

“Stand Up for Bastards”: Natural Issue in the 1571 Act of Parliament, 13 Eliz., c. 1

by David P. Gontar (March 2016)

“We are bastards all.” – Posthumus Leonatus

“I am a bastard, too. I love bastards. I am a bastard begot, bastard instructed, bastard in mind, bastard in valor, in everything illegitimate.” – Thersites

Introduction: The Act in Question

In 1571 Parliament enacted a curious and long forgotten statute now attracting a bit of attention. Despite its obscurity it plays a pivotal role in British history and the Shakespeare authorship question. Sometimes referred to as the “Treason Act of 1571,” it sets out certain offenses related to the Queen’s sovereignty and succession. Basically, the act criminalizes those who would affirm that “any one particular person is or ought to be heir or successor to the Queen, except the same be *the natural issue of her body*. . . .” (emphasis added) Inasmuch as “natural issue of her body” – as opposed to legitimate or lawful issue – customarily denotes non-legitimate offspring, the act read in its integrity means (1) no one but an extramarital child of the Queen may inherit the throne of England and (2) it would be a punishable offense to say otherwise. Legitimate offspring couldn’t be intended because, first, there weren’t any; second, the Queen was unmarried; third, she was publicly pledged to the State and would never marry, and fourth she seemed too old to bear children in the future. Besides, it was self-evident that were Elizabeth to have legitimate offspring they would be her heirs prior to any other kin; no legislation was needed to grasp that. The act thus addressed illegitimates only. It signified that an illegitimate child of the Queen could and would prime more distal blood relatives (such as her cousin’s grandson) and thus accede to the crown.

This reading of the Act of 1571 is disputed by learned counsel, Mr. Regnier. Our

purpose is to respond to those who would deny that the 1571 act signaled that illegitimates might inherit the crown. We submit that this statute was designed precisely to accord succession rights to Elizabeth's natural issue, and we invite the reader to consider *en passant* that in 1571 such natural issue was extant and flourishing. For it was he, Elizabeth's eldest bastard son, who, in his drama *King Lear*, rouses the audience by famously inviting the gods themselves to "stand up for bastards." (*The History of King Lear*, Sc. 2, 21) We will conclude that our interpretation of the statute of 1571 dovetails with the most sensible and coherent analysis of the authorship issue. Each solution complements and lends support to the other.

Let us set the stage by recalling that Queen Elizabeth I had early on deliberately adopted the guise of the "Virgin Queen," a gal heroically espoused to her collective compatriots. That commitment (or public relations stunt) logically excluded the possibility of any children. And it was this professed fidelity to the people, and the sacrifice of conventional motherhood, confirmed in her memorable speech in 1588 at Tilbury, which gained their respect even as it occasioned the dilemma of royal succession. Yet the 1571 Act expressly countenances royal offspring, *illegitimate* offspring. It may have been disconcerting in 1571 to learn that Parliament was contemplating the prospect that the "Virgin Queen" might become *mater* to a brood of bastards. But how many of the commons actually read the Acts of Parliament? In any event they needn't have worried about it. In 1571 Elizabeth was then 38 years old, well past the optimal age of child bearing, especially in a fairly medieval era antedating modern obstetrics. In fact, only 10% of the English population ever saw age 40. (Rowse, 141) By comparison, Elizabeth of York managed to have a child at 37, something of a feat back then. That the Virgin Queen would seek to publicly compete in such a business would have been deemed highly unlikely. The Act, then, cannot reasonably be thought to have had prospective application to Queen Elizabeth. Logically speaking, the only alternative is that in 1571 natural issue of Elizabeth's body already existed. Historian Carolly Erickson concurs.

When a parliamentary act limited the succession to the queen and "the natural issue of her majesty's body," the phrase led to endless jokes, for "natural children" were bastards, and though no one had ever actually seen any of Elizabeth's supposed children by Leicester *there was a very strong suspicion that some existed. The earl, it was said, had influenced the*

phrasing of the act so that, at least, he could 'thrust upon the English some bastard of his own as the queen's natural child'. (Erikson, 266)

The significance is plain: the Parliamentary Act in question had a purpose which went far beyond designating certain utterances as treason. It opened the door to inheritance by the queen's illegitimate offspring. This reading is not merely that of Shakespeare scholars and zealous authorship partisans, it is the judgment and consensus of history. Further, Erikson indicates that the Act concerned itself with existing progeny. (Keep in mind, however, that though the intent of the drafters of this legislation had in view the rights of existing illegitimates, it is possible that Elizabeth did bear "natural issue" subsequently, as will be further touched on below.)

Thomas Regnier points out, however, that "accusing the Queen of actually having borne an illegitimate child" might make one guilty of sedition under the Common law. "Sedition laws," he writes, "which were among the vaguest criminal laws ever devised, were used to punish people who defamed a member of the royal family or the government. These would serve quite well to justify punishing anyone foolish enough to declare that the Virgin Queen had borne a bastard child." (Regnier, 53) That might have kept a few lips sealed in the 16th century, but we today are obliged to seek out what happened. The so-called "Treason Act" of 1571, however, is written with sufficient cleverness and economy to circumvent charges of sedition. By referring to the "natural issue" of the Queen without identifying any, or claiming that such in fact existed, it avoids the risk of defamation by focusing its attention on those who would suppose that any such hypothetical offspring had no successive rights. But as it was common knowledge that the Queen would never marry and bear legitimate children, for the act to have any meaning at all such illegitimates must already have been strewn among the population. One may be quite sure that the Queen's blessing was needed to enact such personal legislation, and that the illegitimate individual in question was important enough to her to be willing to endure this insinuated blot on her reputation.

