Metamorphosis, Mythography, and the Nature of English Law

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I. Introduction

I begin with a tale of transformation. It is a story of violent death and magical rebirth. I begin with the creation of Pegasus. Not the tale of the flying horse's emergence from the blood of the slain Gorgon Medusa, as adapted by Ovid, and related in Book IV of *Metamorphoses*; but a lesser-known though equally fantastical tale of a different Pegasus, as told by the Master of His Majesty's Revels, Sir George Buck, in a work entitled *The Third Universitie of England*. In his brief treatise on the numerous academic institutions housed in London in the early seventeenth century, Buck narrated the story of the transformation of the original seal of the Knights Templar (two knights of that Order, sitting astride the same warhorse) into the heraldic device adopted in the sixteenth century by the Honourable Society of the Inner Temple. That device was the mythical flying horse, Pegasus **[Figure 1]**. Common to the stories told by Ovid and Buck is the theme of distinction between self, or subject, and image, or object. In the version told by Ovid, it is the image of Medusa reflected in the bronze of Perseus' shield (rather than her actual self), that the son of Zeus saw, prior to decapitating the Gorgon. In the version told by Buck, the crucial distinction is between the actual origins of the Inner Temple in a religious Order of medieval

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knights, and the image of its provenance in the immemorial and heroic mythography of the ancient world.

In the first line of the Prologue to his epic poem *Metamorphoses*, Ovid explained that his purpose was: 'to tell of bodies which have been transformed into shapes of a different kind';[1] and through these astonishing tales of transformation, the reader witnesses the intellect acting upon the natural world to create an image of nature itself. In similar fashion, but in a juridical as well as a literary context, the lawyers of early modern England perceived themselves to be applying their intellects and their technical knowledge to natural law, that they might create in the common law an image of nature itself. Hence, Sir Edward Coke would declare that 'causes which concern the life, or inheritance, or goods, or fortunes of his [the King's] subjects, are not to be decided by natural reason, but by the artificial reason and judgment of law'.[2] My purpose in this essay is to explore the capacity of a particular artefact - the heraldic, legal emblem of the Elizabethan and Jacobean eras - to signify the transformation of the subjective human form into the objective subject of English law, thereby illustrating the indivisible relationship between citizen and legal institution. Throughout, I make especial reference both to the derivation of the emblem from the narratives of classical mythography, and to its idiosyncratic fusion with the imagery of Judaeo-Christian theology. I investigate the correlation between the imagined natural world (*ordo naturae* or the order of nature) and a jurisprudence whose apologists asserted the primacy of *lex naturae*, *lex terrae*, and *leges non scriptae* or unwritten law, and the superiority of these to all forms of statute and royal

[1] Ovid, *Metamorphoses*, (trans.) Mary M. Innes (Harmondsworth: Penguin, 1955) 29, *1*.

[2] *Prohibitions del Roy* in Part 12 (1658) of *The Reports of Sir Edward Coke, Knt In English*, (ed.) George Wilson, 7 vols. (London: Rivington, 1777) 7: 64a, 65a.

proclamation. In the words of the poet, jurist, and eminent lawyer Sir John Davies: 'the *lawe of nature*, which the schoolmen call *Ius commune*, & which is also *Ius non Scriptum*, being written only in the hart, is better than all the written lawes in the worlde'.[3]

II. The Emblazonment of Common Law

Written in 1612, and published in 1615 as an appendix to a new edition of *The Annales, or Generall Chronicle of England* by John Stow (first published in 1592), *The Third Universitie of England* does not refer exclusively to the four Inns of Court. Rather, as the alternative title of Buck's short book explains, it is *A Treatise of the Foundations of All the Colledges, Auncient Schooles of Priviledge, and of Houses of Learning, and Liberall Arts, Within and About the Most Famous Cittie of London*. Apart from the various academies of the common law (the four Inns of Court, eight Inns of Chancery,[4] two Inns of Sergeants-at-Law, and two Inns for the officers of the Court of Chancery, known as 'the sixe Clearks Inne, or Kedermisters Inne' and 'Bacons Inne, or Corsiters [Coristers] Inne'), the Third University counted among its

[3] Sir John Davies, *Le primer report des cases & matters on ley resolves and adiudges en les courts del Roy en Ireland* (Dublin: Iohn Franckton, 1615), sig. *2r.

[4] On the Inns of Chancery of this period, see Paul Raffield, *Shakespeare's Imaginary Constitution: Late Elizabethan Politics and the Theatre of Law* (Oxford: Hart Publishing, 2010), 166-168. More generally, on the early modern Inns of Court, see Paul Raffield, *Images and Cultures of Law in Early Modern England: Justice and Political Power, 1558-1660* (Cambridge: Cambridge University Press, 2004).

conglomerate: numerous Schools of Theology; the College of Physicians; 'the Colledge of Civilians, called Doctors Commons' (home to 'The Professors of the civill, or imperiall lawes');[5] and other, smaller educational establishments at which a diverse range of disciplines might be studied (including 'Cosmographie'; 'Calligraphie'; 'the art of Horsemanship'; 'the Art gladiatorie'; and 'the Art of Dancing'). But the identity of the dedicatee of *The Third Universitie* is indicative of the privileged position, which Buck accords the colleges and hostels of the common law over the other educational establishments cited in the treatise.[6] The book is dedicated to Sir Edward Coke, who (at the time Buck wrote the dedication, in August 1612) was Chief Justice of the Common Pleas. Buck admits to Coke that 'the greatest part of this Booke is bestowed in the description of the Colledges, and collegiate houses founded in this Cittie, for the professors of the Municipall, or common Law'.[7] The dedication to Coke is understandable, given the great judge's iconic status as principal apologist for the juridical supremacy of common law, but in 1612 it would have been contentious in certain circles.

Following his appointment in 1606 as Chief Justice of the Common Pleas, Coke committed himself to defending the constitutional hegemony of the courts of common law from threats posed to their superior juridical status by the rival

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[5] Sir George Buck, *The Third Universitie of England* in John Stow, *The Annales. Or Generall Chronicle of England* (London: Thomas Adams, 1615), 958-988, 978.

[6] Buck explains that 'Hostels' is the name given to 'the houses of the French Noblemenne in Paris…which commeth from the Lattin worde *Hospitium* (and is the same, which Inne is in English)', *ibid*., 968.

[7] *Ibid*., 961.

jurisdiction of civil law, which manifested itself in the prerogative courts of the king.[8] The most notable of these at this particular time was arguably the Ecclesiastical Court of High Commission.[9] During the first decade of Jacobean rule, High Commission increasingly asserted its power (contested by the courts of common law) to arrest, indict, convict, imprison and otherwise punish alleged offenders, thereby arrogating to itself the legitimate authority of the common law.[10] On numerous occasions after the accession of James I, the judges of Common Pleas convened to discuss the lawful capacity of High Commission to arrest and imprison individuals (Part Twelve of Coke's *Reports* alone records no fewer than five such instances between 1607 and 1611). Consistently, their decision was that Commissioners 'could not in any case have punished any delinquent by fine or imprisonment unless they had authority so to do by act of Parliament'.[11]

In the summer of 1611, only a year before Buck wrote his dedication to Coke in *The Third Universitie*, James I ceded to pressure from Coke and his fellow Justices,

[8] See Brian P. Levack, *The Civil Lawyers in England, 1603–1641: A Political Study* (Oxford: Clarendon, 1973); also, Daniel R. Coquillette, 'Legal Ideology and Incorporations I: the English Civilian Writers, 1523–1607' (1981) 61 *Boston University Law Review*, 1-89. Specifically on civil law and early Stuart absolutism, see Glenn Burgess, *Absolute Monarchy and the Stuart Constitution* (New Haven: Yale University Press, 1996), 63-90.

