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Narrative and political strategies at the deposition of Richard II

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Abstract

This article deals with the use of a language of disinheritance in the coup d'état by which Henry Bolingbroke overthrew Richard II in 1399. This rhetoric is placed in the context of its importance in informal political ideas. It is argued that disinheritance allowed Henry to be in the right when acting in a way which was technically treasonous. His use of this language was made powerful not only by its material significance for the landed classes, but also its deeper moral resonance, which spread beyond these classes to a wider public. This is explored through the importance of disinheritance in popular romance works. These works have to date been neglected in terms of their possible relationship to late medieval politics, despite their potential as sources. The article goes on to investigate how Henry expanded his claims from disinheritance to seize the entire kingdom of England, even though, in the letter of the law, he had not even been disinherited from his father's lands. Richard II's attention to legal forms was, however, not enough to protect him from Henry's use of the powerful and emotive theme of disinheritance, though even Henry himself later abandoned it.

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This paper is an attempt to examine the role of what might loosely be termed formal and informal political ideas in the coup d'état which brought Henry IV to power in 1399. Formal structures of ideas, above all law as interpreted by lawyers,

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can provide a way of explaining events which is consistent both with themselves and with the particular facts of the case. Prior to the political act itself, however, and in the course of its realisation, ideas can be brought into play which are less formal, less internally consistent and less logical. These provide less accurate models of a given legal or political state of affairs, but can be more powerful and emotive than more formal explanations. The law (or at least, the consistent application of law) only comes in afterwards, and then finds itself playing a poor second to vaguer, but more persuasive, methods of legitimising an action.

Interest in the informal ideas which gave late medieval politics their structure has blossomed in recent years, partly as a result of the dissatisfaction with purely ‘patronage’ based explanations of this period.¹ The tracts known as ‘mirrors for princes’ have been quarried for what they can tell us about contemporary assumptions about politics,² as have the gentry letter collections which begin to appear from the mid-fifteenth century.³ They paint a picture of a political society with ideas about how politics ought to operate far more complex than the pursuit of personal gain alone. In this account, order stands out as a central consideration, guaranteed by the king on a national level and by the nobility or by gentry society locally.⁴ This conception of order accorded with the mutual self-interest of the landed class, based around a conception of law as the guarantee of due process in the distribution of the land which was the basis of their power.⁵ The role of the king was to stand as the guarantor of this due process. His position would be respected providing he fulfilled this role; providing it did not start to look as if the king was more the disturber of order than its guarantor. Only then would the Hobbesian world of personal gain at all costs assert itself: when it was necessary to slay one’s neighbour before he slew you.

The last days of Richard II fit readily into this model of what could go right and what could go wrong in the late medieval polity. There seems little doubt that, by 1399, the kingdom had been reduced to a dangerous state of insecurity by Richard’s actions against those who had opposed him in the disturbances of 1386–8. Over the past forty years, historians have built up a detailed picture of those aspects of

¹ E. Powell, ‘After “After McFarlane”: The poverty of patronage and the case for constitutional history’, in: *Trade, devotion and governance: papers in later medieval history*, ed. D.J. Clayton, R.G. Davies and P. McNiven (Stroud, 1994), 1–16; C. Carpenter, *Locality and polity: A study of Warwickshire landed society, 1401–1499* (Cambridge, 1992), esp. chaps. 1, 7, 17; idem, *The Wars of the Roses: Politics and the constitution in England, c. 1437–1509* (Cambridge, 1997), esp. chap. 1. Compare the early remarks of K.B. McFarlane, ‘The Wars of the Roses’ in *Proceedings of the British Academy*, 50 (1964), 87–119, reprinted in K.B. McFarlane (with introduction by G.L. Harriss, *England in the fifteenth century. Collected Essays* (Oxford, 1981), chap. 12.

² J.L. Watts, *Henry VI and the politics of kingship* (Cambridge, 1996), esp. 16–39; G.L. Harriss, ‘Introduction: The exemplar of kingship’ in *Henry V: The practice of kingship* (Oxford, 1985); Carpenter, *Locality and polity*, 351–9; R.F. Green, *Poets and princepleasers* (Toronto, 1980), chap. 5.

³ See esp. R. Horrox, *Richard III: A study in service* (Cambridge, 1989), 1–26; Watts, *Henry VI*, 63–74.

⁴ Carpenter, *Locality and polity*, 615–31.

⁵ K.B. McFarlane, *The nobility of later medieval England* (Oxford, 1973), 121; C. Carpenter, ‘Law, justice and landowners in late medieval England’, *Law and History Review*, 1 (1983), 205–37; idem, ‘Sir Thomas Malory and fifteenth-century politics’, *Bulletin of the Institute of Historical Research*, 53 (1980), 31–43.

Richard's behaviour after 1397 that produced the circumstances which made possible his deposition.⁶

There seems little reason to dispute this account of the background to Richard's deposition and of the destabilising effect of his disregard for his subjects' property. What seems more subject to question, however, is the sense of the inevitability which this account can produce, if left to stand on its own. It is interesting to note that Caroline Barron, in her early work perhaps the most influential contributor to the current understanding of Richard's 'tyranny',⁷ later came close to recanting her view that the king was the cause of his own demise.⁸ In a 1990 article, she suggested that the collected grievances lodged against Richard II amounted only to the 'small change' of medieval government, that matters in London, for example, were relatively settled by 1397–9, and that perhaps the lack of resistance to the usurpation had 'more to do with logistics than loyalty'.⁹ This view has not, on the whole, carried the day, but it contains an important insight which has often been passed over.¹⁰ The articles outlining Richard's bad government found in the so-called 'Record and Process' of his deposition make a very poor argument for his removal.¹¹ Apart from where they describe, from a partisan angle, Richard's behaviour in 1386–8, and his later actions against his opponents of those years, these articles seem strangely miscellaneous. They range from the extraction of novel oaths to the abusive removal of cases from church courts.¹² If they have a unifying theme, it is the attempt to demonstrate that the king's misdeeds in this or that area contradicted his coronation oath.¹³ Most of them would more appropriately form the basis of a petition than the justification for a deposition. Barron is quite right to note that most of these articles (where they do not concern specific actions against those who opposed Richard in 1386–8) describe standard, if disputed, practices of Richard's predecessors and successors.¹⁴ Other writers have observed that even the more uncompromising

⁶ R.R. Davies, 'Richard II and the principality of Chester, 1397–9', in: *The Reign of Richard II*, ed. C. Barron and F.R.H. du Boulay (London, 1971), 256–279; J.L. Gillespie, 'Richard II's Cheshire archers', *Transactions of the Historic Society of Lancashire and Cheshire*, 125 (1975), 1–39; idem, 'Richard II's archers of the Crown', *Journal of British Studies*, 14–29; N. Saul, *Richard II* (New Haven and London, 1997), chap. 11; C. Given-Wilson, 'Richard II, Edward II, and the Lancastrian inheritance', *English Historical Review*, 109 (1994), 553–57; C. Barron, 'The tyranny of Richard II', *Bulletin of the Institute of Historical Research*, 41 (1968), 1–18; H. Castor, *The King, the Crown and the duchy of Lancaster: Public authority and private power, 1399–1461* (Oxford, 2000), 9–20; C.D. Ross, 'Forfeiture for treason in the reign of Richard II', *English Historical Review*, 71 (1956), 560–575; Alastair Dunn, 'The endowment and disendowment of lay magnates in England and the Welsh Marches, 1396–1408', unpublished D.Phil thesis, Oxford University, 1999, 93–100, 209–15.

