

Richard III's 'tytyle & right': A new discovery

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'In primus paide ffor ij whiryes to convey the ffelauschipp to Westmester in Aperell anno Ricardi tercii primo at the which tyme the kyng tytyle and right was ther plublyschid and shewid—ijs.'—The Worshipful Company of Ironmongers: *Wardens' Accounts & Memoranda*, 1454–1533, f. 45b. Guildhall Library, MS.16988, Vol. 1.

IN APRIL 1484 over a month after the dispersing of parliament the leading members of the London companies, no doubt attended by all the City's officials, went to Westminster to hear the King's title to the throne declared to them. This is the evidence of the passage quoted above, unique to the records of the Ironmongers' Company as none of the other surviving fifteenth-century books of the companies or the City's Journals mention the event. The assembled congregation would have heard the text of the *Titulus Regis* in its final form as engrossed on the rolls of parliament. They would have been expected to accept the truth of the statement made to them and to see that any under their authority who might question the King's title were punished and to instruct any of them who were ignorant of the facts. Oral publication of a statute was a common procedure and was particularly in accord with several of Richard III's own parliamentary enactments that expressed a desire that laws should be made known to the people they were aimed to assist.¹ In view of the public reading in London it would be interesting to know if there were others elsewhere in England. It is evident from this event that the concern expressed in the *Titulus Regis* that the doubts in men's minds over the King's title should be quieted was no mere form of words. In the light of this new discovery it seems appropriate to reconsider the official reasons for Richard III's 'active assumption' of the throne, as his own lawyers politely phrased it.

The two contemporary chroniclers of the events of the protectorship period, the second continuation of the Croyland Chronicle and the work of Dominic Mancini, give us conflicting accounts of the reasons for Richard of Gloucester's 'usurpation' put forward by his supporters before he accepted the throne on June 26. Mancini says the preachers first put forward Edward IV's own illegitimacy to invalidate the succession of his progeny and that then the Duke of Buckingham criticized Edward's marriage to Elizabeth Woodville on the grounds that he had been 'legally contracted' to a foreign princess and married to her by proxy and further that Elizabeth was herself a widow and the marriage had been conducted in a clandestine fashion. Finally the Duke of

Clarence's issue was debarred by his treason.² Mancini's story is confused but it does, however, have all the ingredients of the clearer account of the official *Titulus Regis* in 1484, that is the pre-contract, the secrecy of the Woodville marriage, the dislike of Elizabeth being a widow and the disability of Clarence's heir. The only thing missing in 1484 is the slur cast on Edward IV's own illegitimacy. The distortions of Mancini's account may reflect the difficulties of a foreigner interpreting inaccurate information. It reads as though he got his facts from a bemused Londoner who was trying to make sense of the unexpected details of Buckingham's and the preachers' stories by reference to old tales of the 1460s. In contrast, the Croyland Chronicle ignores sermons and speeches and says simply that the reasons were set forth in the petition which asked Richard to assume the throne: the children of Edward IV were bastards because of their father's contract of marriage with Lady Eleanor Butler before his marriage to their mother, Elizabeth Woodville; the Duke of Clarence's issue was attainted; Richard of Gloucester was the sole 'uncorrupted' descendant of Richard, Duke of York.³

Recently this account by the Croyland continuator has come under attack as being derived from the text of the 1484 *Titulus Regis* and not from the real events of 1484. Charles Wood has claimed that the confused statements of Mancini are a truer reflection of the reasons given out by Richard and his supporters in 1483, that the petition of 1483 put forward the proxy marriage to a foreigner as the main illegitimizing factor and that the story of the pre-contract to Eleanor Butler was a final refinement of invention made for parliament in 1484. This ingenious suggestion, however, is unlikely for one very important reason. The letter of instruction to Lord Mountjoy at Calais sent by Richard III on June 28 says clearly that a copy of the petition to Richard to take the throne is annexed to the covering letter in order that all the details and reasons may be known to the citizens of Calais. The words run: 'The copy of the whiche bille the king will to be sent unto Calais, and ther to be redd & understood, togeder with thise presentes.' Charles Wood has interpreted this as meaning that a copy of the petition would be sent in the future and that the vague generalisations of the solitary surviving covering letter are an accurate expression of the official reasons for Richard taking the throne in 1483.⁴ The vagueness of which he is critical is, however, perfectly understandable, if one accepts that the substance of the communication is in the enclosure 'togeder with thise presentes'. In the *Titulus Regis* it is precisely stated that it contains a text of the 1483 petition. Why should we think this is a barefaced lie? If the reasons of 1484 differed substantially from those offered in 1483 they would have aroused considerable misgivings about the honesty of Richard's proceedings in 1483 and far from allaying the doubts and uncertainties about his title, which is the stated intention of the *Titulus Regis*, would have convinced many of Richard's perfidy. Nor would Richard III have gone out of his way to publicise his title, as we now know he did, if he knew that many men would instantly recognise that his 'title' of 1484 was an 'improvement' on that of 1483.