[9] Upon the accession of Elizabeth I, the appointment of ecclesiastical commissions was validated by the Act of Supremacy, 1559 [*1 Eliz. cap. 1*].

[10] On the juridical procedure of High Commission, see Roland G. Usher, *The Rise and Fall of the High Commission* (Oxford: Clarendon, 1913), 106-120. On *ex officio mero* prosecutions and the constitutional implications of *Caudrey's Case* (1591), see John Guy, 'The Elizabethan Establishment and the Ecclesiastical Polity' in John Guy (ed.) *The Reign of Elizabeth I: Court and Culture in the Last Decade* (Cambridge: Cambridge University Press, 1995), 126-149, 131-132.

[11] Coke, *If High Commissioners have Power to imprison*, 12 *Reports*, 7: 19.

and agreed to 'reform the high commission in divers points, and reduce it to certain spiritual causes'.[12] Coke's vociferous resistance to the unconstitutional excesses of prerogative rule was the primary factor in the decision by the king to translate him from the Court of Common Pleas ('the lock and key of the Common law')[13] to the Court of King's Bench.[14] Sir Francis Bacon suggested that the punitive action would 'be thought abroad a kind of discipline to him for opposing himself in the king's causes',[15] a belief which turned out to be spectacularly misplaced. Coke continued his outspoken attacks upon the ranks of civil lawyers, writing in 1614:[16]

> It is a desperate and dangerous matter for civilians and canonists (I speak what I know, and not without just cause) to write either of the common laws of England which they profess not, or against them which they know not.

[12] Coke, *High Commission*, 12 *Reports*, 7: 85, 85-86.

[13] Sir Edward Coke, *The Fourth Part of the Institutes of the Laws of England: Concerning the Jurisdiction of Courts* (London: M. Flesher, 1644), 99.

[14] On the rivalry between Common Pleas and King's Bench, see Raffield, *Shakespeare's Imaginary Constitution*, 55-58; also, J.H. Baker, *An Introduction to English Legal History* (London: Butterworths, 2002), 37-52.

[15] *The Works of Francis Bacon*, (eds.) James Spedding, Robert L. Ellis, Douglas D. Heath, 14 vols. (London: Longmans, 1857–74), 4: 381.

[16] Coke, 10 *Reports* (1614), 5: xviia.

In 1616, Coke was dismissed as Chief Justice of the King's Bench, never to hold judicial office again.[17]

I include the above sketch of Coke's judicial career, and of the clash between the rival jurisdictions of common law and civil law, because it locates *The Third Universitie* in a particular juridical moment, in which the apologists of common law were impelled to present the ancient credentials of their indigenous jurisprudence to an audience increasingly subjected to the peculiarities of civil law, as manifested by the imperatives of Jacobean prerogative rule. Apart from the reference to 'The Professors of the civill, or imperiall lawes' and the ensuing description of their college, 'Doctors Commons', Buck is ostensibly reticent on the subject of civil law. It may be argued that this is entirely understandable, given his thesis that the site of the Third University is the city of London: the institutional home of common law, in the form of the Inns of Court and Chancery, and the courts of law at Westminster. Insofar as civil law had a similar *locus amoenus* in England at this time, then it was to be found in the more refined academic environment of the University of Cambridge, in which institution John Cowell presided as Regius Professor of Civil Law. The publication in 1607 of Cowell's *The Interpreter* aroused the hostility of Parliament, for the comparison made by Cowell between the powers of the English king and those of his continental counterparts. Parliament accused Cowell of betraying the liberties of the people, and the personal intervention of James I was required in order to save

[17] Thomas Garden Barnes accurately notes 'that Coke has never found a decent biographer', Thomas Garden Barnes, 'Sir Edward Coke' in Thomas Garden Barnes, *Shaping the Common Law: From Glanvill to Hale, 1188-1688,* (ed.) Allen D. Boyer (Stanford: Stanford University Press, 2008), 114-135, 130. For a recent study of Coke in the reign of Elizabeth I, see Allen D. Boyer, *Sir Edward Coke and the Elizabethan Age* (Stanford: Stanford University Press, 2003).

him from imprisonment.[18] In a speech made in March 1610 to both Houses of Parliament, James I distanced himself from Cowell, claiming that 'as a King, I have least cause of any man to dislike the Common Law'.[19] But given the claim made in *The Interpreter* that the royal prerogative bestowed 'all that absolute height of power that the Civillians call (*maiestam, vel potestam, vel iu simperii*,) subject only to god',[20] it is not surprising that Parliament and common lawyers remained suspicious of the motives both of Cowell and of their king. If, as D.H. Willson claimed, one of the principal objectives of *The Interpreter* was 'to reconcile the civilian and the common lawyer',[21] then its author singularly failed in his design. It will come as no surprise to learn that Coke despised Cowell, whom he is alleged to have given the derogatory title of 'Doctor Cowheel'.[22]

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[18] E.R. Foster (ed.), *Proceedings in Parliament, 1610*, 2 vols. (New Haven, Conn.: Yale University Press, 1966), 1: 18.

[19] Johann P. Sommerville (ed.), *King James VI and I: Political Writings* (Cambridge: Cambridge University Press, 1994), 184.

[20] John Cowell, *The Interpreter: or Booke containing the signification of words wherein is set foorth the true meaning of all, or the most part of such words and termes, as are mentioned in the law writers* (Cambridge, Iohn Legate, 1607), sig. Ddd3.*v*. For the argument that Cowell 'was simply careless in discussing politically sensitive matters', rather than an absolutist, see Burgess, *Absolute Monarchy*, 78 n. 74; also, Glenn Burgess, *The Politics of the Ancient Constitution: an Introduction to English Political Thought, 1600-1642* (Basingstoke: Macmillan, 1992), 149-155.

[21] D.H. Willson, *King James VI and I* (London: Jonathan Cape, 1959), 261.

[22] 'It is said by some writers that when Lord Coke spoke of this learned person, he would call him Dr. Cowheel; this certainly is not in unison with the Judge's usual gravity; but, if it be true that he uttered such an expression, it was indeed a low jest': H.W. Woolrych, *The Life of the Right Honourable Sir Edward Coke, Knt., Lord Chief Justice of the King's Bench, &c.* (London: J. & W.T. Clarke, 1826), 205.

Whilst Buck does not engage directly with the topical, political debate surrounding the relative authority of civil law and common law; he makes two references to the relationship between the rival jurisdictions, the second of which places the heraldic emblem at the symbolic heart of the controversy. In his encomium to London (described in the Latin verse, which immediately precedes the dedication to Coke, as '*cornu-copia abundans*'), Buck argues that were the city to contain no colleges other than the Inns of Court, 'yet might London (as Justice Fortescue well observed, and holdeth) bee as worthily stiled an university as either Angiers, or Orleans…wherein the study of the civill law, is only professed'.[23] The observation made by Sir John Fortescue, to which Buck refers, was contained in *De Laudibus Legum Angliae*, written during the last years of the Lancastrian Chief Justice's exile in France, *circa* 1470, and published in English in 1567 as *A Learned Commendation of the Politique Lawes of England*, translated by Robert Mulcaster. In 1513, John Rastell had referred in passing to Fortescue's book as 'de laudibus legum Anglie', but it received that enduring, published title only when John Selden produced a new edition of the work in 1616.[24] Fortescue compared the Universities of Orleans and Angiers unfavourably with the Inns of Court, on the basis that neither of the French Universities had 'so many Students, who have past their Minority, as in Our *Inns of Court*, where the Natives only are admitted.'[25] It is perhaps a truism to state of a work the title of which loosely translates as 'In Praise of English Law' that its pervading

[23] Buck, *Third Universitie*, 966.

[24] Barnes, 'John Fortescue' in Barnes, *Shaping the Common Law*, 46-60, 243 n. 2.