Reflect in this regard on the risk faced by England without an assured successor. The nation was in a period of dangerous instability, swinging back and forth between Catholicism and the Reform faith which would soon be known as "Protestantism." Each side was intolerant of the other, and each suffered

dismaying persecutions when its rival was in power. This internal strife weakened England in relation to its enemies, Spain, France and other continental powers. Looking back to the recent and bloody Wars of the Roses (intensely dramatized in *King Henry VI*), with all their dissension and carnage, it seemed that England might topple once again into civil broils – or worse. A faction of legislators in 1571 probably prevailed on the Queen to agree to resolve this existential threat by allowing a child born out of wedlock to succeed her, understanding that Parliament could render such a child ‘legitimate’ at the appropriate moment.

I. The Claim That the 1571 Act Acknowledged No Successive Rights in Illegitimates

Attorney Thomas Regnier maintains that the 1571 Act was a mere treason law, not a rule or precept of succession. (Regnier, 50) As such it did not authorize or grant hereditary rights to illegitimates. That is, he would construe the act narrowly, so as to disjoin propositions (1) and (2) above, admitting (2) but rejecting (1). Rather counterintuitively, he contends that, though the 1571 statute deliberately employs the phrase “natural issue” instead of “lawfully begotten,” to refer to such children as Elizabeth may have, and prohibits anyone from affirming that persons other than the natural issue of the Queen may succeed unto the throne, the statute neither bestows on nor recognizes in illegitimates any such rights of inheritance to real property, especially the crown (which would render its possessor the ultimate owner of all lands in the kingdom). The result is ambiguity and paradox. Regnier’s argument is bold, articulate, scholarly, yet ultimately unavailing. It flies in the face of history. (Erikson, 266) It fails to explain why the customary locution “lawfully begotten” is supplanted by “natural issue.” Nor can it explain why, having had recourse to “natural issue,” the act of 1571 does not by implication approve of the inheritance of illegitimates in certain circumstances. For were it a crime to support the heritable rights of anyone other than the “Virgin Queen’s” natural issue, and were it at the same time absolutely impermissible for illegitimates to inherit, to identify any successor at all would have been utterly impossible. Plug in the historical situation: it is quite obvious that the 1571 act was a desperate attempt on the part of Britain to provide for a Protestant heir via a direct descendant of Elizabeth even though he be a bastard. And it is also evident that in 1571 such a bastard heir existed and was

well known to the English government. Regnier overlooks or conceals these crucially important matters of fact.

To buttress his argument, he relies on the premise that the statute in question is not an act of succession in any sense, but exclusively a "treason act." It is, he says, "labeled as such." (Regnier, 50) That is erroneous. It is only in the "Table of the Statutes" in *Danby Pickering*, which precedes the body of law, that the term "Certain Offenses Made Treason" is to be found, not in the act itself. But it is elementary that what is not part of the written law lacks dispositive authority and is insusceptible of citation. The Table of the Statutes was not devised by Parliament as a legislative addendum or official elucidation. It is a mere classificatory scheme provided by *Danby Pickering* to assist lawyers in finding the "black letter law." Once the premise that the 1571 statute is a "treason statute" is jettisoned, there is no longer any foundation for denying that the statute concerns rights of inheritance. To avoid reducing it to sheer nonsense, Regnier at last transforms it into an act in "defense of freedom of speech," (Regnier, 52) a quixotic gambit indeed. How can a statute criminalizing the expression of an idea be viewed as enlarging the scope of permitted speech? Not only was freedom of speech not protected in Tudor England, (witness the Act in question), no one would bother to affirm the right of non-bastards to inherit the throne (risking criminal prosecution) if bastards themselves could never actually prevail in such a claim. The 1571 statute therefore cannot be reduced to a law shielding freedom of speech. *Prima facie*, it condemns all who would support the candidacy of those outside the set of the Queen's bastards, recognizing and conceding the right of her illegitimates to inherit the throne. As such, there is a presumption that it is a succession statute, a presumption unrebutted by Regnier.

If we examine the First Act of Succession, 1533-34, discussed by Regnier (44-45), we note that it "touches on many subjects, including treason law and laws regarding marriages between people who were already related." This shows beyond peradventure that such statutes served multiple purposes. The 1571 act is of this type. The First Act of Succession (25 Hen. VIII, c. 22) nullifies the marriage of Henry VIII and "the Lady Katherine" (an insulting reference to England's beloved Queen) and dictates the terms of royal succession.

First the said imperial Crown . . . shall be to . . . the first son of your body between your Highness and your said lawful wife Queen Anne

begotten, and to the heirs of the body of the same first son *lawfully begotten* . . . And for default of such sons of your body begotten . . . that then the said Imperial Crown . . . shall be to the issue female between your Majesty and . . . Queen Anne begotten . . . That is [to] say: first to the eldest issue female, which is the Lady Elizabeth, now princess, and to the heirs of her body *lawfully begotten*. (Regnier, 45, emphasis in original)

Under the terms of this statute Elizabeth is a lawful princess and from her may succeed offspring “lawfully begotten.” This is the key terminology altered in the act of 1571, which speaks rather of “natural issue.”

The Second Act of Succession of 1536 repeals and annuls the First Act of Succession and declares that any child born of the marriage of Henry Tudor and Anne Boleyn is illegitimate and as such ineligible to succeed the King.

