Herman, "Henrician Historiography and the Voice of the People: The Cases of More and Hall," *Texas Studies in Literature and Language* 39 (1997): 261–83.
- 7 Howard and Rackin, *Engendering a Nation*, 49.
- 8 A. W. Reed, *Early Tudor Drama: Medwell, the Rastells, Heywood, and the More Circle* (London: Methuen, 1929), 5–6. Coventry's rich dramatic tradition may also have sparked Rastell's interest in writing interludes and in constructing the first permanent stage (230–34).
- 9 Charles Phythian-Adams, *Desolation of a City: Coventry and the Urban Crisis of the Late Middle Ages* (Cambridge: Cambridge University Press, 1979), 38; Ronald M. Berger, *The Most Necessary Luxuries: The Mercers' Company of Coventry, 1550–1680* (University Park: Pennsylvania State University Press, 1993), 60.
- 10 Reed, *Early Tudor Drama*, 6; Phythian-Adams, *Desolation of a City*, 183.
- 11 Reed, *Early Tudor Drama*, 6. Rastell may have witnessed how Laurence Saunders, a wealthy commoner, member of two guilds, and part of the city's elite, threatened to lead a riot against the magistracy, for which act he was thrown into prison, where he disappears from the historical record (6).

- 12 Elizabeth M. Nugent, "John Rastell," *The Thought and Culture of the English Renaissance: An Anthology of Tudor Prose, 1481–1555* (Cambridge: Cambridge University Press, 1956), 167.
- 13 Reed, *Early Tudor Drama*, 6.
- 14 Rastell would later expand his range to include such wildly various texts as Thomas More's translation of Gianfresco Pico's life of Pico Mirandolla (1510?), *The Seeing of Urine* (1526), Walter Smyth's jestbook on the More circle, *The Widow Edith* (1525), More's first attack on Luther, *A dyaloge of Syr Thomas More Knyghte* (1529), and his own interlude, *The Four Elements* (1520?). See Peter C. Herman, "John Rastell," *Dictionary of Literary Biography: British Literary Booktrade, 1475–1700*, ed. James K. Bracken and Joel Silver (Detroit: Gale Research, 1996), vol. 170, 213–18.
- 15 Critics and historians generally assume that these values were not prevalent or articulated before the absolutist tendencies of King James VI/I forced the issue. For example, as the title of his seminal book makes clear, J. G. A. Pocock maintains that "the way of thinking described here was consolidated in the second half of the sixteenth century, and is not necessarily to be found at earlier times" (*The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century: A Reissue with a Retrospect* [Cambridge: Cambridge University Press, 1987], 262). See also Glenn Burgess, *The Politics of the Ancient Constitution: An Introduction to English Political Thought, 1603–1642* (University Park: Pennsylvania State University Press 1992), 99.
- 16 All references are to John Rastell, "The Pastyme of People" and "A New Boke of Purgatory," ed. Albert Geritz (New York: Garland, 1985), cited parenthetically in the text.
- 17 Woolf, *The Idea of History*, xiii.
- 18 Rastell's government service gave him the opportunity to observe the results of Henry's French policies both at home and abroad. By 1512, Rastell had joined the service of Sir Edward Belknap, a Privy Councillor to Henry VII and Henry VIII. During the 1512–14 invasion, Belknap put him in charge of artillery transport (Reed, *Early Tudor Drama*, 7). Afterward, Rastell tended more to his publishing business (see below), but in August of 1523, he was back in France digging trenches for Charles Brandon. That same year he was appointed a member of a commission to collect subsidy in Gloucester for the king's household, which likely gave him first-hand experience with the resentment against Henry's taxation to pay for his war. In 1529, the same year Rastell published the *Pastyme*, he was elected to Parliament and spent six months in France on government business, ironically enough, probably trying to drum up support for Henry's divorce (Albert J. Geritz and Amos L. Laine, *John Rastell* [Boston: Twayne, 1983], 17). Like Edward Hall, whose work on the Act of the Six Articles did not preclude his protesting its horrible effects, Rastell's government service led to a highly critical position toward Henry and his policies.