Once we accept the reasons given in the act of 1484 as the official reasons for Richard's assumption of the throne in 1483, we can proceed to the more serious question of how valid were these reasons. The main reason given was

that of the pre-contract of Edward IV to Eleanor Butler which bastardised his issue by his Queen, but before we consider that let us review the supporting reason that the Duke of Clarence's issue was debarred from the throne by his attainder for treason. The attainder of the Duke had in fact made no specific statement against his children's inheritance of the crown and any observer of the many attainders passed during the fifteenth century knew that an attainder could be reversed as easily as endorsed by the will of a king. Mortimer Levine has stated that it is doubtful that any attainder could affect inheritance of the crown. Henry VII, once King, was discharged from his attainder and it is certain that if Richard of Gloucester had decided to promote Edward, Earl of Warwick, Clarence's heir, as king, he could have done so by simply declaring in a similar way that since the Earl was King he was discharged of any taint.⁵ The attainder of Clarence was a convenient weapon to hand against another child claimant who was unlikely to attract substantial support, as an alternative king.

The pre-contract is a far more complicated subject, but we may have to come to the conclusion that it served a purpose similar to that of the attainder of Clarence. The truth of the allegation of a pre-contract is unlikely ever to be proved but it is notable that two such diverse biographers of Richard III, Paul Murray Kendall and James Gairdner, both declare for the possibility of its truth.⁶ Kendall's argument in favour of this likelihood has been attacked as a set of inferences by Mortimer Levine who has in his turn admitted to setting up another set of inferences 'of equal or greater weight' in opposition. He has however made some more concrete statements against the ability of the pre-contract to establish the bastardy of Edward V and has claimed that the argument of a putative marriage might also establish the legitimacy of Elizabeth of York. These points have in their turn been criticised with acuity by Mary O'Regan, so it is unnecessary to go into his points in detail here. She has also pointed out the problems relating to the substantive differences in canon law and English common law relating to bastardy which cannot have made the case of Edward V an easy one in 1483.⁷ No doubt it was Robert Stillington, Bishop of Bath and Wells and an eminent doctor of laws, who was the chief adviser to Richard of Gloucester about the pros and cons of the pre-contract in canon law and how sound a reason it was for him to take the throne. It was Stillington who was credited with drawing up the 1483 petition.⁸ He would have stressed the importance of the clandestine nature of the marriage of Edward IV to Elizabeth Woodville and how this invalidated any idea of a putative marriage, and how, if the first contract was made unconditionally and by *verba de presenti*, 'medieval canon law held that a prior marriage always prevailed over a later one, even if the first was a simple contract and the second had been solemnized and followed by cohabitation of many years.'⁹ At this point we can note that canon law may have been inclined to declare the children by the second marriage legitimate all the same so long as Elizabeth Woodville had married in good faith, but by the reign of Edward III English common law had no such inclination and found that a pre-contract bastardised the issue and barred it from inheritance.¹⁰ The matter of the pre-contract should strictly have gone before an ecclesiastical court for trial in 1483 to clear up the marriage

issue, before any claim to the throne was made by Richard of Gloucester. Such a court, however, would have been in an invidious position and few would have thought it unprejudiced in its finding whichever way it concluded, with fear of Edward V's revenge in the future on the one hand and fear of Richard of Gloucester and his supporters on the other. We may presume however that, on the advice of Stillington, that the pre-contract, if true and with evidence of its truth forthcoming, and the clandestine character of the second marriage formed strong arguments to convince an ecclesiastical court that Edward V's parents had indeed lived in adultery. The marriage once declared invalid by the ecclesiastical court the English common law, solely concerned with inheritance of land, would have had no hesitation in pronouncing all the children bastards and unable to inherit. Here again, however, we must pause, for this is not a case concerning the succession of a commoner, but that of a king, as Miss O'Regan has already pointed out, and the same rules may not apply.

Was illegitimacy a sufficient bar to succession to the throne? Charles Wood has recently pointed to Edward III, whose legitimacy might have been called into question on the grounds of a homosexual father and an adulterous mother, being forwarded to the throne by a powerful party in favour of his father's deposition. Similarly the succession of Mary and Elizabeth Tudor in the sixteenth century showed that the English could adopt a very pragmatic attitude towards the birth of their monarchs. Wood finds the authority of English kingship more dependent on election, anointing and coronation than on legitimate heredity.¹¹ In other words it was rather the force and support at the command of the aspirant than any strict law of hereditary succession that was the deciding factor. If Edward V's supporters had been the strongest in 1483, the pre-contract would not have mattered.

