CHAPTER I

HENRY'S RESOURCES

IT is an English habit to assume when any question of government arises that there must be an answer to the question already on record. Much good has been attributed, some of it justly, to this habit; some evil also is due to it, and especially a tendency to believe that every modern definition and articulation of political ideas and institutions had an existence, or at least a manifestation, in every earlier epoch, at any rate since the Middle Ages and the Feudal System came to an end in 1485. It is comparatively easy to remember that king, lords, commons, exchequer, privy council, quarter sessions, liberty, have now meanings different from those they bore at the end of the fifteenth century; it is much more difficult to convince the mind that the relations between these public institutions were not then the same as they are now, nor even of the same kind; not merely that they were undefined, but that they were still for the most part conceived as existing on a plane where technical definition was not to be thought of, though ruling principles ought to be plain. The rules of government resembled rather the rules of conversation than those of bridge: the relations between its various organs were more like those between the members of a family than like those between the officers of a limited liability company: the idea of it was the distribution of justice according to the ancient good customs, not the administration of a state according to the provisions of a sovereign constitution or a sovereign legislature.

It is clear, therefore, that the study of Tudor government cannot be begun with a principle (as the study of Victorian government might be begun with parliamentary sovereignty) nor with a comprehensive document (as the study of the government of the United States might be begun with the American Constitution). For any period of English history it is well to study institutions before seeking a constitution, for the Tudor period it is quite absolutely necessary: and the most
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The Kingship

active and decisive institution, as it had always been the most elevated and the most central, was the kingship: it was also the most ancient and the most conspicuous, and might be expected to have come nearest to definition: yet the kingship in 1485 was still so far from definition that it was by no means certain how the title to it was transmitted or how a challenge of the crown could be tested.

On 22 August 1485 Henry VII was king of England because he had defeated and killed Richard III the day before: he was king when he died on 21 April 1509 because during those twenty-four years he had suppressed every rival, if necessary with sword or axe: but such a tenure does not amount to a legal or constitutional title. There was no doubt that the lawful king at any given moment was the next heir of the last lawful king for whom an heir could be found. But there was no certainty what constituted heirship for this purpose, and in 1485 there was no certainty who had been the last lawful king. Nor was there any tribunal authorised to settle these preliminary questions. The highest tribunal within the realm was parliament, and the highest outside was the papal curia: it could hardly be asserted, it could in no sort of way be either proved or assumed, that pope or parliament had the right to lay down rules for the English succession or to apply the rules in a particular case; though certainly recognition from either of those authorities would be of great and incalculable assistance to any monarch whose inheritance had not been beyond dispute.

In 1460 the duke of York had put into the parliament chamber his claim¹ to be the true king (although Henry VI was then in the thirty-ninth year of his reign, and the sixty-first year of his dynasty) on the ground that he was, through his mother and grandmother, heir-general to Edward III. The lords spiritual and temporal (or such as were present, for most seem to have stayed away)² decided that “inasmuch as every person high or low, suing to this high Court of Parliament, of right must be heard...the said writing should be read and heard, not to be answered without the King’s commandment, for so much as

¹ Rot. Parl. v, p. 375.
York’s Claim of it in 1460

the matter is so high, and of so great weight and poise”. Next day, the
duke pressing for an answer, they were unanimous that “the matter
was so high and of such weight, that it was not to any of the King’s
Subjects to enter into communication thereof, without his high com-
mandment agreement and assent had thereto”; to secure which they
went at once to the king’s presence, and the king told them to search
for every possible objection against the duke’s claim and title.

On this the lords sent for the king’s justices and delivered to them
the duke’s claim, that they might find out all such objections: but they
answered1 that

they were the King’s Justices, and have to determine such matters as
come before them in the law, between party and party, and in such
matters as be between party and party they may not be of Counsel; and
sith this matter was between the King and the said Duke of York as
two parties, and also it hath not been accustomed to call the Justices
to Counsell in such matters, and in especial the matter was so high, and
touched the King’s high estate and regalie, which is above the law and
passed their learning, wherefor they durst not enter into any com-
munication thereof, for it pertained to the Lords of the King’s blood,
and th’apparage of this his land, to have communication and meddle in
such matters; and therefore they humbly besought all the Lords, to
have them utterly excused of any advice or Counsel, by them to be
given in that matter.

The lords next applied to the king’s serjeants and attorney, but with
no better result, for they replied that “sith the said matter was so high
that it passed the learning of the Justices, it must needs exceed their
learning, and also they durst not enter any communication in that
matter”. To whom it was answered that they were the king’s particular
counsellors, and paid as such; and to that they replied that “they
were the King’s counsellors in the law, in such things as were under his
authority or by commission, but this matter was above his authority,
wherein they might not meddle”.