[25] Sir John Fortescue, *De Laudibus Legum Angliae*, ed. John Selden (London: R. Gosling, 1737), 112. Selden notes of Orleans that it is 'an University, erected by King *Philip le Bel*. An. 1312. tho', to speak properly, it be an Hall only for the reading the *Civil Laws*, the only learning there professed, and for that considerable', *ibid*., n. (i).

tone is nationalistic, if not xenophobic. But it is a statement that must be made, because for Fortescue the unique sense of immemorial nationhood, and the antique customs of its indigenous race, defined England and distinguished its laws from those of other nations (especially those of France). Fortescue was emphatic that civilian compliance with the maxim of the emperor Justinian*, quod principi placuit legis habet vigorem* ('the will of the prince has the force of law')[26] was consonant with injustice and oppression of the French populace. Consequently, he claimed that 'the [French] *Peasants* live in great Hardship and Misery'. In England, by contrast, 'the Inhabitants are Rich in Gold, Silver, and in all the Necessaries and Conveniencies of Life.'[27] In Chapter Seventeen of *De Laudibus*, entitled '*The Customs of* England *are of great Antiquity',* Fortescue claimed that neither the civil laws of the Romans, nor the laws of the Venetians, were 'so venerable for their Antiquity' than those of the English. He concluded this particular chapter with the following resounding exaltation: 'So that there's no Pretence to say, or insinuate to the contrary, but that the Laws and Customs of *England* are not only *Good*, but the *very Best*.'[28] For Fortescue and his judicial successors, antiquity conferred not mere legitimacy, but actual jurisdictional supremacy. To quote Peter Goodrich in support of the thesis that the emblem of origin inhabits an indefinite and imaginary historical period, Fortescue 'refers to a past

[26] Justinian, *The Institutes*, Bk I, Title II, '*De Iure Naturali, Gentium et Civili*'. The quotation continues: '*cum lege regia, quae de imperio eius lata est, populus ei et in eum omne suum imperium et potestatem concessit*' ('for by the royal law which is passed to confer authority on him, the people yield up to him all its authority and power'); see Ewart Lewis, 'King Above Law? "Quod Principi Placuit" in Bracton' (1964) 39 *Speculum* 240-269.

[27] Fortescue, *De Laudibus*, 80, 83.

[28] Fortescue, *De Laudibus*, 33-34.

which was never present…an archetypal time whose function is iconic and not representative'.[29]

The second reference by Buck to the increasingly fractious relationship in England between civil law and common law is more explicit than the first. He explains the structure of his book in logical, hierarchical terms. First, he lists and describes the functions of the Schools of Divinity, because the study of the Law of God 'hath by due right the first place'. Next to the Schools of Divinity, he places the colleges of municipal or common law, emphasising to the reader as he does so the coextensive and indivisible bond between divine law and municipal law. It is paradoxical, given the stated ambivalence of James I to the common law (and in particular his injunction to the judiciary that they 'Incroach not upon the Prerogative of the Crowne'),[30] that Buck should justify placing what he terms 'the law of this Lande before the Lawe of the Empire, or Civill Lawe' on the singular ground that he 'preferre my Soveraigne Lorde, and Kinge, before all other Kings and Keysars, and my native Countrey before any countrey in the world.'[31] The close proximity of Buck, as Master of the Revels, to the king and the royal court would have made it impolitic for him to engage in public debate over the relative authority of either

[29] Peter Goodrich, 'Poor Illiterate Reason: History, Nationalism and Common Law' (1992) 1 *Social & Legal Studies* 7-28, 11.

[30] Sommerville (ed.), *King James VI and I*, 212; in the same speech, made in Star Chamber in June 1616, James I described the Danish constitution as 'governed onely by a written Law…and there is an end, for the very Law-booke itself is their onely Iudge. Happy were all kingdoms if they could be so: But here, curious wits, various conceits, different actions, and varietie of examples breed questions in Law', *ibid*. On the exercise of prerogative powers by James I, see Raffield, *Shakespeare's Imaginary Constitution*, 182-217.

[31] Buck, *Third Universitie*, 966.

jurisdiction. But he articulates the perceived sense of rivalry between the common law and the civil law when he describes a 'matter of controversie, which is betweene the professors of the municipall, and civill Lawes about precedence'. Rather than becoming further embroiled in the 'controversie', he bows out of the fray, conceding that 'I will not meddle with it'. But neither does he ignore the controversy. Instead, he leaves 'the determination thereof to the learned Heralds and to their most noble Surintendents the high Constable and high Marshals of England, to whome of right it belongeth.'[32]

III. Heraldry and the Encoded Signs of Legitimacy

Suddenly, and without warning or expectation, the reader is plunged by Buck into the realm of the symbolic and the imagistic, in which the sign takes precedence over the written word: the determination of precedence between common law and civil law is left by Buck 'to the learned Heralds'. It is the word 'precedence' (used by Buck himself) which links heraldry to common law, both of which disciplines sought to identify the original fount of lawful authority; thereby providing historical evidence of authenticity. The lawyers found exemplars of reason in the past, sometimes recent but more often of immemorial origin. Coke recommended the readers of his *Reports* to 'cast thine eye upon the sages of the law, that have been before thee'. He was referring there to the patriarchs of the common law, the judiciary. The provenance of these judicial archetypes was celestial. They had (according to Coke) 'sucked from that divine knowledge, honesty, gravity, and integrity, and by the goodness of God

[32] *Ibid*., 966.

hath obtained a greater blessing and ornament than any other profession to their family and posterity'.[33] Through his systematic (if opinionated) reporting of contemporary cases, and his emphasis on the antiquity of common law and the legitimacy that its immemorial origins conferred on judicial decision-making, Coke elevated the binding power of precedent or *stare decisis* to hitherto unknown levels.[34] In similar fashion, but in relation to an order of signs, predicated on an idealised and pictorial version of a medieval past, heralds (under the supervision of the Marshal of England)[35] conferred legitimacy on those who claimed gentility through antiquity. In part, the revival of interest in heraldry in the Elizabethan era, or more especially in books whose authors sought to explain the arcane symbolism of heraldic devices, was an inevitable consequence of the English Reformation: an assertion of power, identity, and (most of all) legitimacy in the face of the threat posed to the sovereign, English nation-state by Rome and her Catholic allies in continental Europe.[36] The Papal Bull, published by Pope Pius V in April 1570, not only excommunicated Elizabeth I from

[33] Coke, 2 *Reports* (1602), 1: x-xi. Kevin Sharpe makes the important observation that the synthesis between past and present gave to history an exalted status in the governance of early modern English society: Kevin Sharpe, *Politics and Ideas in Early Stuart England* (London: Pinter Publishing, 1989), 174-81. On patterns and precedent in early modern law and drama, see Paul Raffield, 'The Dramatic Imagination and the Dream of Law' in Marco Wan (ed.), *Reading the Legal Case: Cross-Currents between Law and the Humanities* (Abingdon: Routledge, 2012), 175-189.

[34] *Stare decisis et non quieta movere* ['Stand by that which has been decided and do not disturb that which has been settled'].

[35] On the judicial roles of the High Constable and the Marshal in the Court of Chivalry, see M.J. Russell, 'Trial by Battle in the Court of Chivalry', (2008) 29 *The Journal of Legal History* 335-357.

[36] Goodrich argues that 'The fictional unity of the English nation was thus the assertion of an identity against foreign influence and against the power of Rome and of Roman law', Goodrich, 'Poor Illiterate Reason', 10.

the Roman-Catholic Church on the grounds of heresy, but also declared 'her to be deprived of her pretended title to the aforesaid crown and of all lordship, dignity and privilege whatsoever.' Heraldry provided a visual medium through which legitimacy of title might be reclaimed and proven: a possible reason why in 1572 John Bossewell should have dedicated his book on heraldic devices, entitled *Workes of Armorie*, to Elizabeth's Lord High Treasurer, Sir William Cecil.