The lack of any succession law in fifteenth century England has been analysed by Professor Chrimess. He has illustrated the diversity of the claims made to the throne and how the claimants might copy their predecessors' ideas and reasons and add their own.¹² Such was the idea of the misgovernment by the deposed monarch put forward against Edward II, against Richard II by Henry Bolingbroke and against the servants of Henry VI, although Henry himself was not attacked. Richard III was hard pushed to accuse a minor who had not yet ruled so he had to fall back on attacking the rule of his brother, Edward IV. Richard imitated his brother's emphasis in 1461 on election and legitimacy, but again had to skate lightly over the legitimate claim of the Duke of Clarence's heir. Most of all Richard imitated Henry IV's reliance on 'election' by the three estates of the realm which he was able to do because, like Henry, he had a 'parliament' of the about-to-be-deposed monarch to hand. Richard had begun, on June 16, to send out *supercedeas* writs to prevent the meeting of this parliament but had changed his mind and allowed it to assemble once its usefulness in his own 'election' became clear to him. It was not a true parliament because there was no king, but it was the members of one, with a few missing, and it could therefore be called a body which represented the commonality of the realm. The idea of representation, the binding of the community by the actions of its representatives, was already current and John Catesby, justice of the court of Common Pleas, may be quoted as saying in

1482 that 'everyone was party and privy to the parliament, since the commons had one or two for every 'commonalty' to bind or unbind all the 'commonalty'.¹³ It but remained for the 'election' by the three estates out of parliament to be confirmed by them in a full parliament later.¹⁴

The Croyland chronicler says that in 1484 parliament, 'that lay court', could not at first define the King's title 'when the marriage was discussed' but 'out of fear of the most persevering' [of his adversaries] it did go on to so define. Here is a direct criticism by a canonist of such a matter not being referred to the proper jurisdiction of the church, but in view of the part parliament had already played in disputes over the succession to the crown in the fifteenth century, and was to play in 1484 and 1485, perhaps the chronicler was being not only accurate but a little old-fashioned and pedantic as well. Parliament's role was developing beyond his experience. There has been comparatively little notice taken of the fact that the terms of the *Titulus Regis* were actually discussed. Professor A. F. Pollard has said that such an act would have been accepted by parliament without any option,¹⁵ but it seems that there was at least some argument, though no doubt, more on the lines of questioning parliament's authority to pronounce on the King's title, especially when it involved a matter for an ecclesiastical court, than as to whether the King had a title or not. Such reluctance can be compared to that in 1460 on Richard, Duke of York's claim to the throne when the judges in parliament repudiated all efforts to make them pronounce on the matter saying it was a matter above the law and referred it to the decision of the lords of the blood and the peerage.¹⁶ Similarly in 1484 the decision was ultimately remitted to politics, just as the political situation had dictated in the previous year, and parliament merely acceded to the existing state of affairs and the will of the King. Compliant though parliament was in fact, in the words of the *Titulus Regis*, however, it played a magnificent part. A part not favoured, it seems, by the Croyland chronicler. Such play was made with parliament's authority that the *Titulus Regis* has been extensively quoted as an example of the conclusion of a long development of ideas about the three estates and parliament in fifteenth century constitutional England by Professor Chrimes. He sees Richard III reduced to such 'straits' to make his title 'legally and constitutionally acceptable' that he had to pay great respect to parliament. Professor Wilkinson has called Richard III the most parliamentary monarch of the fifteenth century. Dunham and Wood similarly see Richard as exalting parliament, but again only because he was forced to, and by implication they see a contract imposed on Richard and him as responsible to parliament for his good rule.¹⁷

We can at least wonder how far this respect for parliament was imposed upon Richard III. Dunham and Wood say that the coronation oath was 'clarified' by 'coolheaded prelates & legists' in order to control Richard III and put him 'alongside his people'. The coronation oath however can be said to imply a contract between king and people at any time and any clarification or Englishing of the oath in 1483 was most likely at Richard's own suggestion and certainly with his agreement.¹⁸ His own respect for the law is readily apparent throughout his reign and his efforts and desire to rule well sufficiently commented on by his last biographer, Paul Murray Kendall. In view of the

doubts and suspicions felt by his subjects over his title, as the *Titulus Regis* tells us, he may have felt exceptionally pressed to rule well but this was an internal pressure. He may have had considerable doubts about the validity of his title and certainly it must have been clear to him, if not to all of his posthumous supporters, that ultimately it derived from the force and support he had had to hand in June 1483, and that the reasons recorded in the *Titulus Regis*, however true, were in the last analysis excuses. These doubts may have been a cause of his active publication of his title in April 1484 before the leading citizens of London; he wished to explain his action to his people. He certainly showed upon occasion an almost unkingly desire to explain himself as when in 1485 he personally told another assembly of London citizens of his grief and displeasure at the rumours circulating that he had poisoned his wife in order that he might marry his niece, the eldest daughter of Edward IV.¹⁰ Whatever Richard III's special reasons for proclaiming his title may have been, whether doubt or confidence in the truth and his righteousness, or even just routine efficiency, we cannot now know them, but he certainly cannot be accused of secrecy in the matter. It was discussed in parliament, it was later proclaimed and he clearly and without shame wanted all to know and understand his reasons. His exaltation of parliament in the process, was, as it were, a bonus.