⁷ Barron, 'Tyranny'.

⁸ C. Barron, 'The deposition of Richard II' in: *Politics and crisis in fourteenth-century England*, ed. J. Taylor and W. Childs (Gloucester, 1990), 132–149.

⁹ Ibid, 148–9, 135.

¹⁰ See e.g. N. Saul, 'Richard II's ideas of kingship' in: *The regal image of Richard II and the Wilton Diptych*, ed. D. Gordon, L. Monnas, C. Elam (London, 1997), 27–32; idem, 'Richard II: Author of his own downfall?', *History Today*, 49 (1999), 36–41.

¹¹ *Rotuli Parliamentorum*, iii, 417–22; *Chronicles of the revolution*, ed. & trans. C. Given-Wilson (Manchester, 1992), 172–84. See G.O. Sayles, 'The deposition of Richard II: three Lancastrian narratives', *Bulletin of the Institute of Historical Research*, 54 (1981), 257–70.

¹² Articles 28, 29; *Rotuli Parliamentorum*, iii, p. 421, items 45, 46.

¹³ Articles 3, 9, 11, 17, 18, 27; *Rotuli Parliamentorum*, iii, pp. 418–20, items 20, 26, 28, 34, 35, 44.

¹⁴ Barron, 'Deposition of Richard II', 148–9.

declarations concerning royal authority ascribed to Richard II amount to no more than an unusual stress on one side of the loose structure of ideas which made up contemporary commonplace.¹⁵ The proof which Barron was able to produce in her early work that the king did not in fact do what these articles allege does not, therefore, demonstrate that Richard incontrovertibly ‘deserved’ to be deposed by an unambiguous and universally accepted contemporary standard. The specific content of the articles lodged against him was subject to different interpretations than those placed on them by his opponents. Moreover, these articles in no way exculpated Henry of Lancaster and his supporters from the crime of having overthrown an anointed king.

Richard’s behaviour transgressed many of the norms of royal rule as historians have recently reconstructed them. Yet this provided neither unambiguous proof of Richard’s insufficiency as king nor the legal means for his removal. However much evidence is accrued of the practice of Richard’s ‘tyranny’, his actual fall still has to be explained by contingency, by a single act of illegality through which the king brought about his own demise. This act has been located in Richard’s actions against Henry Bolingbroke, heir to the duchy of Lancaster and the future Henry IV. The accepted outline of events has been well established at least since Shakespeare’s time.¹⁶ Henry is exiled for ten years following a dispute with Thomas Mowbray, duke of Norfolk. When his father, John of Gaunt, duke of Lancaster dies, his lands are not granted to Henry as had been agreed, but are seized by the king. Richard, we are told, simultaneously extends Henry’s exile to life, and promptly departs for Ireland.¹⁷ In his absence, Henry returns to retake his inheritance, and at some imprecise point expands his claim to include the kingdom of England. As will be seen, there are a number of important problems with this account. In fact, it passes over and subtly misrepresents certain details of the events of 1399, in a way which corresponds with certain forms of rhetoric used by Henry and his supporters at the moment of his usurpation.

Disinheritance and return is how Henry’s *coup* is explained and justified by many of those chroniclers who later recorded his deeds in laudatory mode. The acerbically anti-Ricardian chronicler of St. Albans presented a glowing account of Henry’s laudable motivation for his return to England in arms in 1399.¹⁸ He came, we are

¹⁵ S.K. Walker, ‘Richard II’s views on kingship’ in: *Rulers and ruled in late medieval England*, ed. R. Archer and S.K. Walker (London & Rio Grande, 1995), 62.

¹⁶ A. Steel, *Richard II* (Cambridge, 1941), 260–85; K.B. McFarlane, ‘The usurpation’, in his *Lancastrian kings and Lollard knights* (Oxford, 1972); Given-Wilson, *Chronicles of the revolution*, 1–52; Saul, *Richard II*, 394–423; William Shakespeare, *Richard II*, acts I and II.

¹⁷ Shakespeare even has Richard seizing Henry’s lands in order to pay for this expedition. Shakespeare, *Richard II*, act II, scene 1, ll. 153–223.

¹⁸ ‘Annales Ricardi Secundi et Henri Quarti’ in: J. de Trokelowe et Anon., *Chronica et Annales*, ed. H.T. Riley (London, 1870–1), i, 155–424 [henceforward, *Annales*]. The precise authorship of this chronicle remains a matter of scholarly debate, despite a number of attempts to ascribe it to Thomas Walsingham, the author of earlier and later chronicles emanating from the abbey, by e.g. V.H. Galbraith, ‘Thomas Walsingham and the Saint Albans chronicle, 1272–1422’, *English Historical Review*, 47 (1932), 12–30; G.B. Stow, ‘Richard II in Thomas Walsingham’s chronicles’, *Speculum*, 59 (1984), 68–102 (esp. 70, 78, 81–3). This ascription is doubted on stylistic grounds by James Clark, ‘Intellectual life at the abbey of St Albans and the nature of monastic learning in England, c.1340–c.1440’, unpublished D.Phil. thesis, Oxford University, 1997, 156–8.

told, by the inspiration of God to regain his father's rights. When Richard was in Ireland, the chronicler relates, God decided to humble his pride and relieve the oppression of his people.

He therefore implanted into the heart of Lord Henry, duke of Hereford – and now, since the death of his father, duke of Lancaster – who had firstly been exiled for ten years and then most unjustly disinherited, the idea that he should return to the land of his birth and demand the restoration of his father's rights, namely the duchy of Lancaster and all that pertained to it; and if the king were to put obstacles in his path by refusing to return his rightful lordships to him, then he should, having collected help, recover them in a manly fashion by force.¹⁹

Although historians have seldom passed judgement on the divine origin of Henry's purpose, they have generally accepted the remainder of this description of his motives. At least, they tend to agree that this was how he portrayed them. As Nigel Saul puts it, 'he simply indicated a desire to regain his inheritance'.²⁰

Observers in France confirm that this was the line which Henry took. The chronicler of St Denis asserted that Henry decided to recover his duchy when he heard that Richard had left England. 'He therefore wrote letters to the English complaining of the tedium and length of his exile, reproaching the king for his harshness, and accusing him of perjury. He declared that he had been unjustly disinherited, and requested support for his cause.'²¹ Much the same version of events is given by one English continuation of the prose *Brut* chronicle, which asserts that Henry returned from exile to 'challenge' the Duchy of Lancaster 'as his right and true heritage'.²² As the hand of God retreats from the scene, so the chivalric and tenurial connotations of Henry's enterprise are increased. Henry puts himself forward to fight for his father's lands which he had been unjustly denied. Later narratives suggest that Henry's disinheritance was the crucial factor which justified the landed classes in supporting him. John Hardyng's verse chronicle, written half a century later, records that it was in terms such as these that Henry won over the

¹⁹ *Annales*, 240-1: 'Immisit igitur in cor Domini Henrici, Ducis Herefordiae, sed nunc, per mortem patris, Ducis Lancastriae, quem prius diximus relegatum ad decennium, sed exposit injuriose nimis exhaeredatum, ut reverteretur in terram nativitatis suae, et jura paterna repeteret, Ducatum, scilicet, Lancastriae, cum suis pertinentiis; vel certe, si Rex se praeuisset in hac sibi parte difficilem, ut nollet illi reddere dominia sibi debita, collectis auxiliariis, ea vi viriliter recuperaret.'

²⁰ Saul, *Richard II*, 406.