The said Marriage between your Grace and the said Lady Anne was never good, nor consonant to the laws but utterly void and of none effect And that all the . . . children born . . . under the same marriage . . . shall be taken . . . [to] be illegitimate . . . and barred to claim . . . any inheritance as lawful . . . heirs to your Highness by lineal descent. (Regnier, 48)

Regnier states that “as the First Act had done, . . . it was treason for anyone to contradict the Act as to who was the lawful successor to the throne.” (Regnier, 48) Elizabeth is demoted from princess to bastard in single swipe and barred from her claim. The Second Act of 1536 is both a succession act and an act treating of treason.

There followed nearly a decade later the Third Act of Succession of 1543-44, passed during the time of Henry’s sixth and final marriage to Katherine Parr. “The Third Act proclaimed that Henry’s son [by Jane Seymour] Edward (later Edward VI) would succeed him as king.” (Regnier, 49) “The Third Act . . . declared that if both Henry and Edward should die without other lawful heirs, the crown would default to Lady Mary “and to the heirs of the body of the same Lady Mary *lawfully begotten*.” Furthermore, “if Mary should die without heirs, the crown would default to Lady Elizabeth “and to the heirs of the body of the said Lady Elizabeth *lawfully begotten*” (Regnier, 49, emphases in

original)

Regnier adds, "Although the Third Act of Succession put Mary and Elizabeth in line for the crown, it didn't expressly say that the two daughters were Henry's legitimate children." (Regnier, 49) Therefore the Third Act of Succession placed the bastard Elizabeth in line for the throne, a significant legislative precedent.

In 1553 when Mary became Queen of England she had Parliament declare her legitimate and reinstate retroactively Henry's marriage to Katherine of Aragon. Once again, Elizabeth was left a bastard, yet a bastard next in line to the English throne. At this juncture it was the evident will of the English people as expressed in the edicts of its monarchs and the acts of Parliament that a bastard, Elizabeth Tudor, inherit the diadem.

Regnier then says: "When Elizabeth became Queen in 1558, a so-called 'Act of Recognition' stated that 'Your majesty . . . is and . . . ought to be . . . our most rightful and lawful Sovereign liege Lady and Queen.' It then added rather gratuitously: 'your Highness is rightly, lineally, and lawfully descended and come of the Blood royal of this realm of England'" He comments: "Use of the phrase 'lawfully descended' cured an omission in the Third Act by expressly un-bastardizing Elizabeth. But Anne Boylen's marriage to Henry VIII . . . was not posthumously recognized as valid." (Regnier, 50) Further, the Second Act of Succession of 1536 which had bastardized Elizabeth had declared that it "could not be repealed." (Regnier, 48) No magic wand could be waved at that point by Parliament or anyone else to make Elizabeth truly "legitimate." The "Act of Recognition" thus represented nothing more than Elizabeth's *ipse dixit*, setting the Crown on her own head, heedless of facts and law, to the warm applause of her Parliament. On account of Elizabeth's illegitimacy, the rightful ruler of England was lineal descendant of King Henry VII, Mary Queen of Scots, who advanced that argument, and was imprisoned by Elizabeth for 19 years, then executed. Having broken with Rome and suffered under Bloody Mary, England did not want another Catholic Queen. Mary Queen of Scots' son James, a Protestant, thus retrieved the throne in 1603. Elizabeth's illegitimacy was a small price to pay. The taint of bastardy was never effectively removed, nor, as we will see, could it be by any Parliament heedful of law and history.

II. Elizabeth's Illegitimacy

For most of her life before she ascended the throne in 1558 Elizabeth Tudor was a notorious illegitimate. As such, she was not technically entitled to the rank of princess, and was referred to as Lady Elizabeth. (Snyder, n.p.) Even though the marriage rites of parents, King Henry VIII and Anne Boleyn, had been celebrated prior to her birth, she never emerged from the shadow of bastardy. Some of the reasons are set forth by distinguished Professor Marc Shell in *Elizabeth's Glass* (1993), given below with comments.

First, King Henry VIII proclaimed publicly on May 2, 1536 Elizabeth to be a bastard, sired by her uncle, Lord Rochford, her mother's brother. (Shell, 9, 257) She was declared a bastard by a 1536 Act of Parliament. (Shell, 9)

Second, according to theologian Sir Thomas More, the union of Henry and Catherine of Aragon, (previously married to Henry's older brother Arthur) was not incestuous. Thus both Henry's divorce from Catherine and hasty marriage to Anne Boleyn were null and void, rendering the fruit of the latter (Elizabeth) a bastard.

Third, Anne Boleyn became Henry's mistress in 1527. They married less than nine months before Elizabeth's arrival. This suggested that conception antedated wedlock. (Shell, 9-10)

Fourth, under the theological doctrine of carnal contagion, as man and woman become through intimacy one flesh, their further relations are properly circumscribed on pain of incest. Henry had an affair with Anne's sister, Mary Boleyn, prior to his involvement with Anne. She was thus his kin, and their child Elizabeth was therefore illegitimate. (Shell, 10-13)

Fifth, the same doctrine of carnal contagion, when interpreted in terms of the Blessed Virgin's status as the wife, mother, sister and child of God, suggests that Anne Boleyn should be understood as Henry's daughter. (Shell, 10) Their union would be correspondingly proscribed. Though this would seem to rule out all human procreation as incestuous, it should not be forgotten that in the case of Henry VIII, it was commonly supposed that his liaisons included not only Anne's sister Mary but also her mother, Elizabeth Howard Boleyn. It would therefore be presumed that Anne was indeed Henry's issue, and that their child was illegitimate. Though tradition seems content to ignore this never disproved prospect, there is more in its favor than mere possibility. Recall that the

“possibly pregnant” Anne (Shell, 10) inscribed on an illumination of the Annunciation in *The Book of Hours*, “Be dayly prove you shalle me fynde, to be to you bothe lovyng and kynde,” where ‘kynde’ connotes relatedness by blood. (Shell, 10)