- 19 Edward Hall, *Hall's Chronicle Containing the History of England during the Reign of Henry the Fourth and the Succeeding Monarchs to the End of the Reign of Henry the Eighth* (originally titled *The Union of the Two Noble and Illustre Famelies of Lancastre & Yorke*), ed. Sir Henry Ellis (London, 1809). All citations will be given parenthetically. See also G. W. Bernard, *War, Taxation, and Rebellion in Early Tudor England* (Sussex: Harvester Press, 1986).
- 20 It is indicative of Hall's general attitude toward this matter that he specifically notes that the lords created this bill, not the commons.
- 21 Geritz, ed., *Pastyme*, 30.
- 22 Parenthetical citations of the *Book of Assizes* are from Nugent, *Thought and Culture of the English Renaissance*.
- 23 Rastell's distaste for conquest is also part of the humanist critique of militarism. See Dominic Baker-Smith, "'Inglorious glory': 1513 and the Humanist Attack on Chivalry," in *Chivalry in the Renaissance*, ed. Sydney Anglo (Woodbridge: Boydell and Brewer, 1990), 129–44.
- 24 However, see below for Rastell's very different evaluation of Henry VII in the *Pastyme*. Quotations of *An Abbridgement of the Statutes* are from Nugent, *Thought and Culture of the English Renaissance*.
- 25 Roy Strong, *Tudor and Jacobean Portraits*, 2 vols. (London: H.M.S.O., 1969), 1:144.
- 26 J. J. Scarisbrick, *Henry VIII* (Berkeley: University of California Press, 1968), 23, 35; and *The First English Life of King Henry the Fifth*, ed. C. L. Kingsford (Oxford: Oxford University Press, 1911), 4.
- 27 Robert Fabyan, *The New Chronicles of England and France*, ed. Henry Ellis (London, 1811). All references will be cited parenthetically.
- 28 Patterson, *Reading Holinshed's "Chronicles,"* 7. Hall studied law at Gray's Inn, and like Rastell, he also was elected to the Reformation Parliament of 1539 (although he may have been elected in 1523). See D. R. Woolf, "Edward Hall," *Dictionary of Literary Biography*, ed. David A. Richardson (Detroit: Gale, 1993), vol. 132, 160.
- 29 See, for example, Marku Peltonen, *Classical Humanism and Republicanism in English Political Thought, 1570–1640* (Cambridge: Cambridge University Press, 1995), 3; Johann Sommerville, *Politics and Ideology in England, 1603–1640* (London: Longman, 1986); and Sommerville, "Ideology, Property, and the Constitution," *Conflict in Early Stuart England: Studies in Religion and Politics, 1603–1642*, ed. Richard Cust and Ann Hughes (London: Longman, 1989), 47–71. Like Pocock, all of these studies stress the early Stuart period.
- 30 Even Richard Helgerson, whose purpose in *Forms of Nationhood* is to illuminate the multiple sites of authority in late Elizabethan England, nonetheless asserts that "[t]he monarch was unquestionably the single most powerful unifying force in the English state," that "the younger Elizabethans arose under the aegis of Tudor absolutism," and that Spenser and others "pushed claims that subverted the absolute claim of the crown" (*Forms of Nationhood: The Elizabethan Writing of England* [Chicago: University of Chicago Press, 1992], 9). Helgerson, in other words, still sees Tudor government as absolutist. For a corrective, see Constance Jordan, who writes, "Absolutism, in the sense of a theory sustaining an institution of government in which the authority and power of the head of state were limitless, was a concept essentially alien to the English experience of monarchy. In England the useful fiction of an ancient constitution guaranteeing the liberties of the subject . . . informed arguments against the claim of any officeholder, even a monarch, that presumed he (or she) was above positive law" (*Shakespeare's Monarchies: Ruler and Subject in the Romances* [Ithaca: Cornell University Press, 1997], 4).
- 31 On England as a mixed monarchy, see Z. S. Fink, *The Classical Republicans: An Essay*



- on the Recovery of a Pattern of Thought in Seventeenth-Century England (Evanston: University of Illinois Press, 1945); John Guy, "The Henrician Age," *The Varieties of British Political Thought, 1500–1800*, ed. J. G. A. Pocock (Cambridge: Cambridge University Press, 1993), 17–19; Donald W. Hanson, *From Kingdom to Commonwealth: The Development of Civic Consciousness in English Political Thought* (Cambridge: Harvard University Press, 1970), 240–52; and Robert Eccleshall, *Order and Reason in Politics: Theories of Absolute and Limited Monarchy in Early Modern England* (Oxford: Oxford University Press, 1978).