²¹ *Chronique du Religieux de Saint-Denys*, ed. M. Bellaguet (Paris, 1839-52), ii, 704-6: 'Ut regem Anglie transfretasse comperit dux Lancastrie Henricus, opportunitatem nactus suum recuperandi ducatum, mox ad Anglicos destinat apices, de tedioso ac diuturno exilio conqueritur, exprobrat regis severitatem et perjuriū arguit; injuste se exheredatum astruit, rogans ut sibi favorabiles coexistent adjutores.' Trans. in Given-Wilson, *Chronicles of the revolution*, 110.

²² *The Brut or The Chronicles of England*, ed. F.W.D. Brie, ii, EETS old series 136 (London, 1908), 357: 'While þat King Richard was þus yn Irelande, Ser Henry of Bolingbroke, Erle of Derby, þat þe king hadde made before Duk of Herford – þe which Duk, þe King had exiled out of þis lande – was come ayen yn-to Engeland, for to chalange þe Duchery of Lancastre as for right & trewe heritage.'

Percy family to his cause, swearing that he would claim no more than his mother's inheritance, his father's lands, and those of his wife.²³

The St Albans chronicler saw Henry's disinheritance as the key factor which led English nobles to sympathise with his cause.²⁴ He describes how the duke of York sent out the muster to the shire, and how many lords joined him with their retinues. Amongst them, he asserts, only the bishop of Norwich was in favour of attacking Bolingbroke. The rest of the lords and commons 'declared openly that they had no wish whatsoever to move against the duke of Lancaster.'²⁵ Even the duke of York, he claims, 'stated publicly that the duke of Lancaster had been wrongfully disinherited, and that he had no intention of attacking someone who came in a just cause and to ask for the restoration of his rightful inheritance.'²⁶ That Henry came in arms against his king, the chronicler had York conveniently forget.

These accounts seek to have it assumed that, because Henry had been disinherited, he was perfectly justified in using force against the king if he was denied redress. This was asserted even though, by the letter of the law, such a use of force was clearly treason, even as specified in the 1352 Statute of Treasons.²⁷ Yet it seems that the authors of these texts accepted that disinheritance relieved Henry and his supporters from their duty not to take up arms against the king. Furthermore, they imply that not only Henry but the whole realm chose to think so too. How could they do so given that, legally, this was certainly not the case? In a certain measure, the answer to this question lies in the networks of ideas alluded to above, on which historians have shed such light in recent years. Richard disinherited Henry of Lancaster, and this stood as the epitome of what was wrong with his rule in these years. He was no longer the guarantor of due process in the transmission of land which a king ought to be, and thus made it clear that he needed to go. Yet, this does not explain how Henry could claim that he had the right to appeal to arms in the pursuit of his claim, nor why he was supported in this by the political classes when he arrived. What he did was, in law, nothing less than treason. How did the question of disinheritance come to overrule that? The straightforward materialist view – the

²³ *Chronicle of John Hardyng*, ed. H. Ellis (London, 1812), 349–54. See Given-Wilson, *Chronicles of the Revolution*, 192–3. On Hardyng's career and writing, see Antonia Gransden, *Historical writing in England II, c.1307 to the early sixteenth century* (London and Henley, 1982), 274–87.

²⁴ *Annales*, 243–4. See Given-Wilson, *Chronicles of the revolution*, 118.

²⁵ *Annales*, 243–4: 'Nam caeteris dominis et communibus videbantur haec quasi jocus; ita quod palam fatebantur se nolle damnum inferre Duci Lancastriae quovismodo.'

²⁶ *Ibid*: 'Ipse vero Dux Eboraci protestabatur publice Ducem injuriose exhaereditum; neque velle se molestare qui in justa causa venerat, ad repetendum haereditatem debitam sibi jure.'

²⁷ *Statutes of the Realm*, i, 319–20. J.G. Bellamy, *The law of treason in England* (Cambridge, 1970), esp. chap. 3, demonstrates how it was Edward I who first succeeded in establishing levying war against the king as treason. It is seldom adequately noted, despite the remarks of S.B. Chrimes in his 'Richard II's Questions to the Judges, 1387', *Law Quarterly Review*, 72 (1956), 365–90 (esp. 382–3), that the specific instances of treason noted in the 1352 statute were subject to expansion through confirmation by the king in parliament of common law ideas of treason (which included, but went far beyond, rebellion). This was what the Appellants did in 1388, and was what Richard was trying to do in 1387. Bellamy, *Law of Treason*, chap. 5, esp. 103–5, notes the continued wide range of treason in common law after 1352, and especially after 1381: 'There was no slavish adherence to the phraseology of the treason act of 1352. Juries, appellants and approvers were happy to call treason what seemed to them to be treason.'

landed classes saw Richard endangering hereditary rights and thus simply decided to remove him – should certainly not be ignored. Yet such a view on its own underplays the moral resonance of the language of disinheritance, and thus its importance even amongst those whose property rights were not directly threatened. For if, in law, disinheritance put Henry no more in the right, it is possible to find evidence elsewhere of how disinheritance could justify the raising of arms against a king. This evidence is found in texts which are closer to contemporary informal ideas than the precisions of law. They will help to explain Henry's success in using these informal ideas even though, as will be seen, he had never been legally disinherited at all.

In search of the informal political ideas which contributed to Henry's success, it is useful to turn to a type of source not often quarried in the analysis of political action in the late middle ages: that is romances, in particular those dubbed 'popular'. The availability to a relatively wide audience of these works, which were composed in Anglo-Norman French in the thirteenth century, is suggested by their early translation into English and by a continued manuscript tradition in both languages from then into the fifteenth century.²⁸ Disinheritance without redress is an important recurring theme in these works. It provides one means of driving the action of the story and putting the hero in the right. This theme is of enough significance to survive into later, derivative works composed in the late fourteenth or early fifteenth century. I do not wish to suggest that romances were directly the source of these ideas, but they do provide evidence for the acceptability of ideas of more general currency. If the fourteenth century boasted the gentry letter collections of the fifteenth, then these would provide an invaluable support to what are, after all, fictional works. Yet still, the power, the emotional force of ideas such as disinheritance, would still be best explained with reference to their more general cultural impact, into which romances give us an insight. The stories which people hear, and continue to return to, provide a vital context for their assessment of right action in the real world. This was even more so with Henry Bolingbroke's taking up of arms, which the frameworks provided by law overtly described as wrong, but which many nonetheless believed to be right.

Popular romance might seem a strange choice of text to relate to late fourteenth-century politics. There is a tendency in the historical treatment of literary works to choose texts which were originally composed at the time of the events to which they are related, or which comment explicitly upon them. Yet this seems an unnecessarily narrow perspective to take. It pushes to one side works which give significant evidence of the cultural values of the society under study, in that they were copied, revised and owned in that period. Far larger numbers of people interacted with these works in the late fourteenth century than with more complex contemporary

²⁸ For the relationship of Anglo-Norman to Middle English romance see especially Susan Crane, *Insular Romance: Politics, faith and culture in Anglo-Norman and Middle English literature* (Berkeley & London, 1986), 2–10. For the 'popularity' of romance see R. Field, 'Romance in England, 1066–1400', in: *The Cambridge history of medieval English literature*, ed. D. Wallace (Cambridge, 1999), 152–176; Lee C. Ramsey, *Chivalric romances: Popular literature in medieval England* (Bloomington, Indiana, 1983), 1–25; V.B. Richmond, *The popularity of Middle English romance* (Bowling Green, Ohio, 1975), 1–10.