The heraldic device was of especial significance also to the professors of municipal law, who sought to provide form and shape to a body of law that was unwritten: *lex terrae*, rather than *leges scriptae*. As the seventeenth-century historian William Dugdale expounded: 'And that their [the laws of England] being not written doth no whit extenuate the authority and esteem justly due to them';[37] but still, it was expedient, to say the least, that signs of their 'authority and esteem' be manifest: especially in the face of opposition from a jurisdiction, the civil law, the authority of which was founded in the written word. The image not only lent form and shape to unwritten law; the order of signs also performed the crucial function of capturing the imagination of the subject of law: an argument that has been advanced by numerous legal theorists and semioticians. Goodrich has written extensively on the capacity of the image to 'hold the invisible body, the emotional body, the affective subject or soul of those subject to law'.[38] Goodrich acknowledges the influence of the legal historian and psychoanalyst Pierre Legendre, whose work has engaged throughout with the

[37] Sir William Dugdale, *Origines Juridiciales or Historical Memorials of the English Laws* (London, F & T Warren, 1666), 3.

[38] Peter Goodrich, *Languages of Law: From Logics of Memory to Nomadic Masks* (London: Weidenfeld and Nicolson, 1990), 262.

idea that the image is 'the trace of an absent presence'.[39] Representing something that is present but simultaneously is not, the image is the structure of authority; and it is the particular form of this structure that enables capture of the subject of law.

It may be considered a serious understatement to assert that the meaning of the sign was an obvious point of contention in Reformation Europe, but the assertion serves as a starting point for understanding the role of the arts in early modern England, which was didactic as well as decorative. Sir Philip Sidney, writing of the poetic art *circa* 1580, implied that poetry had much in common with figurative art. For Sidney, poetry was a form of mimesis (a definition which he derived from *The Poetics* of Aristotle). It was 'a speaking picture: with this end, to teach and delight'.[40] In a work from the same genre, by Sidney's near contemporary George Puttenham, entitled *The arte of English poesie*, the author locates the origins of western law in the mythography of ancient Greece; implying that law was originally recorded neither as imperial edict nor as statute, but rather as an aesthetic form. Puttenham related the myth of Orpheus, who tamed wild beasts through the harmonious music of his lyre. Thus was recorded through metaphor the civilizing moment when law was introduced

[39] Pierre Legendre, *Law and the Unconscious: a Legendre Reader*, (trans.) Peter Goodrich, with Alain Pottage and Anton Schütz, Peter Goodrich (ed.), Basingstoke: Macmillan, 1997), 214. On the tale of Narcissus (in Book III of *Metamorphoses*) and an introduction to the theory of the image, see *ibid*., 211-254.

[40] Sir Philip Sidney, *The Defence of Poesie* (London: W. Ponsonby, 1595), sig. C2v. In the opening few lines of *The Poetics*, Aristotle states that epic poetry, tragedy, comedy, dithyrambic poetry, and music "are all (taken together) imitations," Aristotle, *The Poetics*, (trans.) Malcolm Heath (London: Penguin, 1996), 3, *47a*.

into society.[41] Just as Fortescue described judges as *Sacerdotes* or priests, giving or teaching 'Holy Things';[42] so Puttenham depicted the ancient poets as 'the first Priests and ministers of the holy misteries.' It was their 'holiness of life' (in addition to their sagacity and worldly experience), which enabled poets to become:[43]

> The first lawmakers to the people, and the first polititiens, devising all expedient meanes for th'establishment of Common wealth, to hold and containe the people in order and duety by force and vertue of good and wholesome laws, made for the preservation of the publique peace and tranquillitie.

Graeco-Roman mythography was a resource to which common lawyers of the early modern period made frequent reference, as they sought to establish the legitimate foundations of English law in an antique and imaginary past. In his report of *Postnati. Calvin's Case,* concerning the naturalisation of a Scottish subject in the Jacobean English state, Coke went so far as to incorporate the legend of the Trojan Horse (from

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[41] See Horace, *Ars Poetica*, on the myths of Orpheus and Amphion: "Poets the first Instructers of Mankind, / Brought all things to their proper, native Use; / Some they appropriated to the Gods, / And some to publick, some to private ends: Promiscuous love by marriage was restrain'd / Cities were built, and usefull Laws were made," *Horace's Art of Poetry made English by the Right Honourable the Earl of Roscommon* (London: H. Herringman, 1680), 23.

[42] Fortescue, *De Laudibus*, 4-5.

[43] George Puttenham, *The arte of English poesie* (London: R. Field, 1589), 4, 5. On the 'poet-judge' as the embodiment of equitable justice, see Martha Nussbaum, *Poetic Justice: the Literary Imagination and Public Life* (Boston, Mass: Beacon Press, 1995), 80.

Book II of Virgil's *Aeneid*), with which to depict the threat posed by aliens to the security of the realm.[44] The imagery employed by Coke in *The Reports* was often drawn from the philosophical, literary and political texts of the ancient world. The mythical Trojan king, Brutus (grandson of Aeneas), became for Coke the prototypical author of the ancient constitution, describing him as 'Brutus the first King of this land'.[45] According to Geoffrey of Monmouth, writing in the twelfth century: Brutus, after fleeing Italy and landing eventually at the unlikely destination of Totnes in Devon, travelled east, to found a new city, Troynovant (London), on the banks of the Thames.[46] For Fortescue, Coke, and other jurists of the early modern period, Brutus was the father of the Britons, the archetype and icon of English nationhood and English law.[47] Fortescue credits Brutus with the foundation of *dominium politicum et regale*: 'So the Kingdom of *England* had its Original from *Brute* and the *Trojans*, who attended him from *Italy* and *Greece*, and became a mixt Kind of Government, compounded of the *Regal* and *Political*.'[48] It matters not to the story of common law and its origins that, as John Selden perspicaciously noted, the myth of Brutus was 'patched up out of Bards Songs and Poetick Fictions taken upon trust, like *Talmudical*

[44] '…then strangers might fortify themselves in the heart of the realm, and be ready to set fire on the commonwealth, as was excellently shadowed by the Trojan horse in Virgil's Second Book of his Æneid': Coke, *Postnati. Calvin's Case*, 7 *Reports* (1608), 4: 1a, 18b.

[45] Coke, 3 *Reports* (1602), 4: viiia.

[46] Geoffrey of Monmouth, *The History of the Kings of Britain*, (trans.) Lewis Thorpe, (London: Penguin, 1966), 53-74.

[47] '…as soon as he had settled himself in his kingdom, for the safe and peaceable government of his people, [Brutus] wrote a book in the Greek tongue, calling it the Laws of the Britons, and he collected the same out of the laws of the Trojans': Coke, 3 *Reports*, 4: viiia.

[48] Fortescue, *De Laudibus*, 23-24.

Traditions, on purpose to raise the *British* name out of the *Trojan* ashes.'[49] The importance of Brutus lay rather in his iconic status, as an archetypal patriarch of English law.