- 32 See Margaret Atwood Judson, *The Crisis of the Constitution* (1949; repr. New Brunswick, N.J.: Rutgers University Press, 1988), 24–25. The power to make proclamations having the force of statutes was granted by Parliament in 1539, well after Rastell's text. Furthermore, the act granting Henry VIII this power was repealed in the first year of Edward VI's rule. All told, as F. W. Maitland writes, the history of the king's power to issue proclamations serves to underscore the superiority of Parliament: "you will at once see the importance of its enactment and its repeal; they seem distinctly to confirm the doctrine that the king is not supreme, king and Parliament are supreme; statute is distinctly above ordinance or proclamation; statute may give to the king a subordinate legislative power, and what one statute has given another statute may take away" (*The Constitutional History of England* [Cambridge: Cambridge University Press, 1926], 253). Elizabeth resumes making proclamations that have the force of law, and James followed her example, yet not without protests from the commons (257).
- 33 Francis Bacon, *Maxims of the Law*, in vol. 7 of *The Works of Francis Bacon*, ed. James Spedding et al. (London, 1859), 370; quoted in Burgess, *Politics of the Ancient Constitution*, 22–23.
- 34 According to Maitland, the 1327 Parliament clearly "conceived that it had full power to depose a worthless king" (*Constitutional History of England*, 190). Milton also endorses this notion in the *Tenure of Kings and Magistrates*: "Whence doubtless our ancestors, who were not ignorant with what rights either nature or ancient constitution had endowed them, whom oaths both at coronation and renewed in parliament would not serve, thought it no way illegal to depose and put to death their tyrannous kings" (*John Milton: Complete Poems and Major Prose*, ed. Merritt Y. Hughes [Indianapolis: Bobbs-Merrill, 1957], 763).
- 35 Quoted in Charles H. McIlwain, *Constitutionalism Ancient and Modern* (Ithaca: Cornell University Press, 1940), 67.
- 36 *Ibid.*, 74.
- 37 Quoted in John Guy, "The 'Imperial Crown' and the Liberty of the Subject: The English Constitution from Magna Carta to the Bill of Rights," *Court, Country, and Culture: Essays on Early Modern British History in Honor of Perez Zagorin*, ed. Bonnelyn Y. Kunze and Dwight D. Brautigam (Rochester: University of Rochester Press, 1992), 68.
- 38 Quoted in Faith Thompson, *Magna Carta: Its Role in the Making of the English Constitution* (Minneapolis: University of Minnesota Press, 1948), 150.
- 39 Guy, "Imperial Crown," 70.
- 40 *Ibid.*
- 41 Quoted in *ibid.*, 71.
- 42 Quoted in Charles Plummer, ed., Sir John Fortescue, *The Governance of England: Otherwise Called The Difference between an Absolute and a Limited Monarchy* (Oxford: Oxford University Press, 1926), 4. Burgess argues that the essential characteristic of English mixed monarchy was "balance" (emphasis in the original) meaning that the two work in tandem rather than against each other, mutually enhancing rather than mutually exclusive. Or as Coke would write, between a sovereign and subject there is "duplex et reciprocum ligamen," with stress on *reciprocum* (*Politics of the Ancient Constitution*, 5).
- 43 See also Arthur B. Ferguson, *Clio Unbound: Perception of the Social and Cultural Past in Renaissance England* (Durham, N.C.: Duke University Press, 1979), 225–58, although Ferguson does not connect these two thinkers to developments in early Tudor historiography. Nugent also notes that Rastell closely follows Fortescue's belief in limited monarchy (*Thought and Culture of the English Renaissance*, 168), but while Geritz grants the importance of legal history in this text, he does not connect it with Rastell's adherence to the principles of mixed monarchy and limitations on the monarch's power (ed., *Pastyme*, 28–29).
- 44 *The Doctor and Student*, ed. William Muchall (R. Clarke, 1874). All references will be given parenthetically.