‘political’ works such as, for example, *Richard Redeless*, which often survive only in single manuscripts.²⁹ This is not to diminish the interest of such works for understanding politics. Yet the evidence of ownership, manuscript survival and thematic resonance with events gives reason to take popular romances equally seriously as possible sources for the more general cultural ambience of late fourteenth-century England, and hence of the political practice which took place in that same world.

It might be objected that the readership of romances is by the late fourteenth century most often ascribed to lower social ranks than Henry of Lancaster and those whom it was most important for him to sway. The critical tradition sometimes has it that this was the literature of entertainment of townsmen or gentry.³⁰ It is sometimes argued that because the nobility perused luxurious volumes in continental French, and that the English versions of these romances for the most part survive only in relatively low quality manuscripts, the nobility could not have interested themselves in such lowly fare.³¹ This argument, however, seems to confuse the status of the text with the status of its reader, and to assume an unproven disjuncture between the culture of the nobility and that of the gentry and of towns. The difference in quality of English romance manuscripts reflects a difference in use, not in social status. The ownership by the nobility of high quality codices in continental French, which are found occasionally in wills, does not mean that nobles did not have access to cheaper texts.³² The absence of this material from wills is not evidence that the testator did not own such material, much less that they did not have access to it.³³ Given the informality of wills at this time, such trifling matters as a few folios in English would

²⁹ *The Piers Plowman tradition*, ed. H. Barr (London, 1993), contains also the equally important *Mum and the Sothsegger* and *The Crowned King*, both of which survive only in single copies.

³⁰ See esp. P. Coss, ‘Aspects of cultural diffusion in medieval England: The early romances, local society and Robin Hood’, *Past and Present*, 108 (1985), 35–79; L.H. Loomis, ‘The Auchinleck MS and a possible London bookshop of 1330–40’, *Publications of the Modern Languages Association*, 57 (1942), 595–627.

³¹ It is interesting to note that although G. Guddat-Figge, *Catalogue of Manuscripts Containing Middle English Romances* (Munich, 1976) ascribes romance ownership to a somewhat amorphous ‘middle class’ who had aspirations to romance ownership but not the means to buy the expensive volumes owned by the nobility (pp. 44, 47–8) this is at the same time undermined by the sheer variety of audiences, from towns and gentry to the nobility, which her codicological study reveals. The presence of French and Latin material in manuscripts containing English romance (noted by e.g. Guddat-Figge, *Catalogue*, 44–6; C.M. Meale, ‘“gode men / Wiues maydynes and alle men”: Romance and its audiences’ in: *Readings in Medieval English Romance*, ed. C.M. Meale (Cambridge, 1994), 208–225, at p. 211) demonstrates that interest in material in different languages did not preclude interest in material in English.

³² Joel T. Rosenthal, ‘Aristocratic cultural patronage and book bequests’ 1350–1500’, *Bulletin of the John Rylands University Library*, 64 (1982), 522–48; C.M. Meale, ‘Patrons, buyers and owners: book production and social status’ in: *Book production and publishing in Britain, 1375–1475*, ed. J. Griffiths and D. Pearsall (Cambridge, 1989), 201–38.

³³ When wills do record books it is for their material value, status or religious significance. See A. Kiralfy, ‘Wills of personalty (movables) in England from 1066 to 1500’ in *Actes à cause de mort, Acts of last will*, Transactions of the Jean Bodin Society for Comparative Institutional History, part II (Brussels, 1993), 35–45; P.J.P. Goldberg, ‘Lay book ownership in late medieval York: the evidence of wills’, *The Library*, 6th series, 16 (1994), 181–9, esp. 184.

have passed unnoticed.³⁴ It seems reasonable to agree with Derek Pearsall's analysis that, with romance, we are dealing with a multiplicity of audiences, not a single determinable audience.³⁵ Amongst these potential audiences the nobility ought also to be numbered. Furthermore, the design of these romances, at least in the fourteenth century, with oral performance as a pre-supposition, widens still further the possible range of people who might encounter this kind of material.³⁶ It might be objected that we are not talking about mass media, that the lowliest peasant might never have encountered any romance material. This may be true, but here we are concerned only that the ideas of romance, circulating in English or Anglo-Norman, would have been available to the élite widely conceived – down to and including the humblest gentleman in the shire, or the burgess in his provincial town. These were the people, no less than the nobility, that Henry had to convince.

Two of these romances are of particular interest because of evidence which links them to a noble closely connected with the centre of late fourteenth-century politics. In the inventory of the goods confiscated when Thomas Woodstock, duke of Gloucester, was tried and convicted of treason in 1397, are found a small, French copy of *Beues of Hampton* and an old French book called *la gest de Fouke filtz Waryn*.³⁷ *Beues* is one of the most popular of the 'popular romances' to judge by manuscript survivals, the drafting of new versions into the fifteenth century and the number of references to the hero in other works.³⁸ *Fulk Fitz Waryn* has less of

³⁴ Note the fact that the manuscript copies which survive frequently seem to have circulated in unbound form for some time before they were lucky enough to be bound up. See Guddat-Figge, *Catalogue*, 129; Meale, 'Patrons, buyers and owners', 217; Kate Harris, 'The origins and make-up of Cambridge University Library MS Ff.1.6', *Transactions of the Cambridge Bibliographical Society*, 8 (1983), 299–333; P.R. Robinson, '“The Booklet”: a self-contained unit in composite manuscripts', in: *Codicologica (3) Essais typologiques*, ed. A. Gruijs and J.P. Guimbert (Leiden, 1980), 46–69; Ralph Hanna III, 'Booklets in medieval manuscripts: further considerations', *Studies in Bibliography*, 39 (1986), 100–111.

³⁵ Derek Pearsall, 'Middle English romance and its audiences' in: *Historical and Editorial Studies in Medieval and Modern English for Johan Gerritsen*, ed. M.-J. Arn, H.W. Wirtjes and H. Jansen (Groningen, 1985), 37–47.

³⁶ Derek Pearsall, 'The English romance in the fifteenth century', *Essays and Studies*, new series, 29 (1976), 56–83, esp. p. 59; Andrew Taylor, 'Fragmentation, corruption and minstrel narration: the question of the Middle English romances', *Yearbook of English Studies*, 22 (1992), 38–62.

³⁷ Viscount Dillon and W.H. St John Hope, 'Inventory of the goods and chattels belonging to Thomas, Duke of Gloucester', *Archaeological Journal*, 54 (1897), 275–308.

³⁸ *The Romance of Sir Beues of Hamtoun*, ed. E. Kölbing. EETS extra series 46, 48, 65 (London, 1885–94). The earliest extant ME version of *Beues* survives in the Auchinleck MS of c.1330 (*Sir Orfeo*, ed. A.J. Bliss (Oxford, 1966), ix–x). Two further MSS of this version survive from around the late fourteenth century and c.1457. A second version is found in two MSS from the mid and late fifteenth century. See *Beues*, ed. Kölbing, vii–viii; Guddat-Figge, *Catalogue*, 82, 182, 94, 238–9. Also extant is an incomplete late fifteenth-century copy edited in Jennifer Fellows, 'Sir Beves of Hampton: Study and edition', unpublished Ph.D. thesis, Cambridge University, 1980. For references to *Beues* in other romances see *Der Mittellenglische Versroman über Richard Löwenherz*, ed. K. Brünner (Vienna and Leipzig, 1913), ll. 6723–42; *The Laud Troy Book: A romance of about 1400 AD*, ed. J.E. Wülfing, EETS old series 121, 122 (London, 1902), ll. 11–24. For a reference in a didactic work deploring how people spend more time on such tales than the life of Christ, see William of Nassington's *Speculum Vitae*, in e.g. MS Royal 17.C.viii, fol. 2v; G.R. Owst, *Literature and pulpit in Medieval England*, 2nd ed. (Oxford, 1961), 13. *Beues* is also referred to by Chaucer in his parody tale-rhyme romance, *The Tale of Sir Thopas (The Riverside Chaucer)*, ed. L.D. Benson et al. (Oxford, 1987), fragment VII, ll. 897–902).

a claim to such fame, since it currently survives in only one French prose version of an Anglo-Norman verse romance of the thirteenth century.³⁹ However, it does seem that the work did make its way into English. John Leland records the survival into the sixteenth century of an English verse version.⁴⁰ It is primarily its presence in Gloucester's inventory, however, which makes it interesting here.