Under the convention of *Droit du Seigneur*, Henry VIII as lord of the manor, was, like Mozart’s Don Giovanni, entitled to the favors of the females of his estate, a realm which extended to the fringes of the English nation. Why, then, would it be assumed that Elizabeth Howard was regarded as off-limits? And how did it happen that a sexual appetite as capacious as Henry’s should settle with such vehemence upon a single maid, Anne Boleyn? Recall that Henry’s dilemma was the failure of Catherine of Aragon to produce a viable male successor. At the height of that royal reproductive crisis he meets a young lady who, though not a fabulous beauty, somehow so captivates him that he can think of nothing else. How was he so powerfully drawn to her? First, she resembled her sister and mother. But clearly there was something else. Henry’s galactic ego could not tolerate the notion that failure to generate a viable male heir was due in any way to deficiencies in himself. No. Such a progenitive anomaly must be the fault of the *female* spouse. For Henry viewed himself as the personification of potency. Thus whether it was deliberate or unconscious, he may have conceived the view that by coupling with his own flesh and blood he would be doubling the odds of producing a child of the virile line. That was the singular opportunity presented by Anne Boleyn. (Cp. *Macbeth*, I, vii, 72-74: “Bring forth men-children only, for thy undaunted mettle should compose nothing but males.”) At that time of course Henry failed to consider that such a child would be an incestuous bastard and as such barred from the throne. But whoever said that Henry was rational? Besides, no one would ever know. Unfortunately, the child proved to be a girl, triggering a deluge of predictable woes. (The reader skeptical of the idea that a person separated from close relatives for an extensive period of time might find himself powerfully attracted to such a person on encountering them again might benefit from researching the topic of “Genetic Sexual Attraction,” (‘GSA’) a well-known psychological phenomenon about which much is written, online, in the media and by social psychologists.)

Sixth, it was widely believed that despite the myth of Henry’s virility he was actually impotent. (Shell, 297) However, in light of the pregnancies of Catherine of Aragon and others it may be supposed that Henry reserved such

incapacities for his sunset years.

And last but not least, on account of Anne Boleyn's earlier marriage contract with Henry Percy, the 6th Earl of Northumberland, any later marriage with Henry would have been null, implying Elizabeth's undeniable illegitimacy.

Regnier himself admits that under the common law, a pre-contract of marriage would make null and void any later marriage to some other individual.

A possible basis for bastardy under the common law was that the parents' marriage turned out to be invalid due to a "precontract," such as those found in Shakespeare's *Measure for Measure*. One kind of "precontract" was an oral agreement between a couple that they would marry at some time in the future. This agreement was binding on both parties and neither one could marry someone else without first obtaining the agreement of the original betrothed to dissolve the contract." (Regnier, 41)

Nowhere in his article does Regnier mention that Anne Boylen's freedom to marry was circumscribed and bound by her precontract with Henry Percy, Sixth Earl of Northumberland. Thus "the principle that a valid precontract nullifies a later marriage" would have operated to nullify the marriage of Henry VIII and Anne Boleyn under the common law of England, a body of law which Parliament was without authority to traduce. Regnier overlooks that Anne Boleyn's union with Henry was illicit under the common law and any children born unto them were illegitimate by precontract. Elizabeth's illegitimacy is demonstrated beyond peradventure.

The Act of 1571, which plainly entails the successive rights of Elizabeth's natural issue to inherit, is thus based on the precedent that Elizabeth herself was an illegitimate who took the throne in 1558. To such facts the English people through their Parliament chose to turn a blind eye, so desperate were they to resolve the succession crisis caused by their monarch's refusal to marry. Meanwhile, there was a bastard in the wings waiting to be brought on. Though learned counsel mentions writers who identify that bastard (Paul Altrocchi, Paul Streitz and Charles Beauclerk), he never informs the reader that that bastard was alive and well. Writing in a vacuum, Regnier produces an abstack analysis of history which ignores the key issues and facts.

III. Anne Boleyn, Incest and Illegitimacy: The Backstory

As stated above, there are reasons to believe that Anne Boleyn was herself an incestuous bastard, a prospect which would explain much and is insusceptible of confutation. If it were so we may presume it is something of which she was keenly aware. Though history has left her exact date of birth delicately shrouded, we do know that in 1514 she and her elder sister Mary were shipped to Paris, where Anne began to serve in 1516 as waiting woman to Queen Claude of France. Claude had married Francis of Angouleme, Henry VIII's rival and the brother of Marguerite of Navarre, in 1514. It is of course unlikely that the ubiquitous and omnipotent King Henry VIII, intimate patron of the Boleyn family, would have been unaware of Anne's mission to France, as it could hardly have gone forward without his blessing. In fact, it's likely he paid for it himself. Anne was educated at the French court and remained there seven years, returning to England in 1521. Serving as Queen Claude's English translator at Field of Cloth of Gold, she would presumably have seen her *pater* and future husband Henry VIII at those festivities in 1520. (Shell, 291) Most prominent at the Court of King Francis were his mother Louise and his sister, the prodigious Marguerite of Navarre, poet, theologian and patron of the arts, who would publish her astonishing mystical monograph, *Le Miroir de l'ame pecheresse*, in 1531. Her ribald classic *Histoires des Amans fortunez* would be published posthumously as *L'Heptameron des Nouvelles* in 1559. (Marguerite, 7) What is striking about Marguerite's oeuvre, both as a devout religious reformer and as secular Renaissance artist in the tradition of Giovanni Boccaccio's *The Decameron* (1348-1353), is how the theme of incest colored both her sacred and her profane literary landmarks. In secular terms, we need look no further than Story Thirty of *The Heptameron*, in which a young nobleman has unwitting relations with his mother, and then with the girl to whom his mother gives birth. (Marguerite, 317) In theological terms, in the devotional *Miroir*, Marguerite resolved her own fallen nature via a fourfold relationship with God, conceiving herself as His daughter, wife, mother and sister, that is, assimilating herself within the very Trinity, now so expanded as to embrace fraternity. (Snyder, n.p.) Here incest was giddily promoted from unspeakable wrong to supreme moment of the Godhead. The background for this transmogrification lay in Marguerite's family, which included herself, her mother Louise and of course her glorious younger brother, Francis, the new ruler of France. So significant was this consanguineous triumverate that its members were fond of referring to themselves as "our