Brutus of Troy returns us to the issue of precedence and, by implication, of genealogy. He returns us also to Buck, and the insistence that 'no man can be made a Gentleman but by his father.' According to Buck, a king has the power to make esquires, knights, baronets, barons, viscounts, earls, marquises, and dukes (recalling the imperial maxim: *quod principi placuit legis habet vigorem*), but he cannot 'make a Gentleman, for Gentilitie is a matter of race, and of blood, and of discent, from gentile and noble parents, and auncestors, which no Kings can give to any'.[50] According to Buck, the honourable members of the Inns of Court are all 'Registred by the stile and name of Gentlemen'; the status of which Buck affirms by reference to the eminent Elizabethan scholar and herald, Gerard Legh, author of *The Accedens of Armory*. Legh's book, which contains over 300 heraldic emblems, each of which is accompanied by detailed interpretation and exposition of the meaning of the hieroglyphs and their component parts, is perhaps best-known for the description near the end of the book, of Legh's visit to the Inner Temple in December 1561, at which he met Sir Robert Dudley, playing the role of Palaphilos (High Constable to Pallas

[49] John Selden, *The Reverse or Back-Face of the English Janus*, (trans.) Redman Westcot (London: Thomas Basset & Richard Chiswell, 1682), 8. It is noteworthy in this context that the Latin word with which to describe members of the Order of Serjeants-at-Law (the early modern equivalent of Queen's Counsel) was *narratores*: Dugdale, *Origines Juridiciales*, 110; Latin *narratores* translates not only as 'storytellers', but also as 'historians'.

[50] Buck, *Third Universitie*, 969.

Athene) in the Candlemas revels.[51] Legh, a member of the Inner Temple himself, emphasised that within the idyllic enclave of the Inner Temple is contained 'the store of Gentilmen of the whole Realme'.[52] His description of the membership has much in common with the description by John Ferne (a fellow Inner Templar) in a similar work, entitled *The Blazon of Gentrie* (published twenty-four years after *The Accedens*, in 1586). In Ferne's opinion, the members of the Inns of Court were gentlemen 'of bloud and coate-armour, so perfect and auncient'.[53]

The account given by Ferne in *The Blazon of Gentrie* of the noble genealogy of members of the Inns is qualified by the author's own admission that the hegemony of the landed gentry within those institutions was increasingly threatened by the incursion of:[54]

> yeomanrye and Merchauntes, [who] set their broode, to the studye of common lawes: that faculty is so pestered, yea many worthy offices, and places of high

[51] *The Accedens* and the visit by Legh to the Inner Temple in December 1561 are discussed in Peter Goodrich, 'Eating Law: Commons, Common Land, Common Law' (1991) 12 *The Journal of Legal History* 246-267; see also, Raffield, *Images and Cultures*, 99-106.

[52] Gerard Legh, *The Accedens of Armory* (London, Rychard Tottel, 1576), fo. 119v.

[53] John Ferne, *The Blazon of Gentrie* (London: Toby Cooke, 1586), 92. On the depiction by Ferne of nobility at the Elizabethan Inns of Court, see Raffield, *Images and Cultures*, 35-36, 79-82. Interest in heraldry remained strong throughout the Jacobean era, as instanced by *The Third Universitie*, and in 1618 by the publication of Sir Henry Goodyere's compendium of heraldic emblems and accompanying verses, entitled *The Mirrour of Maiestie: or, the Badges of Honour Conceitedly Emblazoned: with Emblems Annexed, Poetically Unfolded* (London: W. Jones, 1618). For analysis of *The Mirrour of Maiestie*, see Raffield, *Imagea and Cultures*, 64-74.

[54] Ferne, *Blazon of Gentrie*, 93.

> regarde, in that vocation, (in olde time, left to the support of gentle linage) are now preoccupated, and usurped by ungentle, and base stocke.

It is worth mentioning here that although Ferne was a member of the Inner Temple, his own genealogy failed to meet the requirement of 'a gentleman of bloud and coate-armour'. His grandfather was a yeoman (from Uttoxeter, Staffordshire), and his father acquired the family's land in Lincolnshire only in the 1570s. The same might be said of Legh, who was the son of a draper in Fleet Street, and had been apprenticed to his father and joined the Drapers' Company.[55] According to Ferne's definition of those members of society who were forbidden honour, dignity, or pre-eminence, described by him as 'the estate unnoble…that which is called *Plebeian*, that is to saye, the vulgare and common sort of the people', Legh's father would have been in the category either of Merchant (*Mercatores*) or Burgher (*Burgenses*);[56] either of which would have made Legh ineligible to bear arms. By his insistence that the late Elizabethan Inns 'have much ado, to conserve the estate of their former honor',[57] Ferne was harking back nostalgically to a literary portrait of the Inns, painted in the late fifteenth century by Fortescue in *De Laudibus*, according to which: 'Knights, Barons and the Greatest Nobility of the Kingdom, often Place their Children in those

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[55] S. Healy, 'Ferne, Sir John (*c.*1560–1609)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [http://www.oxforddnb.com/view/article/9350]; J. F. R. Day, 'Legh , Gerard (*d.* 1563)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [http://www.oxforddnb.com/view/article/16362].

[56] Ferne, *Blazon of Gentrie*, 92-93.

[57] *Ibid*., 92.

Inns of Court.'[58] Even in the late fifteenth century, when *De Laudibus* was written, Fortescue's claim that the gentlemen of the Inns of Court were all descended from the English nobility was exaggerated, and has been dismissed by Wilfrid R. Prest as 'an extravagant boast'.[59] Exaggeration notwithstanding, the myth was perpetuated by lawyers and historians, well into the seventeenth century. The reasons for this near obsession with genealogy, and of being identified with the estate which Ferne describes as *nobilitas Polytica*,[60] are twofold. The first is entirely to do with increased social mobility: the need for existing members of the nobility and gentry to assert their ancient status; and for the *soi-disant* elite, the *arrivistes* of the burgeoning middle classes, to establish theirs.[61] Of greater interest to the current analysis, the

[58] Fortescue, *De Laudibus*, 111-112.

[59] Wilfrid R. Prest, *The Rise of the Barristers: A Social History of the English Bar 1590-1640* (Oxford: Clarendon, 1991), 94.

[60] Ferne, *Blazon of Gentrie*, 6.

[61] On the social composition of the Bar between 1590 and 1640, see Prest, *Rise of the Barristers*, 83-126. Prest concludes (somewhat cautiously) that the survey provided evidence of 'the broadening of the bar's social composition over the early modern period as a whole', *ibid*., 95. The growing threat posed to extant social hierarchy in the early seventeenth century was represented by the abolition in 1604 of sumptuary legislation (*1 Jac. I cap. 25*). Regulation of the sartorial image had provided the lawful means through which hierarchy and social distinction were enforced and represented throughout the sixteenth century. See Alan Hunt, *Governance of the Consuming Passions: A History of Sumptuary Law* (Basingstoke: Macmillan, 1996); Hunt perceives sumptuary law in terms of Foucault's thesis that power takes two distinct forms: 'disciplines' acting on 'bodies', and 'regulation' acting on 'populations', 11. See also, Susan Vincent, *Dressing the Elite: Clothes in Early Modern England* (Oxford: Berg, 2003), 117-152; Peter Goodrich, 'Signs Taken for Wonders: Community, Identity, and "A History of Sumptuary Law"' (1998) 23 *Law & Social Inquiry* 707-728; Raffield, *Images and Cultures*, 157-176; Wilfrid Hooper, 'The Tudor Sumptuary Laws' (1915) 30 (119) *The English Historical Review* 433-449.

second reason for the obsessive concern with genealogy (and hence, with the Elizabethan revival of interest in heraldry, the craft of which served to represent in graphic form the genealogy of its subjects) at the Inns of Court is to do with the identification of a symbolic, originary father: the imaginary source of common law. Both Legh and Ferne include dedications at the start of their respective books: 'To the honorable assembly of gentlemen in the Innes of Court';[62] so it is reasonable to assume that each writer had in mind the English legal institution, rather than its individual members, when expostulating on the subject of 'gentlemen of bloud and coate-armour, so perfect and auncient'.