The framing narrative of the first and longest part of *Beues of Hampton* is one of disinheritation by tyranny and return to reclaim what has been wrongly taken. The story begins with Beues' disinheritation, when his father is killed in a trap set by his mother and her lover, the Emperor of Almaine. An attempt on Beues' own life is foiled by the hero's foster father, who fakes Beues' death and disguises him as a cowherd. Yet Beues is unable to bear his disinheritation patiently until he can grow up and regain his patrimony. Instead he makes a violent entry into court, demanding his possessions back, is captured and sold to heathen merchants.

The issue of Beues' inheritance then takes a back seat, for the passage into heathendom serves as the start of a second story-line which provides the meat of this section just as disinheritation provides the bare bones of the structure. Yet reminders of Beues' patrimony constantly recur, usually at divisions between episodes. On a mission for a heathen king, Beues meets his foster father's son, who tells him that his father is currently holding out alone against the usurpers. Beues, however, conceals his identity in order to complete his mission. When this has been done, with much slaying of Saracens, giants, and so forth, his thoughts turn back to England, deciding that he must gather a host before he returns. For a while, the second story-line once more diverts him from his inheritance. However, once he has rescued his heathen love, made his way to Cologne, killed a dragon, and secured one hundred knights from the grateful bishop, he finally returns to England. After a short digression back to Cologne a battle ensues in which the usurping emperor is defeated, captured, and killed by being thrown into molten lead. Beues' mother, hearing this, falls from her tower and breaks her neck. As Beues reclaims his father's lands, he rejoices as much at his mother's death as at the death of her lover.

This use of disinheritation assumes, indeed relies on, the fact that it establishes Beues as a wronged hero. It gives him a sense of purpose, gets the audience on his side and justifies his violence. It is not by any means the only factor which does these things, as is shown by the narrative continuing after this point. But this does not diminish the fact that the narrative, like the chroniclers of Henry Bolingbroke's *coup*, assumes that disinheritation *is* a just cause, one which justifies the most violent revenge against the usurper.

Fulk Fitz Waryn, is still more powerfully couched in terms of disinheritation.⁴¹ This time the scenario is closer to Henry Bolingbroke's predicament, for one agent of Fulk's disinheritation is a tyrannical king. This romance might be described as an extended narrative charter of the Fitz Waryns' claim to the town of 'Blauncheville',

³⁹ *Fouke le Fitz Waryn*, ed. E.J. Hathaway, P.T. Rickerts, C.A. Robson and A.D. Wilshire. Anglo-Norman Text Society (Oxford, 1975).

⁴⁰ *Fouke*, xxi.

⁴¹ The role of disinheritation in this tale is remarked upon by M. Keen, *The outlaws of medieval legend*, revised edition (London, 1977), 39–52, esp. 39, 43; J.C. Holt, *Robin Hood* (London, 1982), 65.

that is Whittington, Shropshire. About the first third of the romance is concerned with establishing the hereditary title to this town of Fulk, son of Guaryn de Meez, and its loss in local feuding and Welsh border warfare. Although in the subsequent peace Fulk brings in the assistance of King Henry, Whittington goes not to Fulk but to one Roger of Powys, whilst Fulk remains at the king's court.

Fulk's son, also called Fulk, although he does well in royal service, squabbles at an early stage with King Henry's son, the future King John, over a game of chess. When John becomes king, matters take a turn for the worse. John is approached by Maurice, son of Roger of Powys, who asks him to confirm by his charter the honour of Whittington to him and his heirs. Remembering his argument with Fulk, John thinks to avenge himself, agreeing to seal whatever Maurice draws up. The terms in which Fulk hears of this make it clear that no one has forgotten the claim to Whittington. A knight 'recounted to him that the king would confirm by his charter to Sir Maurice the lands to which he (that is Fulk) had a right'. Fulk and his brothers thus go before the king 'and pray that they might have the common law and the lands to which they had right and reason as the heritage of Fulk.' John out of malice refuses to reverse his decision, and Morys boasts that he would disprove Fulk's challenge by combat, were it not for the presence of the king. No such considerations restrain Fulk and his brothers, however, and Fulk's brother William steps forward and bloodies Maurice's nose. Fulk then renounces his homage on the grounds that John has failed to give him 'reason and common law', as he ought to do to his 'free' (franke) tenants.⁴²

The argument Fulk uses is that the king has failed to grant him redress, the due process of 'reason and common law'. As the story is set out in this romance, it is clear that this redress would be identical with the recognition of Fulk's claim to Whittington. The narrative begins with Fulk's age-old claim to Whittington and goes on to relate how John does not recognise this because he is motivated by a petty desire for vengeance. Fulk, therefore, in this version of events, does not have to worry about such petty considerations as compromise and arbitration, and can simply renounce his homage and ride off. The fact that Maurice has a generation's *de facto* possession of Whittington, ratified in part by the treaty between the prince of Wales and King Henry, can be conveniently forgotten since the narrative has made it clear that this is the consequence of aggression against Fulk's ancestors. *Fulk Fitz Waryn* to this point reads like a petition for the restoration of Whittington. That Fulk then renounces his homage to his lord is thus entirely justified by his disinheritance without redress.

The remaining two-thirds of the romance are taken up with Fulk's adventures as a rebel, in which the matter of Whittington never goes away. Fulk first fights Maurice, and eventually gains Whittington by force. At length, however, he is forced to take refuge from King John in France. When he succeeds in returning to England, he decides to waylay the king, swearing 'by a great oath that for fear of death he would not stop from avenging himself on the king, who had disinherited him with force and with wrong, and that he would not desist from challenging highly his rights

⁴² For the incidents described in this paragraph, see *Fouke*, 23–4.

and his heritage.⁴³ Capturing John, Fulk swears that the king will die for the great damage and disinheritance which he has done him.⁴⁴ Under duress, John grants him his inheritance. Once free, unsurprisingly, the king once more attacks Fulk, who again flees overseas. After many adventures Fulk returns and does exactly the same thing. This time, however, he wisely ensures that John publicly proclaims his forgiveness and the return of Fulk's inheritance. Finally, Fulk returns to Whittington. The romance concludes with an extract from a prophecy of Merlin: Fulk is the wolf who will chase the leopard from the 'Blaunche Launde' which is, of course, Whittington.

In *Fulk Fitz Waryn*, the hero's disinheritance without redress guarantees that he is in the right, even to the extent that it justifies resistance to a king who does not entertain a baron's right to lands which his family has not had in its possession for a generation. More than in *Beves*, disinheritance is less a convenient structuring device than an obsession, yet both texts use disinheritance in the same way to put the hero in the right and condemn his enemies.