Trinity." In light of Francis's penchant for mistresses and philandering, her adoration of his person must strike us today as boldly idolatrous, though there has apparently never surfaced conclusive evidence of physical incest in their dealings with one another. Nevertheless, her identification with and adulation of Francis was sufficiently imposing to be understood as psychologically ingrown.

According to Professor Shell, beginning in 1516 Anne served both Queen Claude and Maguerite of Navarre for seven long years. Furthermore, following the publication of *Le Miroir de l'ame pecheresse* in 1533, Anne Boleyn and Marguerite of Navarre enjoyed a "well-documented correspondence in 1534-35." (Shell, 291) Elizabeth Tudor is born to Anne in 1533, the same year Marguerite's treatise comes out. Marguerite is believed to have sent Anne a copy of her book at that time. Anne was still in correspondence with Marguerite of Navarre in August of 1535 when she and husband/pater Henry during the King's Progress stayed in the home of courtier Nicolas Poyntz (whose surname is enshrined in Shakespeare's *King Henry IV*.) (Gontar, 64 ff.) Yet at her trial of May 15, 1536, Anne was accused of engaging in incestuous acts with her brother George in November and December of 1535, and of plotting treasonously against the King. In light of previous events we can detect the ironic resonance of these charges: the royal accuser was up to his eyeballs in incest. (i) It was Henry who had committed incest by marrying Catherine of Aragon, the widow of his elder brother Prince Arthur. (ii) As he had engaged in sexual relations with her sister Mary Boleyn it was seducer Henry who led Anne down the aisle of incest. (Shell, 16, 298) (iii) Nor is there any reason to doubt that promiscuous Henry's conquests of the Boleyn family included Anne's mother Elizabeth, and that, as a consequence, he embraced and married his own daughter, as does Antiochus in *Pericles* (though the latter may have dispensed with a wedding). Hence his allegations were not only false and scurrilous, they were little more than melodramatic projections of his own proclivities and misadventures. Does not the incestuous Gertrude soliloquize, "So full of artless jealousy is guilt, It spills itself in fearing to be spilt"? (*The Tragedy of Hamlet*, IV, v, 19-20) Europe was becoming one big unhappy family.

It was in this context that certain nobly born intellectual women started to study the scriptures at first hand and discuss them with experts and their friends. As Marguerite was in the vanguard of that movement (as was Katherine

Paar, the sixth and last wife of Henry VIII), the seven year association of Anne Boleyn and Marguerite should be understood as a spiritual and intellectual tutelage and alliance, in which the latter assisted Anne in achieving a religious and philosophical standpoint in which incest might bear salvific import. Thus she was prepared to accept Henry as her husband, father, son and brother, little realizing she'd find herself prosecuted and beheaded by her partner for committing incest.

IV. Elizabeth's Obsession with Incest and Certain Dalliances of Note

It is hardly surprising, then, to discover that the stream of incest flowing from these paragons of consanguinity, Henry VIII, Marguerite of Navarre and Anne Boleyn, should sweep up the child Elizabeth in its currents. A brilliant and industrious student with the best tutors in the world, but emotionally wounded as a result of her mother's untimely death and its social and political fallout, Elizabeth took refuge in a world of books and learning, mastering Latin, Greek and French, at an age when today's distracted youngsters can barely set one word next to another. In July of 1543 Henry was married for the last time, to Katherine Paar. Elizabeth was then nine years of age, and soon thereafter Queen Katherine took up the task of playing step-mother to her, duties which appear to have commenced in Elizabeth's tenth year. Sometime in 1544, this young genius stumbled across a copy of *Le Miroir de l'ame pecheresse*, presumably the very volume sent by its author Marguerite to her protégé Anne Boleyn circa 1533. As it had belonged to her biological mother and reflected her advanced learning, and as it dealt with the issues of sin, incest and redemption through filiation with God, Elizabeth was first intrigued, then deeply impressed, and resolved to translate Marguerite's treatise into English, adding a brief preface of her own. (Shell, 113)

Professor Shell comments:

Elizabeth's own familial relations were tinged by incest. Her uncle-father Thomas Seymour seduced the thirteen-year-old Elizabeth, or tried to. Thomas was Elizabeth's step-uncle: his sister, Jane Seymour, who had been lady-in-waiting to Catherine of Aragon and Anne Boleyn, had married Henry VIII in 1546 only one day after the execution of Elizabeth's mother. And Thomas was her stepfather: in 1547 he married, in indecent haste (Henry VIII's funeral was barely done with, much as was Old Hamlet's when Gertrude

married Claudius: "O, most wicked speed! To post / With such dexterity to incestuous sheets!") dowager Queen, Catherine Paar, fourth step-mother to Elizabeth. Thomas Seymour tried to marry Elizabeth herself.