IV. Pegasus and Other Hieroglyphs of English Law

In the first line of the first chapter of *Origines Juridiciales*, entitled 'Of Government the Original', Dugdale states unequivocally with reference to the chapter's title: 'That this, at first, was in the Father of the Household'. He is referring to the classical idea that government and the father are inextricable. Thus is the symbolic father imprinted indelibly on the reader's conscience as the founder of law. A couple of pages later, Dugdale asserts that the common law 'is, out of question, no less ancient than the beginning of differences betwixt man and man, after the first peopling of this land'.[63] The indigenous law of England is, according to its apologists, of primeval origin; it is as old as the world itself. In strict, Roman legal terminology,

[62] Legh, *The Accedens*, sig. A.ii.r; Ferne's dedication is 'To the honorable assemblyes of the Innes of Court', Ferne, *Blazon of Gentrie*, sig. A.iiii.r.

[63] Dugdale, *Origines Juridiciales*, 1, 3.

the image or *imago* was the social representation of the father, in symbolic terms the ultimate lawgiver. As *paterfamilias*, the Roman father had power that mirrored that of the emperor.[64] His authority was absolute; he was *lex loquens*—the living, speaking law. In strict classical terms therefore, the heraldic emblem was the iconic image of the originary: a graphic symbol that guides the viewer to understanding and perception of the intangible and the invisible.[65] Striking also about the imagery of heraldic devices is their derivation from the natural world. Animals are taken from their natural environment, transplanted into a symbolic realm of hieroglyphs, and transformed into images of antiquity, honour, and legitimacy. I refer above to the transformation of natural law into municipal or common law, enabled by the application of the 'artificial reason' of man, to which Coke alluded in his report of *Prohibitions del Roy*.[66] In one of several acrimonious encounters between Coke and James I, this particular one taking place in Michaelmas Term 1607, the King argued that as the law was 'founded upon reason', then as he James was endowed with reason, he should have the right, 'as well as the Judges', to sit in judgment in the King's courts. Coke rejected this argument on the grounds that cases were decided by

[64] On the paternal source of law and the Roman origins of the Western legal tradition, see Legendre, *Law and the Unconscious*, Introduction, 8–12. On the classical law of images, see Pierre Legendre, *Le Désir politique de dieu: Etude sur les montages de l'état et du droit* (Paris: Fayard, 1989); the title of Legendre's work derives from an essay by Lacan, in which he discusses the iconic image and its capacity to 'arouse the desire of God', Jacques Lacan, *The Four Fundamental Concepts of Psycho-analysis*, (ed.) Jacques-Alain Miller, (trans.) Alan Sheridan (Harmondsworth: Penguin, 1979), 113.

[65] Of the 'other-worldly character' of Legh's account of his visit to the Inner Temple, Goodrich convincingly argues that 'The originary is invariably hieroglyphic, it exists only in the trace or vestige, the ruin of a present form': Goodrich, 'Eating Law', 247.

[66] See text to n. 2, above.

artificial, rather than natural, reason, and by the judgment of law: 'which law is an act which requires long study and experience'.[67] In *De Laudibus*, Fortescue described a similar transformation, of nature and customs into '*Constitutions* or Statutes', which 'oblige the Subject to the Observance of them'.[68] This is not to say that the law of nature was not central to the foundation of common law and its practice in the king's courts: Fortescue was emphatic that 'the power of the king took its beginning under and from the law of nature'.[69]

Famously, Fortescue was to state that English law was 'deduced from the *Law of Nature*';[70] while Coke would later argue not only 'that the law of nature is part of the law of England', but that it was of greater antiquity than 'any judicial or municipal law'.[71] On the Title-page to Part One of *The Reports*, Coke quotes the Ciceronian maxim: *Lex est certa ratio e mente divina manans, quae suadet, prohibetque contraria* ['Law is certain reason flowing from the mind of God, which commands

[67] Coke, *Prohibitions del Roy*, 12 *Reports*, 7: 65a. Coke is referring here to the prolonged period of training at the Inns of Court and apprenticeship in the courts at Westminster, a process which Sir John Doderidge described as 'the worke of many yeares, the attaining whereof will waste the greatest part of the verdour and vigour of our youth': Sir John Doderidge, *The English Lawyer: Describing a Method for the managing of the Lawes of this Land* (London: I. More, 1631), 29.

[68] Fortescue, *De Laudibus*, 28.

[69] Sir John Fortescue, 'On the Nature of the Law of Nature' in Shelley Lockwood (ed.), *On the Laws and Governance of England* (Cambridge: Cambridge University Press, 1997), 127-136, 131. On Fortescue's *De Natura Legis Naturae* and the subjection of *ius regis* to the law of nature, see E.F. Jacobs, *Sir John Fortescue and the Law of Nature* (Manchester: Manchester University Press, 1934), 12-13.

[70] Fortescue, *De Laudibus*, 29; on the universal authority of the law of nature, see Aristotle, *The Nicomachean Ethics*, (trans.) J.A.K. Thomson (London: Penguin, 2004), 130, Bk. V.VII.1134b18-20.

[71] Coke, *Postnati. Calvin's Case*, 7 *Reports*, 4: 12b.

right and prohibits the contrary'], thereby acknowledging the line of descent of natural law theory from the ancient world to the present day. For Coke, as for Cicero, 'True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting'.[72] But Coke and other early modern jurists looked beyond Cicero, to Aristotle, for authority of the claim that English law derived from the law of nature. Coke noted the influence of Aristotle over the founding fathers of early modern English law, recording in his report of *Postnati. Calvin's Case* that Henry de Bracton, Sir John Fortescue, and Christopher St. German, all agreed with the Aristotelian proposition that 'God and nature is one to all, and therefore the law of God and nature is one to all'.[73] It is not surprising that Coke should refer approvingly to Aristotle as 'nature's secretary'.[74] The coextensive bond between reason and nature is fundamental to the Aristotelian and Ciceronian definitions of law. But within these philosophical frameworks, the juridical application of law is an aesthetic exercise in which 'artificial reason' dominates and determines both process and outcome. In the classical imagery employed by Nietzsche in *The Birth of Tragedy*, art (which for the purpose of the present analysis I take to include law in its juridical context) 'derives its continuous development from the duality of the *Apolline* and *Dionysiac*'.[75] In the aesthetic scheme imagined and related by Nietzsche, these two opposing artistic

[72] '*Est quidem vera lex recta ratio naturae congruens, diffusa in omnes, constans, sempiterna*' Cicero, *The Republic* in *On the Republic; On the Laws* (trans.) C.W. Keyes, (Cambridge, Mass: Harvard University Press, 1928), 211, Bk III.XXII.

[73] Coke, *Postnati. Calvin's Case*, 7 *Reports*, 4: 12b-13a.

[74] *Ibid*., 12b.

[75] Friedrich Nietzsche, *The Birth of Tragedy*, (trans.) Shaun Whiteside, (ed.) Michael Tanner (London: Penguin, 2003), 14.

powers 'spring from nature itself'.[76] The Apolline represents the ordered dreamland of artistic illusion, creating aesthetic artefacts that are based on observation of natural phenomena. It is into this aesthetic framework that the present analysis places the heraldic device.

The influence of Aristotle and Cicero over the development of the western legal tradition (and more generally, the influence of ancient eastern thought over modern western thought)[77] is evidence of what might be termed the transfer of rule from east to west: the *translatio imperii*, progressing on a westerly course.[78] From the east came not only light, but also law: *ex oriente lex*. Revolutionary printing technology facilitated the publication of seminal texts in unprecedented numbers. As F.W. Maitland noted of the Renaissance of English law in the sixteenth century: 'medieval books poured from the press'.[79] He was referring to juridical texts of late-medieval and early modern origin that had hitherto been current mainly in manuscript: works such as Littleton's *Tenures*, Statham's *Abridgement*, and St.

[76] *Ibid*.,18.

[77] See Arthur Schopenhauer, *The World as Will and Idea*, (trans.) R.B. Haldane and John Kemp, 3 vols. (London: Kegan Paul, Trench, Trübner, 1906); also, Donald R. Kelley, 'Vera Philosophia: The Philosophical Significance of Renaissance Jurisprudence' (1976) 14 *Journal of the History of Philosophy* 267-279.