Although these romances are thirteenth-century compositions, there is evidence of a continued and continuous readership into the fifteenth century. Moreover, even romances which seem to have been composed as late as the fifteenth century return, occasionally with some vigour, to the same themes of disinheritance and redress. One such is *The Erle of Tolouse*, a romance which survives in four manuscripts, two from the fifteenth century, and two from the sixteenth.⁴⁵ The hero in this romance, the Earl himself, has been deprived of three hundred pounds worth of his lands by the emperor, who is identified from the beginning of the poem as being given to unjust disinheritance.⁴⁶ The earl thus pursues war against him. The emperor goes to war even though his wife asks him to 'deliver the earl his right'.⁴⁷ The earl, however, is victorious for, as the poet moralises 'false quarrel comes to evil end'.⁴⁸ This provides the background for the love theme which then develops. The disinheritance serves to begin the story by setting up the earl as the hero and the emperor as in the wrong, in which context the earl's infatuation with the emperor's virtuous wife can proceed.

Except for the case of *Fulk*, disinheritance is not the most important theme in these texts. Rather, it is a means of separating right from wrong, the good guys from the bad guys, and justifying the former in their recourse to violence. This, I would argue, is exactly the same function that served Henry of Lancaster and those who justified his return to England in arms.

In this light it is interesting to consider how Henry took his claim to disinheritance one stage further, portraying his claim to the crown of England in similar terms, in

⁴³ *Fouke*, 48: 'Fouke jura grant serement qe pur pour de moryr ne lerreit qu'il ne se vengeroit de le roy, q'a force e a tort ly ad desherytee, e q'il ne chalengereit hautement ces dreytures e son herytage.'

⁴⁴ *Fouke*, 49.

⁴⁵ *The Erl of Tolous*, ed. G. Lüdtkke (Berlin, 1881), and more conveniently in: *Of Love and Chivalry: An anthology of Middle English romance*, ed. Jennifer Fellows (London, 1993). On MSS see Guddat-Figge, *Catalogue*, 94-99, 134-142, 247-9, 249-52.

⁴⁶ *Erl of Tolous*, ll. 19-21: 'He dysheryted many a man / And falsely ther londys wan / Wyth mastry and wyth myght'.

⁴⁷ *Erl of Tolous*, l. 48.

⁴⁸ *Erl of Tolous*, l. 131.

the English declarations which he made in the parliament which deposed Richard II.⁴⁹ The throne having been vacated by Richard's arranged abdication and subsequent condemnation under a variety of articles, Henry stepped up to claim it:

In the name of Fadir, Son, and Holy Gost, I Henry of Lancastir' chalenge þis Rewme of Yngland and the Corone with all þe membres and þe appurtenances, als I þat am disendit be right lyne of the blode comyng fro the gude lorde Kyng Henry therde, and thorghe þat ryght þat God of his grace hath sent me, with helpe of my kyn and of my frendes to recover it: the whiche Rewme was in poynt to be undone for defaut of governance and undoyng of the gode lawes.

Firstly, Henry claimed the throne by *challenging* it as his inheritance. It is not a coincidence that this echoes both the terms in which the *Brut* records Henry claiming the duchy of Lancaster, and those in which Fulk Fitz Waryn asserted his rights to Whittington. The phrase 'through the right that God of his grace has sent me, with the help of my kin and of my friends to recover it' not only confirms that Henry is claiming to take *back* something of which he has been deprived, but also confirms that he is asserting the rightness of this challenge in a way which accords with the values of the romances.⁵⁰ I think we should read the 'help of my kin and of my friends' not as a casual reference in the acknowledgements chapter of a new regime, but as a way of pointing out the military help of his supporters which allowed the right which Henry had acquired from God to be confirmed as divinely ordained.⁵¹ Just as in romance, just war in pursuit of a 'right' led to divinely approved victory.

Yet the qualification which Henry then added demonstrates that his argument was not considered acceptable by all. For 'in order to put the minds of his subjects at rest' Henry then went on to declare that he did not wish to disinherit any man by way of conquest, nor take anything from him which he had by the good laws and customs of the realm, excepting only those who are against the good purpose and common profit of the realm.⁵²

⁴⁹ *Rotuli Parliamentorum*, iii, 422-3 checked against London, Public Record Office [hereafter PRO], Parliament Rolls, C 65/62.

⁵⁰ McFarlane, in *Lancastrian kings and Lollard knights*, 57, asserted that the 'challenge' was Henry's offer to fight any rival claimant. This seems to me to put force alone too high on the agenda, and to separate it from the question of 'recovery', which as McFarlane rightly notes implied both that it was Henry's right and that he secured it by force. Challenge, too, as the romances make clear, was the vindication of a right through its reclamation by force. There was no plain right of conquest here, but there was the 'dangerous precedent' that a right asserted might be confirmed by combat, even against a king. This precedent did not come from nowhere, however. Its possibility is already suggested by the commonplace ideas found, for example, in romances.

⁵¹ Although 'recover' might also have the sense of 'make better' in ME, I think the context of challenge and Henry's hereditary rights implies that the primary sense in this passage is 'take back'. Thanks to Helen Barr for pointing out the wider possible resonances of this word.

⁵² *Rotuli Parliamentorum*, iii, 423: 'it es noght my will that no man thynk þat be waye of conquest I wold disherit any man of his heritage, franchises, or other ryghtes that hym aght to have, no put hym out of that that he has and has had by the gude lawes and custumes of the rewme: except thos persons that has ben agan the gude purpose and the commune profyt of the rewme.'

Claiming to right his own disinheritance with due and divinely confirmed force, Henry had to be careful not to give the impression that he was disinheriting others (unless, of course, they deserved it). The St Albans chronicle glosses this remark further, saying that Henry had proposed to claim the kingdom by conquest, but that Justice William Thirning said that this was ‘quite impossible, for by doing so he would arouse the anger of the entire population against him. This was because if he claimed the kingdom in this way, it would appear to the people that he had power to disinherit anybody at will, and to change the laws, establishing new ones and revoking old ones, as a result of which no one would be secure in his possessions.’⁵³ This, however, somewhat misses the point of Henry’s assertion: his right of conquest only applied in that it was a confirmation through military ‘challenge’ of a hereditary right. This ‘right line of blood’ (which could mean simply ‘direct line of blood’) from Henry III was in all probability the ‘Crouchback legend’ – that Earl Edmund of Lancaster, not Edward I, was Henry’s eldest son. This was apparently raised by Henry, and subsequently dismissed by his clerks and lawyers.⁵⁴ But such petty considerations could be swept aside when Henry declared that it was God’s grace, along with the help of his kin and his friends, which had helped him successfully to challenge his kingdom, and hence recover it as of right.

That said, hereditary right, the challenge and the help of friends are not the only content of this declaration. Henry also asserted, albeit as something of an appendix, that the ‘realm was on the point of being undone for default of governance and undoing of good law’. On the one hand, this default is the cause of the vacancy which Henry claimed to fill. But perhaps we should also note, that in this clause he went on from reclaiming his own inheritance to saving his fellow victims of tyranny. So disinheritance not only justified Henry’s own action against his king, it also made him the appropriate representative of all the disinherited of the kingdom. In this way his own right enabled him to take up arms for the benefit of all.

Thus, Henry of Lancaster justified taking up arms against Richard in the first instance by his disinheritance by the king. We have seen that this theme is a common one, sometimes a dominant one, in romance literature which was available to the political élite of the time, and many others besides. I am not asserting that this literature expresses directly the core values of late fourteenth-century England. However, for this literature to be valued, copied and imitated into the fifteenth century, then the values of these romances could not have been thought absurd by those who read them.⁵⁵ Henry of Lancaster, at least, certainly did not think them absurd, for he attempted to extend them as part of his claim to the throne of England. The claims of the disinherited, which serve to put the hero in the right in

⁵³ *Annales*, 282: ‘quia tali occasione commovisset bilem totius populi contra eum; eo quod visum fuisset populo, so sic vendicasset regnum, quod potuisset quemlibet exhaeredasse pro votis, leges mutasse, condidisse novas, et veteres annullasse; et per consequens nullus securus fuisset de sua possessione.’