- 45 *Dialogus de Fundamentis Legum Anglie et de conscientia* (London, 1528; STC 21559); John Guy, *Christopher St. German on Chancery and Statute*, Selden Society supp. ser. 6 (London: Selden Society, 1985), 6–7.
- 46 Although *On the Governance of England* was not published until the eighteenth century, five of the ten extant manuscripts predate the publication of the *Pastyme*, which would suggest that the text was known and copied in the legal circles to which Rastell belonged. The theoretical sections, mainly the first two chapters, recast the relevant sections of the widely read *De laudibus* (Plummer, ed., *Governance of England*, 86–94).
- 47 Sir John Fortescue, *On the Laws and Governance of England*, ed. Shelley Lockwood (Cambridge: Cambridge University Press, 1997), 17, hereafter cited in the text parenthetically.
- 48 Sir Philip Sidney's metaphor of the body politic in the *Apology* inverts the point of Fortescue's allegory: "[Menenius Agrippa] telleth them a tale, that there was a time when all the parts of the body made a mutinous conspiracy against the belly, which they thought devoured the fruits of each other's labor: they concluded they would let so unprofitable a spender starve. In the end, to be short (for the tale is notorious, and as notorious that it was a tale, with punishing the belly they plagued themselves)" (*An Apology for Poetry*, ed. Forrest G. Robinson [Indianapolis: Bobbs-Merrill, 1970], 40–41).
- 49 "For thus the kingdom of England blossomed forth into a political and royal dominion out of Brutus' band of Trojans, whom he led out of the territories of Italy and the Greeks" (*ibid.*, 22).
- 50 Quotations of Fortescue, *Expositions of the Terms of English Laws*, are from Nugent, *Thought and Culture of the English Renaissance*, 176–77.
- 51 Patterson, *Reading Holinshed's "Chronicles,"* ix.

- 52 “He was cruell and tyrannous to his subjectes, & torynd theyr lawes and costumys after his one wyll” (*Pastyme*, 271).
- 53 I.e., “About this tyme, Egbertus, after the yonger Wylfryde, was made archebisshop of Yorke, the which brought agayne thither the pall that his predecessours hadde forgoon, syn the tyme that the first Paulinus had lefte that see, and fled to Rochestre, in Kent, and there left the sayd pall. This Egbert was brother unto Egbert, kynge of Nothumbirland, by whose assistance and comforte he dyd many thynges for the weale of that see, and made there a noble library” (Fabyan, *New Chronicles*, 137–38).
- 54 Patterson has also suggested that Holinshed’s devotion to “indifferency” also extended to an interest in the place of women (*Reading Holinshed’s “Chronicles,”* 215), and Rastell’s treatment of Alfred once again anticipates what she finds original to the later sixteenth century. Whereas Fabyan begins his description of Alfred by noting that he was a “moost beloved fader of all his children” and later, parenthetically, mentions the education he gave to his daughters (*New Chronicles*, 165), Rastell emphasizes his daughters’ education: “he brought up hys chyldren in lernyng & causyd his doughters to lerne the sciens of gramer with many other goodly vertwis” (*Pastyme*, 279).
- 55 These reforms are, in fact, legendary.
- 56 Lawrence Manley, *Literature and Culture in Early Modern London* (Cambridge: Cambridge University Press, 1995), 30.
- 57 See Henry A. Kelly, *Divine Providence in the England of Shakespeare’s Histories* (Cambridge: Harvard University Press, 1970), 66–108. Although the first version of Vergil’s text was not published until 1534, Rastell may have met Vergil through his connections in the More circle and he may have read the *Anglica Historia* in manuscript (Levy, *Tudor Historical Thought*, 72–73).
- 58 Interestingly, Rastell does not mention Richard’s confiscation of Bolingbroke’s property, and Fabyan alludes to it only in passing (545).
- 59 Kamps, *Historiography and Ideology in Stuart Drama*, 154; and on Massinger and Fletcher, see 141–67.
- 60 Burgess argues that seventeenth-century resistance theory was not all that unprecedented and “radical” because of the deep embeddedness of the ancient constitution in English legal (and, I would argue, historical) thinking: “ancient constitutionalism could be combined with resistance theory. What this suggests is perhaps less the radical potential of the ancient constitution than the very limited extent of the radicalism of resistance theory” (*Politics of the Ancient Constitution*, 94–95).