In a letter to Edward Seymour, Lord Protector, in 1549, Elizabeth writes, "Master Tyrwhitt and others have told me that there are going rumours Abroad, which be greatly both against my honor and honesty . . . that I am in the tower; and with child by my Lord Admiral. My Lord, these are shameful slanders." (Shell, 17)

Much more shameful would they have been had their falsehood been proved by Elizabeth. That did not happen. Instead, equivocation and doubt reigned on the issue for centuries, and at this point there can be no presumption of such falsity. (Gontar, 224-230)

Notice that Professor Shell describes familial relations as "tinged" with incest. What could that mean? This is a girl who was fairly wallowing in it. Seymour (her step-father/uncle) "seduced" her – or "tried to." Which is it? There's an implicit presumption of purity here dubiously derived from the doctrine of the "Virgin Queen." Here is a prize-winning example of begging the question. Against the mass of evidence that Elizabeth was fairly ravished by Thomas Seymour (who was promptly executed for his marital zeal) and became pregnant there is not a jot to the nayward. The record speaks for itself and need not be reviewed here. Elizabeth, an incestuous bastard, was the daughter of incestuous parents and at the age of eleven had written an entire volume on the subject, a translation of Marguerite's *Le Miroir de l'ame percheresse*. There, in a letter to Catherine Paar, she confessed her own wantonness in unmistakable terms, as one who "beholding and contemplating what she is, doth perceive how of herself and of her own strength she can do nothing that good is, or prevaieth for her salvation, unless it be through the grace of God, whose mother, daughter, sister, and wife by the scriptures she proveth herself to be." (Shell, 111)

The reader does not need to be reminded that birth control and clinical abortions were not available in the 16th century. Thus when scholars declare that it is "unlikely" that Elizabeth remained a virgin (Cawthorne, 114), it is tantamount to admitting that this incest-haunted woman conceived and bore children. Her known lovers included: the aforementioned Thomas Seymour, Robert

Dudley, Sir William Pickering, Christopher Hatton, Thomas Heneage, Edward de Vere, Sir Walter Raleigh and Robert Devereux, a total of at least eight. (Cawthorne, 114-116) Under the circumstances, those wishing to persuade us that Elizabeth did not produce children have a heavy burden of proof.

Examine the list. Is it possible that under the spell of consanguineous desire Elizabeth might have found herself especially attracted to her own kindred, as her forbears, Marguerite, Anne and Henry had been? Plainly the 13-year old Elizabeth fell in love with father/uncle Thomas Seymour and most probably had a child by him. If so, what became of that child? Where was he in 1571? To take history – and Shakespeare – seriously means being willing to seek out answers to these basic questions. The same old Stratfordian mantra gives about as much refuge these days as a hovel on a heath.

Those clinging to the quaint notion of the Virgin Queen ignore the verdict of history. The Virgin Queen amassed a corpus of accounts of her sexual activity.

She could not . . . keep to herself the legend that was growing up around her, the legend of a woman, unchaste and unmarried, insatiable in her sexual appetites and imperious in gratifying them. The days were long past when Elizabeth was seen as an infatuated young woman dallying with her handsome suitor Leicester. That image was almost innocent compared to the stories circulating in the 1570's. Now the queen was looked on as a practiced, hardened voluptuary. "Every man had a tale to tell" about her unchastity, and the vice-ridden court she had gathered around her. At Norwich, in August of 1570, several persons were tried – and some executed – for treasonable slander. "My lord of Leicester had two children by the queen," they insisted, and set out a proclamation "touching the wantonness of the court." A rural parson harangued his congregation with tales of how Elizabeth "desireth nothing but to feed her own lewd fantasy, and to cut off such of her nobility as were not perfumed and court-like to please her delicate eye." (Erikson, 266)

CONCLUSION

Scholar Hank Whittemore writes:

There is evidence [Elizabeth] had given birth during the 1560's to at least one (and probably more than one) child by Robert Dudley, Earl of

Leicester. When Parliament passed an Act in 1571 excluding all but "*the natural issue of Her Majesty's body*" from succession (significantly emending the term "legal issue" to "natural issue"), it was widely assumed that this new law would allow a royal bastard by Leicester to be put on the throne.

Edward de Vere came to Court in 1571, at age twenty-one, when Elizabeth was thirty-seven and unmarried. Later that year he married into an arranged family alliance with William Cecil, Lord Burghley, by marrying his fifteen-year-old daughter, Anne Cecil, but quickly rose at Court in the highest personal favor of the Queen, to the point it became Palace gossip that they were as lovers.

In August 1572 . . . while Oxford was on the royal progress enjoying the Queen's intimate company, the St. Bartholomew's Day Massacre in France was a thunderbolt. Thousands of Protestants were slain in Paris and the slaughter spread quickly to the French countryside. Elizabeth and Burghley feared the worst. The same could happen on English soil; their personal lives were in danger as well. Now it was clearer than ever that the Protestant Reformation had to move forward; the nation needed its own self-image and unity, not to mention naval power to resist invasion.

Against this backdrop of fact and political reality, there existed a window of time during 1573 and 1574 in which Elizabeth, at forty, still had a chance to produce a successor whom she could eventually acknowledge. She was the last of the Tudor line, which would end at her death if no heir existed, so the pressure on her to fulfill this personal and regal responsibility was enormous.

It was reported in May 1573 that Elizabeth was so taken with Edward de Vere that she "delighteth more in his personage and his dancing and his valiantness than any other," while his Puritanical father-in-law, Burghley, "winketh at all these love matters and will not meddle in any way." Such gossip at

Court was the result of calculated public relations.