⁵⁴ *The Chronicle of Adam Usk*, ed. C. Given-Wilson (Oxford, 1997), 64–5; *Chronicle of John Hardyng*, 353–4; McFarlane, *Lancastrian kings and Lollard knights*, 57.

⁵⁵ Comparable arguments concerning other texts are presented in G. Spiegel, ‘History, historicism and the social logic of the text in the Middle Ages’, *Speculum*, 65 (1990), 59–86; Paul Strohm, *Hochon’s Arrow* (Princeton, 1992), esp. intro.

romance, might also be used in a political context by political actors to put themselves in the right in a way which was simple, straightforward and convincing, even to the extent of overruling scruples about armed rebellion against the king. Furthermore, disinheritance served a powerful symbolic role, for as one of the disinherited, Henry could take action for all whose property had been threatened by Richard II. That further examination might make this powerful justification for usurpation seem dubious, even dangerous, was a problem that Henry could safely leave to his lawyers.

Yet, interestingly, few other contemporary sources put the reason for Henry's return in these terms. Indeed, the normal policy is to disguise that Henry had any other reason for arriving in England than as an agent of God's providence or as a saviour from tyranny. Thus the Evesham chronicle, for example, makes no comment on Henry's disinheritance, remarking simply that 'around the feast of St John the Baptist, he [Richard] heard of the arrival of Lord Henry, duke of Hereford, or rather then of Lancaster, in England, whom before he had driven out.' By concentrating on Richard, the Evesham chronicler makes Henry the agent of Fortune rather than an independent agent with a moral status of his own.⁵⁶

Even more surprisingly, the account of Richard's errors found in the articles following the record of his deposition in the 'Record and Process' does not, in fact, claim that Henry was disinherited.⁵⁷ The closest is article 26, which alleges that Richard often declared that he could seize the lands of his subjects even without legal forfeiture.⁵⁸ This is not even an accusation that Richard did such things: he is merely said to have declared, in a conveniently unprovable fashion, that he could have done so if he had wanted to.

Amongst the three articles which deal with Bolingbroke's exile as part of the account of Richard's crimes in 1397–9, no specific accusation of seizing Henry's lands is made. Article 9 refers to his refusal to hear petitions from Henry.⁵⁹ Article 11 deplores Henry's banishment for ten years despite his willingness to undergo trial by combat.⁶⁰ Article 12 refers to Richard's refusal to grant Henry livery of his inherited lands by attorney, as had been promised, and comes closest to an accusation of disinheritance.⁶¹ Yet, still, perjury not disinheritance is the focus of this article. The word disinheritance, or even seizure, is not used, and no suggestion is made that Henry would have had any trouble in returning in ten years time to reclaim his father's lands.

So why do these articles make no explicit reference to disinheritance? It seems that this is because, in the letter of the law, this simply did not happen. The section of the Parliament Roll frequently cited as the confiscation of the Lancastrian inheritance does not, in fact, contain such an act.⁶² Rather it is, as is accurately alleged in article

⁵⁶ *Historia Vitae et Regni Ricardi Secundi*, ed. G.B. Stow (Philadelphia, 1977), 151–3.

⁵⁷ *Rotuli Parliamentorum*, iii, 417–22. Trans. in Given-Wilson, *Chronicles of the revolution*, 172–84.

⁵⁸ *Rotuli Parliamentorum*, iii, 420, item 43.

⁵⁹ *Ibid.*, 419, item 26.

⁶⁰ *Ibid.*, item 28.

⁶¹ *Ibid.*, item 29.

⁶² PRO C65/57, printed in *Rotuli Parliamentorum*, iii, 372.

12 of the ‘Record and Process’, a record of Richard’s revocation of the letters patent granted to Henry to receive livery of seisin of his inheritance during his exile.⁶³ It records that Henry’s letters patent were revoked, on 18 March 1399, on the grounds that they had been granted ‘by inadvertence and without due consideration’;⁶⁴ that they were contrary to the judgement given at Coventry; and that, in consequence of that judgement, Henry ‘was not a person able to have nor to accept benefit from the aforesaid letters.’⁶⁵ In this act, as in the original judgement at Coventry, all petitioning to the contrary by Henry or his associates is forbidden. Anyone who pursues such a course of action is to be adjudged a traitor. Yet this document does not extend Henry’s exile to life.⁶⁶ The same can be said of the application of this judgement on 23 April 1399 against Henry Bowet, clerk.⁶⁷ Bowet’s trial is the last item in the roll, which is otherwise a triumphal record of the state trials of the parliamentary sessions of 1397–8.⁶⁸ He is condemned as a traitor in accordance with the judgement of 18 March. The revocation of the letters patent and the ban on petitioning is rehearsed. But again no extension of exile to life is made. In fact, the only authority for such an extension having taken place is, in fact, the St Albans chronicler: scarcely the most reliable authority on such matters, and the major advocate, save Henry himself, of Bolingbroke’s grievance of disinheritance.⁶⁹

So what did Richard do with the Lancastrian inheritance after John of Gaunt’s death? As Nigel Saul has noted, when Richard apportioned the Lancaster lands, he seems to have retained the possibility ‘that either Hereford or his son might one day be restored’.⁷⁰ He cites the grant on 20 March, recorded in the Fine Rolls, of the custody of Gaunt’s Welsh castles and lordships to John Holand.⁷¹ It seems that Richard treated the Lancastrian lands as though they had been granted in trust, as if during a minority, adding the clause ‘until Henry of Lancaster, duke of Hereford, or his heir, shall have sued the same out of the king’s hands according to the law of the land or have another grant from the king’. Another grant in the Patent Rolls, this time to Thomas Holand, duke of Surrey, on 8 May 1399 is similar.⁷² The custody of the manors of Rodley and Munstreworth, Gloucestershire, ‘late of John, duke of Lancaster’ is again granted only ‘until Henry, duke of Hereford, or his heir shall have sued the same out of the king’s hands... etc.’. The Holands are both to render the value of these lands yearly at the Exchequer, although both are given full discretion in the appointment of officials. This kind of arrangement seems to have

⁶³ *Calendar of Patent Rolls* [hereafter CPR], 1396–9, 425 (8 Oct 1398).

⁶⁴ *Rotuli Parliamentorum*, iii, 372: ‘Quelles Lettres par inadvertence, et sanz covenable advisement, ou mere deliberacion, come affiert, feurent grantez au dit Duc’.

⁶⁵ *Ibid*: ‘Por ceo qe le dit Duc, apres le dit Juggement ensi renduz, ne feust persone hable d’avoir n’accept benefice de les Lettres avant dites.’

⁶⁶ That it does contain such an extension is assumed in e.g. Steel, *Richard II*, 249; Saul, *Richard II*, 404; Dunn, ‘Endowment and disendowment’, 99.

⁶⁷ *Rotuli Parliamentorum*, iii, 385.

⁶⁸ PRO C65/60 and its duplicate C65/61.

⁶⁹ *Annales*, 232. Trans. in Given-Wilson, *Chronicles of the revolution*, 75–6.

⁷⁰ Saul, *Richard II*, 404.

⁷¹ *Calendar of Fine Rolls* [hereafter CFR], 1391–9, 293.