[78] On the medieval, Christian formulation of *translatio imperii*, see Wayne Cristaudo, Paul Caringella, Glenn Hughes, 'History, theology and the relevance of the translatio imperii' (2013) 116 *Thesis Eleven*, 5-18.

[79] Frederic W. Maitland, *English Law and the Renaissance* (Cambridge: Cambridge University Press, 1901), 29; see Elizabeth L. Eisenstein, *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early-Modern Europe*, 2 vols. (Cambridge: Cambridge University Press, 1979).

German's *Doctor and Student*. But the new technology also exposed the ancient classical writers to a hitherto undiscovered audience, especially when these works were popularised by translation into English. This applied as much to poetic works as it did to those of philosophy or law. One such work was Ovid's *Metamorphoses*, the first four books of which were published in 1565 (the full version was published in 1567), in a translation by Arthur Golding. Golding's translation was so popular that Shakespeare parodied (while not replicating) the verse style (rhyming couplets of iambic heptameter, commonly known as 'The Fourteener') in the play of 'Pyramus and Thisbe', which the mechanicals perform before Theseus and Hippolyta in the last Act of *A Midsummer Night's Dream*.[80] In *Shakespeare and Ovid*, Jonathan Bate describes the antique literary texts from which Shakespeare and his contemporaries derived the themes (and sometimes the entire plots) of their plays and poems as '*precedents*, not *sources*…a conceptual exemplar, not a reservoir of raw material'.[81] Shakespeare's contemporary, George Puttenham, made a similar observation, concerning '*Paradigma*, or a resemblance by example', whereby the past is compared with the present, 'gathering probabilitie of like successe to come in the things wee have presently in hand'. Whether Puttenham had the juridical process in mind when he wrote in the same sentence that 'judgements precedent' were 'authorized by antiquitie' is unclear;[82] but it is a useful image with which to draw together some literary and juridical threads on the theme of precedents and paradigms.

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[80] Anthony Brian Taylor, 'Golding's Ovid, Shakespeare's "Small Latin", and the Real Object of Mockery in "Pyramus and Thisbe"' (1990) 42 *Shakespeare Survey* 53-64.

[81] Jonathan Bate, *Shakespeare and Ovid* (Oxford: Clarendon, 1993), 84.

[82] Puttenham, *Arte of English Poesie*, 205.

Golding's translation of Books One to Four of Ovid's *Metamorphoses* was published in 1565. He dedicated the work to Sir Robert Dudley, Earl of Leicester. It is probable that the work was circulated in manuscript form for several years before its publication, as was the fashion (Sidney's *Defence of Poesie*, for example, was written *circa* 1580, but remained unpublished until 1595).[83] In which case, it is likely that Dudley (and indeed, Gerard Legh) would have read the translation prior to participating in the Inner Temple Candlemas revels of 1561, at which Dudley played the role of Palaphilos. The story of the birth of Pegasus, in Book IV of *Metamorphoses*, was anyway one with which Legh would have been familiar from childhood, as the work formed part of the curriculum at grammar schools. Carol Chillington Rutter has noted that, in some schools, *Metamorphoses* was 'memorized, word for word, at the rate of a book a year'.[84] Legh is attributed with the adoption of Pegasus as the heraldic device of the Inner Temple, and it was inaugurated as such at

[83] On the Elizabethan proverb 'Manuscript is a virgin, the printing press a whore' ['*Est virgo haec penna, meretrix est stampificata*], see Douglas A. Brooks (ed.), *Printing and Parenting in Early Modern England* (Aldershot: Ashgate, 2005), Introduction, 4; also, Laurie Maguire and Emma Smith, 'Shakespeare Was Not Interested in Having his Plays Printed' in *Great Myths About Shakespeare* (Chichester: Wiley-Blackwell, 2013), 26-33.

[84] Carol Chillington Rutter, 'Shakespeare and School' in *Shakespeare Beyond Doubt: Evidence, Argument, Controversy*, (eds.) Paul Edmondson and Stanley Wells (Cambridge: Cambridge University Press, 2013), 133-144, 138; also, Caroline Jameson, 'Ovid in the Sixteenth Century' in J.W. Binns (ed.), *Ovid* (London: Routledge and Kegan Paul, 1973), 210-242; more generally, see J.W. Binns, *Intellectual Culture in Elizabethan and Jacobean England: the Latin Writings of the Age* (Leeds: Francis Cairns, 1990).

the 1561 revels.[85] The original seal of the Knights Templar (two Knights, sitting astride the same warhorse) was, as Buck explained, 'a symbole of piety…an Emblem of Love, and Charitie, and a true Ierogliffe of ingenious kindenesse, and Noble courtesie of Souldiers' **[Figure 2]**.[86] Unfortunately, the emblem was liable to misinterpretation. Buck expressed his outrage that 'they which loved to deprave, and make scandalous, and ridiculous, interpretations of every thinge…would have it supposed that it was taken, and devised to shew and expresse the poore, and needy beginnings' of the Order of Templars.[87] That is to say, the emblem falsely implied that the Order could afford only one horse between two knights. The Knights Templar therefore exchanged their emblem for an explicitly religious one: 'a Shield argent, Charged with a Crosse Gules, and upon the Nombrill thereof, a holy Lambe' **[Figure**

[85] See Robert A. Pearce, *A Guide to the Inns of Court and Chancery* (London: Butterworths, 1855), 219-220; also, Paul Raffield, 'The Elizabethan Rhetoric of Signs: Representations of *Res Publica* at the Early Modern Inns of Court' (2011) 7 *Law, Culture and the Humanities* 244-263.

[86] On the history of the Knights Templar, see Edith Simon, *The Piebald Standard* (London: Cassell, 1959); specifically on military campaigns in the Holy Land in which they fought, see Sir Hamilton Gibb, *The Life of Saladin: From the Works of 'Imad Ad-Din and Baha' Ad-Din* (Oxford: Clarendon Press, 1973).

[87] Buck, *Third Universitie*, 972. Buck presumably refers to the claim of Joseph Holland that 'These Templers were at the first so poor as they had but one house to serve two of them, in token whereof they gave in their seal two men riding on one horse': Joseph Holland, 'The Question is, Of the Antiquity use and privilege of places for Students and Professors of the common law' [1601], in Thomas Hearne (ed.), *A Collection of Curious Discourses, Written by Eminent Antiquaries Upon Several Heads in our English Antiquities* (Oxford: Thomas Hearne, 1720), 128. The original device exists in monumental form opposite Temple Church, where two knights sit astride a bronze horse, atop a stone plinth. The monument was erected in 2000, to celebrate the start of the new millennium. It is situated on the site of the former cloister courtyard of the Knights Templar.

3].[88] The likelihood in Elizabethan England that the Inner Temple would choose the Paschal Lamb as its emblem was nil. Indeed, in 1570, the graphic portrayal of *Agnus Dei*, the Lamb of God, was prohibited by a statute that described all such religious emblems as 'vain and superstitious things' (*13 Eliz. C. 2*). In 1612, the year in which Buck wrote *The Third Universitie*, the Middle Temple had yet to choose the device of the Lamb and Flag as its emblem **[Figure 4]**. In 1561, the Inner Temple reverted to the original emblem of two knights on the same mount. Retaining the body of the horse, the two knights were transformed into wings. Thus was Pegasus the Flying Horse born: not from the blood of Medusa, but from the original seal of the Knights Templar. Legh describes the new device thus: 'He beareth Azure, a Pegasus Argent, called the horse of honour': a silver, winged horse on a blue background.[89] Of course, the sign is never innocent, and in the encoded visual grammar of heraldry, Azure 'is Royal, & a colour of heavenly hew.' When combined with Argent (silver), it denotes 'vigilan[ce] in service.'[90] Through the creation of a new emblem, the Inner Temple has undergone a symbolic rebirth; its imaginary genealogy tracing its origin to the mythographies of ancient Greece, and the re-telling of these stories in Ovid's *Metamorphoses*.