"That Oxford and Elizabeth were lovers can scarcely be doubted," Charlton Ogburn, Jr., wrote in 1995, but their act of sexual intercourse would not have been motivated primarily (if at all) by romantic passion; rather, it would have been a political act, calculated to give Elizabeth the means of keeping her options open in the future, when she could point back to the years 1572-1574 and confirm her affair with Oxford.

When the royal progress returned to London in September 1573, Elizabeth went into seclusion until the following July. The Queen was an absolute monarch, dictating the terms of her public appearances and meetings with Councilors and foreign dignitaries or ambassadors who came to call. She chose her dress of the day from an assortment of styles, many perfect for concealment; entering the room before the guests, she determined the physical setting for any encounter, including how near the visitor could approach. Other than Lord Burghley . . . only her most intimate Ladies who waited upon her needed to know any such royal secret; if they were inclined to talk it would be at their peril. A servant entrusted with such sensitive information was by definition an insider within the highest level of the social hierarchy, not to mention physically separated from the public by vast estates and closely guarded palace walls. (Whittemore, xxxv-xxxvii)

It may not be seen as uncharitable to ask why, if Mr. Regnier would have us view the 1571 statute as touching treason only and not succession, he cites no authority for this proposition. As of this writing it is now 445 years since passage of the Act in question. During all that time, was it ever acknowledged or stated by any person familiar with English law that the Act under scrutiny is not to be understood as governing succession? On what authorities does learned counsel rely? As none are cited we may presume there are none. No prior cases, no commentaries, no acts of reconciliation or explanation are offered by one who bears substantial burdens of proof and persuasion. With all due respect, we may remind the reader that distinguished counsel advances a legal argument as though

in foro without citing a single prior decision in his favor. But we have seen that there is a rebuttable presumption that the law is what it appears to be, one treating succession. Shall we then overturn the received acceptance of this statute on nothing more than the asseverations of counsel? Recall that Mr. Regnier has an ulterior motive. He appears before the public not to provide a better reading of the 1571 Act but rather to defeat the claims of Messrs. Altrocchi, Streititz and Beauclerk, who looked to said Act as evidence that a royal bastard was in line for the English throne, and that it was he who composed the works of "Shakespeare." (Regnier, 39-40) Now, not as student of the science of jurisprudence does Mr. Regnier come forward to comment on English law, but as a tendentious partisan in a literary squabble. No wonder he cannot properly support his revision of the Act. No one in 445 years has sought to alter its meaning in this manner, nor does Mr. Regnier give any effective reasons why we should not defer to tradition. He offers us nothing but legal novelty, and just to that extent it is nugatory. We decline to tamper with the law to suit counsel's fancy.

It is not our purpose to prove that Edward de Vere, 17th Earl of Oxford, was the son of Elizabeth Tudor or that he became the author of *Hamlet* and the other glorious works complacently attributed to the dubious yeoman of Stratford-upon-Avon. Readers interested in these subjects can investigate them and make their own determination. (See, e.g., Gontar, 206 ff.) What has been attempted here is to observe that the most coherent account of the Act of 1571 is that at that juncture in history England was willing to take action to ensure that Elizabeth had royal heir. While the groundlings nodded over their cups, the courtly cognoscenti from the Cecils on down well knew she had a son, raised up in that warren of noble indiscretions, the so-called "Court of Wards." De Vere was the illegitimate son who at one shining moment in history might have received the crown. That was not to be, for England would never allow its greatest poet and dramatist to serve as its King. Robert Cecil stood in the way of that. In 1571 Oxford was coming into his own as Earl and Member of the House of Lords. He was also attracting the notice of the Queen, with whom he seems to have had an especially close relationship. (Rowse, 48, 104) Despite his notable merits, England was not prepared to accept its functional poet laureate as the heir apparent to the English throne. Oxford was constrained to abandon his successive rights. Thus, when Henry Wriothesley, 3rd Earl of Southampton was born two years

later, in 1573, he became the next Elizabethan illegitimate in contention for the Crown, a man thought by many to have been the son of Elizabeth by Oxford. For it is the obvious opinion of orthodox history that at the apogee of her wantonness Elizabeth and Oxford had a torrid romantic affair. All we need do is read between the lines.

But it was not only Leicester who was widening his circle of conquests. Elizabeth too, it was said, was *seducing* handsome young men and keeping them under surveillance by her well-paid spies when they were not in amorous attendance on her. Prominent among these favorites was Edward de Vere, earl of Oxford, a boyish, hazel-eyed young courtier whose expression combined poetic languor and aristocratic superciliousness. Oxford excelled at those courtly graces Elizabeth admired. He was athletic and acquitted himself brilliantly in the tiltyard, dashing fearlessly, lance lowered, against any and all comers and retiring the victor despite his youth and slight build. He was an agile and energetic dancer, the ideal partner for the queen, and he had a refined ear for music and was a dexterous performer on the virginals. His poetry was unusually accomplished, and his education had given him a cultivated mind, at home with the antique authors Elizabeth knew so well. He was an ideal companion for her – except, perhaps, for the seventeen-year age difference that separated them – and she was to “delight more in his personage and in his dancing and valiantness than any other.”

Rumourmongers speculated about Oxford's talents in the bedchamber and whispered that he was gambling all, including his marriage, on becoming her preferred lover. (Erikson, 267)

Grant for the sake of argument that Elizabeth was the incestuous bastard born of the union of King Henry VIII with his own natural issue, Anne Boleyn. And grant that Elizabeth carried in her heart the flame of incestuous passion. Would she not succumb easily to the embraces of her uncle/step-father Thomas Seymour? And what would happen if the child he gave her, Edward de Vere, grew up to be a gallant dashing courtier in the early years of the 1570's? Who will argue that we can rule out natural issue in their case? The 1571 Act of Parliament was tailor made for such a unique monarch.