⁷² CPR, 1396–9, 563.

been the policy with all grants of the custody of the Lancastrian inheritance. The term of the custody is limited to such time as Henry or his heirs will have sued the same out of the king's hands, and the appointment of new officials is granted by special grace to the lands' custodian.

References to 'seizure' of the Lancastrian inheritance, in the few instances when they do occur, seem to refer to the king's current possession of *seisin* following Gaunt's death, again pending return to his heir. Thus Gaunt's wife, Katherine, sues, as was normal for a widow, for the lands which were her own before her marriage to Gaunt which had been 'seized' into the king's hands;⁷³ and John, marquess of Dorset, Gaunt and Katherine's son, sues for lands which he claims to have held from Gaunt for six or seven years previously, 'the premises by the said duke's death having been seized into the king's hands'.⁷⁴

Richard did not confiscate the Lancastrian lands. Yet he did act in a number of ways which would have given Henry grave cause for concern. First, there was the revocation of letters patent which allowed Henry to take livery of *seisin* by attorney of any lands which fell to him during his exile. In law, livery (or delivery) of *seisin* was the essential mark of the transfer of property from one person to another.⁷⁵ Without it Henry could not say for sure that he had received his father's lands. On the other hand, he could not say that he would not do so either. He could return in ten years time and receive livery of *seisin* at the same time as he did homage. This seems to be the thrust of the revoked letters patent which, when they are similarly repealed for the duke of Norfolk, are described as 'letters patent to have his inheritance or succession if it occurs and to remit his homage in his absence, in such a manner as was granted to the said duke of Hereford'.⁷⁶ This seems to imply that Richard and those about him thought that it was the special favour of remittance of homage which was the important thing being revoked, and that livery and homage might both be done only when (for Hereford) or if (for Norfolk) exile came to an end.

Henry, however, might have reason to see things otherwise. He was denied the secure transfer of his lands against the more obscure trust in the king's goodwill and honesty of dealing that he would have them in ten years time. Moreover, Richard would have worsened Henry's sense of insecurity by denying him any appeal. It would not have lost Richard anything to leave the door open for petitioning even if he had continually turned Henry's approaches down. Yet instead he convicted as a traitor the man Henry sent as his representative. It seems likely that the duke simply did not expect Richard to mean what he had said by a ten-year exile, and hoped to be allowed to return when his father died. The main thrust of article 9 seems to be that this inflexibility was entirely unacceptable.

⁷³ *CPR*, 1396-9, 555; PRO C66/352, m. 21: 'que in manus nostras una cum omnibus aliis possessionibus que fuerunt predicti Ducis per mortem eiusdem ducis seista fuerunt'.

⁷⁴ *CPR*, 1396-9, 532; PRO, C 66/352, m. 34.

⁷⁵ F. Pollock and F.W. Maitland, *The history of English law*, 2nd ed. (Cambridge, 1968), 83-90.

⁷⁶ *Rotuli Parliamentorum*, iii, 372: 'lettres patentes pur son heritage ou succession s'ils aviendroient, et de luy respiter son homage en s'absence, en manere come il feust grantez au dit Duc de Hereford.' For Hereford's letters see *CPR*, 1396-9, 487 (3 Oct 1398).

Furthermore, there are other reasons for sympathising with Henry. To begin with, it seems that, if the terms of the grant of custody of lands to the Holands are typical, then Henry was not being allowed to appoint his own officials. This in one regard is scarcely surprising – how could Henry as an absentee do such a thing? – but if it were Richard and not Henry who was appointing the appointers, as it were, then Henry stood to have his position seriously undermined. In fact, the work of Alastair Dunn has recently revealed that Richard and his grantees, probably to make the financial administration of the Lancastrian estates easier, for the most part left the existing officials in place.⁷⁷ Of course, all the estate revenues went (at least in theory) to the exchequer, and the continuity of officials would have been cold comfort to Henry, particularly considering that there is little evidence to suggest that he was ever paid the two thousand pound annuity he was granted at his initial exile.⁷⁸

In addition, very curious things were going on with former annuitants of John of Gaunt. From soon after Gaunt's death, Richard had been confirming with letters patent indentures or pensions which John of Gaunt, or Henry as his heir, had agreed or granted. These were sometimes grants for no specific service, such as that to Joan Orerton of 40s. for life for good service to the duke and duchess of Lancaster.⁷⁹ Alternatively, they could be military, recording the amount of money that Gaunt agreed to pay to a man in return for service in peace and (usually a different amount) in war. Up until late March or early April 1399 it is difficult to know what to make of these, since it is not clear what the consequences of this confirmation might be. Are these men perhaps to serve Henry in the future? In such a confirmation in the Patent Rolls dated 24 March, however, a new clause is added above the line: Nicholas Talbot's annuity drawn on the manor of Kingston, Dorset is confirmed 'because retained to stay with the king only'.⁸⁰ From about this date similar clauses begin to appear in confirmations of Gaunt annuities. A typical example is granted on 15 June 1399 to Walter, son of Roger de Corwan, whose annuity drawn on the duchy of Lancaster is confirmed 'because we retain this Walter to stay with us and no other'.⁸¹ From mid-April confirmations, with this clause absent, are the exception rather than the rule. For Henry, sitting without any redress on the continent, such developments would have been very worrying indeed. Richard seems to have been in the process of poaching his men, and paying for this enterprise with the duchy of Lancaster's money.

So it can be seen that it was not just the 'tedium' of exile which might have encouraged Henry to portray himself as disinherited. By appearing as the disinherited hero, Henry stood to unite all those who were disaffected by Richard's actions in 1397–9. His position was strengthened by a language of disinheritance which appealed to the deep moral resonance of these themes. Yet the fact remains that, in law, Henry had not been disinherited. Even the 'Record and Process' and

⁷⁷ Dunn, 'Endowment and disendowment', 216–8. Now see also A.J. Dunn, *The politics of magnate power: England and Wales, 1389–1413* (Oxford, 2003).

⁷⁸ Dunn, 'Endowment and disendowment', 218–20.

⁷⁹ CPR, 1396–9, 569.

⁸⁰ CPR, 1396–9, 497; PRO C66/352, m. 5

⁸¹ CPR, 1396–9, 582; PRO C66/352, m. 2.

a surprising number of anti-Ricardian texts refrained from portraying things in these terms, merely because Richard organised his seizure of the Lancaster inheritance in such a way that it was not clear that he had, legally speaking, confiscated it.

The ‘Record and Process’ as an elaborate example of formal, internally consistent thought is both truthful and deceptive – it does not lie about the facts of the case, but the conclusions it draws from them, and the narrative of voluntary abdication with which it frames them, are determined by a desire to show that everything was above board and in accordance with due process, with no derogation of the estate of king. Such a desire could have no room for Henry’s arrival in arms, and any violent ‘challenge’ for the inheritance which had been denied him. Yet, as a model of what actually happened in 1399, and why people might think Henry’s cause a legitimate one, the model of disinheritance and the legitimately violent pursuit of redress is actually a better one. It captured perfectly and put into a single, powerful, easily understood narrative everything which Richard could be argued to be doing wrong, whilst simultaneously showing Henry to be the appropriate vehicle of retribution. This narrative would be all the more powerful for being familiar from stories such as those in romance, with their informal ideas of justice and right action. Because of this combined power and informality, Richard was in no way protected from this rhetoric by his attention to legal forms in the matter of the Lancastrian inheritance. But Henry’s lawyers had to avoid the dangers latent in these informal ideas, and so they portrayed his actions somewhat differently.

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