NOTES AND REFERENCES

1. S. B. Chrimes, *Constitutional Ideas in 15th century England*, (1936), p.229. In particular Chapters 3, 6 and 7 of Richard III's statutes. The *Titulus Regis*, of course, was not technically a statute as it did not relate to public and general matters.
2. Dominic Mancini, *The Usurpation of Richard III*, Ed. C. A. J. Armstrong, 2nd ed. (1969), pp.94-6.
3. Ingulph's *Chronicle of the Abbey of Croyland*, Ed. and trans. H. T. Riley (1854), p.489.
4. Charles T. Wood, The Deposition of Edward V, *Traditio*, Vol. 30 (1935), p. 276. *Letters and Papers illustrative of the reigns of Richard III and Henry VII*, Vol. I, Ed. James Gardner, Rolls Series (1861), p. 12.
5. Mortimer Levine, Richard III—Usurper or lawful king? *Speculum*, Vol. 34 (1959), p. 392 n.6. Chrimes, *op. cit.* p.51.
6. P. M. Kendall, *Richard III* (1955), pp.476-7; James Gairdner, *Life and Reign of Richard III* (1898 ed.), p.91.
7. Levine *op. cit.* pp. 392-401; pp. 391, 392 n.7; Mary O'Regan, The Pre-contract and its Effect on the Succession in 1483, *Ricardian* Vol. 4, No. 54, pp.2-7.
8. Chrimes, *op. cit.* p.266 n.4.
9. R. H. Helmholz, *Marriage Litigation in medieval England* (1974), p.57. He continues: 'A plaintiff could wait fifty years before enforcing a claim under a contract of present consent, if he could find witnesses to prove it'. The plaintiff would, of course, have been a party to the contract.
10. R. H. Helmholz, Bastardy Litigation in Medieval England, *American Journal of Legal History*, Vol. 13 (1969), p.371.
11. Charles T. Wood, Queens, Queens and Kingship, an inquiry into theories of royal legitimacy in late medieval England & France, in *Order & Innovation in the Middle Ages, Essays in honour of Joseph R. Strayer*, Ed. William C. Jordan, Bruce McNab, Teofilo F. Ruiz. Princeton University Press, 1976. The whole article and especially p.398.
12. Chrimes *op cit.* pp.22-33.

13. *ibid.* pp.106-115; 122-6, 79. The influence of such men as John Catesby, uncle of William Catesby, on the 'constitutional thinking' of Richard III is worthy of some consideration.
14. There is no reason to subscribe to Charles Wood's view that Richard III had no intention of submitting his title to confirmation by parliament merely because of the long delay in calling a parliament. Wood, *The Deposition . . . op. cit.* p. 279, n.96. The parliament had been called for November 1483 but had been postponed because of Buckingham's rebellion. We should however remember the warning that 'election' only meant 'choose' at this date, W. H. Dunham, Jr. and C. T. Wood, *The Right to rule in England: Depositions and the Kingdom's Authority, 1327-1485, American Historical Review* Vol. 81 (1976), p. 756.
15. *Croyland Chronicle, op. cit.*, pp.495-6 Wood, *Deposition, op. cit.*, pp.284-5, A. F. Pollard, *The clerical organization of Parliament, English Historical Review*, Vol. 57 (1942), p.55.
16. Chrimes, *op. cit.*, pp.28-31.
17. *ibid.* pp.123-6. B. Wilkinson, *Constitutional History of England in the 15th Century* (1964), p.163. Wood, *Deposition* p.382, *Queens*, n.75. Dunham and Wood, pp. 758-9.
18. Dunham and Wood, p.756. The present author has attempted to give some idea of Richard's attitude to the law both in its administration and as regards the theories prevailing in the 15th century, *Ricardian*, Vol. 4 No. 53 (June 1976), pp.4-15. Chrimes is the obvious source for views of the estate of king in the fifteenth century.
19. *Acts of Court of the Mercers' Company*, Ed. Lyell and Watney (1936) p. 173. It is interesting to note that there is no entry of this event in the Ironmongers' Accounts although they no doubt attended and similarly the Mercers do not record the publication of the King's title in 1484.