V. Conclusion

[88] Buck, *Third Universitie*, 971.

[89] Legh, *The Accedens*, fo. 118r.

[90] *Ibid*., ff. 6v, 7r.

Returning briefly to the theme of *translatio imperii* and its westerly progress, the origins of heraldry itself are to be found in the east: in the hieroglyphs of the ancient Egyptians and in the pages of the Bible. 'Every man of the children of Israel shall pitch by his own standard, with the ensign of their father's house': thus, God spoke to Moses and Aaron, as reported in the *Book of Numbers*.[91] The source of *translatio imperii* itself is Biblical; its foundations lie in Nebuchadnezzar's dream, as interpreted by Daniel. Most notable about the Old Testament text of *The Book of Daniel* is the centrality of the image to the narrative. In his dream, Nebuchadnezzar saw 'a great image, whose brightness *was* excellent'. The image, we are told, was of a human body: the head of gold, the breast and arms of silver, the belly and thighs of brass, the legs of iron, the feet of iron and clay. The image is destroyed by a stone, 'which smote the image', and the broken pieces 'became like the chaff of the summer threshing floors'. Daniel interprets the dream as an allegory of the transience of earthly empire: Nebuchadnezzar's golden empire would be followed by empires of silver, brass, iron and finally, a divided empire of iron and clay. All would perish: only the kingdom of God 'shall stand for ever.'[92] There are obvious thematic parallels between the Biblical depiction of *translatio imperii* and the story of the four ages of the earth – gold, silver, bronze, and iron – narrated by Ovid in Book I of *Metamorphoses*. Central to this narrative is the transference of power, from Saturn (the golden age) to Jove (the age of silver), before the descent into warfare (the age of bronze) and wickedness (the age of iron).

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[91] *The Fourth Book of Moses, Called Numbers*, 2.2 (Authorised King James Version). On the ancient, eastern origins of heraldry, see Arthur Charles Fox-Davies, *A Complete Guide to Heraldry* (London: Studio Editions, 1993), 1-18.

[92] *The Book of Daniel*, 2.31-44.

In the story told by Gerard Legh of his visit to the Inner Temple, the sense is conveyed of empire originating in the east and of progressing westward, until its arrival in the symbolic heart of the English legal institution, the Temple. The appearance of Sir Robert Dudley, disguised as Palaphilos, High Constable to Pallas Athene, the goddess of law and justice, compounds the impression that the empire of laws has been transplanted in the west. In a dedication 'To the reader' at the start of *The Accedens of Armory*, Richard Argall (a member of the Inner Temple) outlines the imperial theme, stating that 'All knowledge and artes rising first in the east, emonges the children of God'. He subsequently traces the history and the journey of empire from Egypt, to Greece, and then Rome, before intimating strongly that the next site of empire is England: 'this our countrey, may compare with those, who therein thynke themselves most victorious.'[93] When Legh begins his narrative, he informs the reader that he has 'traveiled through the Easte partes of thunknowen world'.[94] He casts himself in the role of a traveller, returning home with strange tales of his adventures in the east. He narrates the myth of Pegasus, striking with his hooves 'the highest toppe of Mount Helicon, from whence immediatelye, rose the fountaine (Hypocrene)'.[95] The waters of the Hippocrene imparted poetic inspiration and the Inns of Court were perhaps best known during the early modern period for presenting a poetics (or aesthetics) of law through their arcane rites;[96] of which the Inner Temple Candlemas revels of 1561 are exemplary. In less specific terms, the use by Legh of the Hippocrene metaphor reflects the extent to which learning in general (and in the

[93] Richarde Argall, 'To the reader' in Legh, *The Accedens*, unpaginated.

[94] *Ibid*., fo. 119r.

[95] *Ibid*., fo. 118v.

[96] See Jayne Elisabeth Archer, Elizabeth Goldring, Sarah Knight (eds.), *The Intellectual and Cultural World of the Early Modern Inns of Court* (Manchester: Manchester University Press, 2011).

context of the Inner Temple, the study of law in particular) had been affected by the influx of humanism.[97] Indicative of the new learning was the adoption by the Inns of Court of Christopher St. German's *Doctor and Student* as a set text.[98] This seminal work placed unprecedented emphasis on the correlation between English law and conscience. Divine law, natural law and common law were represented as coexistent; while Aristotelian *epieikeia* or natural equity was acknowledged as a guiding principle of the common law.[99] The waters of the inspirational Hippocrene have, according to Legh:[100]

> watered the growinge plantes of the pleasaunt countries adjoining. And latelye, so wythe cleare streames hath abounded, as exceeding tholde lymittes, burste foorthe the bankes, reaching themselfe, to countries, farther distant, sweetlye moystinge the soiles thereof. And emongst other, pleasauntlye washte over tholde forworen Temples.

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[97] The fountain or stream was widely used as a metaphor for the origin of law. See for example, Cicero: 'Well, then, shall we seek the origin of Justice itself at its fountain-head?' ['*Visne ergo ipsius iuris ortum a fonte repetamus*'], *The Laws* (trans.) Keyes, 319, Bk I.XX; also,'Law is certain reason flowing from the mind of God' ['*Lex est certa ratio e mente divina manans*'], Coke, 1 *Reports* (1600), Title-page; see text to n. 72.

[98] John Guy, 'Tudor Monarchy and its Critiques', in John Guy (ed.), *The Tudor Monarchy* (London: Arnold, 1997), 78-104, 88.

[99] See John Guy, 'Thomas More and Christopher St. German: The Battle of the Books', in Alistair Fox and John Guy (eds.), *Reassessing the Henrician Age: Humanism, Politics and Reform, 1500-1550* (Oxford: Blackwell, 1986), 95-120, 102; also, John Guy, *Christopher St. German On Chancery And Statute* (London: Selden Society, 1985), 19.

[100] Legh, *The Accedens*, fo. 118v.

Legh's work is a celebration of the Renaissance and its pervasive influence over the development of the English legal institution. Whilst the Inner Temple is described by Legh as an 'Iland';[101] it is an island washed by the waters of the Hippocrene. Legh heralds the nativity of a new empire of laws in the west; a sovereign state, independent from Rome and Roman law, but one that embraces rather than denies its classical forebears. In Legh's fantastical narrative, the Inner Temple is a microcosm of the ideal constitution, simultaneously embodying the classical model provided in Plato's *The Republic* and the Christian model of St. Augustine's *De Civitate Dei*.[102] As Michel Foucault wrote of the ill-fated Actaeon, whose tragic story is told in Book III of Ovid's *Metamorphoses*: 'in the complicity of the divine with sacrilege, some of the Greek light flashed through the depths of the Christian night'.[103]

[101] *Ibid*., fo. 119v.

[102] '…that heavenly city which has Truth for its King, Love for its Law, and Eternity for its Measure': St. Augustine, *The City of God*, (trans.) John Healey (London: Dent, 1931), Introduction, xii. On the theme of *translatio imperii*, it is noteworthy that St. Augustine wrote *De Civitate Dei* when the Roman empire was on the verge of collapse. On the architecture of the early modern Inns as the representational synthesis of Augustinian and Platonic ideals, see Paul Raffield, 'Bodies of Law: The Divine Architect, Common Law and the Ancient Constitution', 13 *International Journal for the Semiotics of Law* (2000), 333-356.

[103] Michel Foucault, *Aesthetics, Method, and Epistemology: Essential Works of Foucault, 1954-1984*, (ed.) James D. Faubion, 3 vols. (London: Penguin, 2000), 2: 125.