While Thomas Regnier contends that Parliament wouldn't permit illegitimates to

inherit, he admits that it took a famed royal bastard (Elizabeth) and by fiat presented her with the diadem. (Regnier, 50) How then could it not do the same thing for this bastard's own bastards? His argument deconstructs itself. There was no absolute fixed rule regarding the treatment and rights of illegitimates in Plantagenet England. After all, a great portion of the English gentry descended from the grand-daddy of them all, William the Bastard of Normandy, who defeated the English army at the Battle of Hastings in 1066 A.D. Here was the Über-illegitimate to whom all later lords fought to trace their dubious titles. Rather than conceal his checkered origins, William paraded under its banner as proudly as Edmond does in *King Lear*. This Bastard became the fountainhead of all rights. The gravamen of Regnier's brief is that Parliament would never contravene the common law by legislatively approving of inheritance rights for illegitimates. But it did not declare that henceforth illegitimates should inherit equally with illegitimate offspring, as for example the Louisiana Supreme Court did in *Succession of Brown*, 388 So.2d, 1151 (La. 1980). No, the 1571 Parliament merely directed its attention to the bastard offspring of Queen Elizabeth and, for the nonce, allowed *them* to inherit. Parliament had the right to do so, as anyone might by last will and testament leave his property to an illegitimate child. For example, Sir Robert Dudley was the illegitimate son of Robert Dudley (Earl of Leicester and one of the Queen's paramours). He inherited all of Leicester's property under his will in 1588. (1911 *Encyclopedia Britannica*)

Professor Michael Bryan of the University of Melbourne writes:

Henry VIII had an illegitimate son, and at one time gave serious thought to recognising his right to the throne. His name was Henry FitzRoy, born to Henry and Elizabeth Blount, a lady in waiting to Catherine of Aragon in 1519. 'FitzRoy' of course means 'son of the king'. Unusually for a bastard, significant titles were conferred on him – Duke of Richmond and Somerset. He also held significant appointments, including Lord High Admiral and Lord President of the Council of the North. The second Succession Act of 1536 which bastardised Elizabeth also allowed Henry VIII to designate his successor, with no limitation to legitimate issue. There was speculation at the time that Henry wanted to keep open the possibility of designating Henry FitzRoy as his successor. The imperial ambassador, Chapuys, mentioned this possibility in his correspondence. Modern biographies of Henry repeat

the speculation (for example, Scarisbrick's biography). In fact, the speculation was short-lived, since Henry FitzRoy, who was consumptive, died soon after the 1536 Act was passed. But the episode shows that allowing an illegitimate child to succeed to the throne was not considered unthinkable, and that the 1536 Act . . . was recognised as giving rise to the possibility of illegitimate succession. (personal correspondence to author)

This view is supported by Beauclerk and Powell writing of Henry FitzRoy.

In his sixth year he was created Earl of Nottingham and Duke of Richmond and Somerset, with precedence over all the other dukes, save the king's issue . . . The following month Henry was created Lord High Admiral of England and Warden General of the Marches of Scotland, a clear indication of his intention to promote him to only the highest of offices. He was also made a Knight of the Garter and installed 25 June 1525. Eight years later in 1533 he was promoted to the Lieutenancy of the same Order.

Unfortunately, the King's acknowledgement of his bastard son and his elevation to the peerage was not welcomed by all. Queen Catherine, in particular, resented the honour shown to her husband's bastard Her fears were not unreasonable and were fuelled by her own inability to produce a healthy son of her own. Moreover, she feared that the king might make his bastard son and not their daughter heir to his kingdom as evidenced by the many appointments that followed Until the birth of the Prince of Wales in 1537, young Henry was therefore the only son of King Henry to survive childhood. It is only natural therefore to expect some degree of speculation at Court on whether the King intended to legitimize him and place him in direct line for the succession. Indeed, in 1536 no less a person than the Earl of Sussex raised the very issue at a meeting of the Privy Council, declaring: "in the King's presence, that considering that the Princess (Mary) was a bastard, as well as the Duke of Richmond, it was advisable to prefer the male to the female for the succession of the crown. (Beauclerk, Powell, n.p.)

A more generous and accommodating account of the rights of illegitimates is given by Rowse.

Peacham has an interesting comment on noble bastards, who, he says, often

received social recognition for good service in the field, though not recognized by law. We recognize the nobility inherent in Shakespeare's Portrait of Faulconbridge. Leicester's natural son Sir Robert Dudley, who spent a life-time asserting in vain his legitimacy, exhibited all, and rather more than all, his father's gifts.

Bastards often kept the family name: the excellent poet and translator Of Tasso, Edward Fairfax, kept his. Further north, on the uproarious Borders, the Foster family hardly recognized the inhibiting restrictions of matrimony and cheerfully made little difference among their progeny. (Rowse, 119)

As Sir Robert Dudley inherited the Earl's entire property by last will and testament, so might have Elizabeth's natural issue, the 17th Earl of Oxford. Strangely, unlike her father, King Henry VIII, she died intestate, an omission that savors of foul play or coercion. When we read that it was Anne of Denmark who inherited the late Queen's wardrobe we must scratch our heads in wonder. What was she to Elizabeth that she should take from her? The problem with ignoring the authorship question is that it always involves ignoring history. And those for whom history holds no charm have little incentive to pursue the question of authorship.

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David P. Gontar's latest book is [*Hamlet Made Simple and Other Essays*](#), New English Review Press, 2013.

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