Lacking expert advice, the lords themselves then formulated five
objections to the Yorkist claim—the oaths which they had taken: great

1 R.P. v, p. 376.
and notable acts of parliament of divers of the king’s progenitors: divers entails made to the heirs-male as for the crown of England, as it may appear by divers chronicles and parliaments: the fact that the duke bore the arms of Edmund Langley and not of Lionel duke of Clarence: Henry IV’s claim that he was right inheritor to Henry III. To these objections the duke replied1 as best he could, and in especial that “the divers entails made to the heirs-male as for the crown of England” were in truth reduced to one made in the parliament of 6 Henry IV,2 and that Harry of Derby’s claim to inherit from Henry III was only to colour and shadow fraudulently his violent usurpation.2 Finally, at the suggestion of the chancellor, the lords agreed to a compromise by which Henry VI was to remain king for life but to be succeeded by York and his heirs.

The arguments on both sides and the results are not here of the first importance: what is of the first importance is the failure of all concerned to find any indisputable rule or any indisputable judge of the succession, and beyond this failure, the assumption of all concerned that the succession was a matter above human authority. On the day on which Richard III was alive and was dead the finding of an available authority had become much more difficult still, for there was now no king in being and no parliament in being (and how can a parliament come into being unless a king calls it?), and the Lancastrian case was more than ever complicated by the doubtful legitimacy of the Beauforts, and the Yorkist case by the sex of Elizabeth, and both by attainder.

If Henry VII had not an indubitable hereditary right, neither had any one else, and the kingdom he won by the sword did not possess and could not provide itself with any constitutional means of deciding in such a situation who ought to be king: nor was it supposed, least of all by Henry, that it was for any earthly power to make rules for the

1 R.P. v, p. 377; and cf. York’s argument that his oath of allegiance was a spiritual matter, about which he would answer before any competent spiritual judge.
2 6 H. IV c. 2. Cf. R.P. v., p. 377. “And if he might have obtained and rejoiced (enjoyed) the said Crowns, &c. by title of inheritance, descent or succession, he neither needed nor would have desired or made them to be granted to him in such wise, as they be by the said Act”.

4 No Absolute Criterion of Succession
Henry’s Claim
descent of kingship. *Deus facit haeredom*, and the divine control is especially exclusive and essential in the case of kings.

So, though Elizabeth should have been crowned if the crown descended to heirs-general, and Warwick¹ if it descended to heirs-male, yet it was possible for Henry to maintain that as the nearest kinsman to Henry VI on the side of Henry IV he was entitled to the throne, and that is what he did maintain.² Henry did not go into any detail about his hereditary claim, perhaps on the sound general principle that the less a man bases himself on argument the less he can be proved wrong, perhaps from his consciousness that one of the first results of any technical argumentation on the point must be to bring to public notice the clause *excepta dignitate regali* in Henry IV’s confirmation of the Beauforts’ legitimacy.³ Nevertheless, Henry could assume without absurdity, and did assume with success, that he was king by right of inheritance, and that the God of battles had made his right plain at Bosworth. Henry knew very well that one of the instruments employed by the God of battles was his promise to marry Elizabeth of York, and he knew also that his right, however divine, could not be too firmly certified. When Richard III was slain and Stanley picked the crown out of a bush and put it on Henry’s head, Henry was king of a kingdom where there was so little public law, so little constitutional definition, that the very succession to the kingship had never been fixed. He did not intend that defect to be supplied by act of parliament or by archiepiscopal unction or by papal bull or by dynastic treaty; but he was very willing that any or all of these agencies should register and affirm the just title of inheritance and true judgment of God by which he had come to the throne.

Henry was the Lancastrian claimant whose success had brought to an end a century of dynastic strife. It is always remembered, generally in a quite false sense, that the Lancastrian champion was especially

¹ Elizabeth was daughter of Edward IV, and Warwick son of Edward’s brother Clarence.
³ Cf. J. Gairdner, *Letters and Papers of Richard III and Henry VII*, ii, p. xxx: who adds that perhaps Henry did not know, as his cousin of Buckingham did, that the exception had been foisted in by Henry IV and was of very dubious validity.
Regal and Feudal Assets of Kingship

bound to parliament: it should not be forgotten that the traditions of his house inclined him to take high views of kingship no less than of parliaments. English kings had always borne two characters: they were the principal feudal personages in a society which consisted largely and conspicuously of feudal arrangements, and to that they owed most of their definable rights and practicable powers. They were also sacred and national personages, and though there was a shorter inventory of assets to be written down under this head and no item was very definite, yet the sum of the items was infinite, and the obligations, so onerous a part of the feudal bargain, were here practically inconsiderable: practically inconsiderable, for the debts were to the Deity and to the people and the credit was long.

It is not strange, then, that our kings always preferred their regal to their feudal capacity and that they were always eager to emphasise its sacred character. Peter of Blois\(^1\) said of Henry II *sanctus enim et christus Dominii*, and since Henry’s time English kings\(^2\) habitually performed miraculous cures, a power which early in its manifestations began to be considered as an hereditarily transmitted privilege of the royal race. Then, there was intimately and essentially connected with the gift of miracle-working, the holy unction\(^3\) which a king received


\(^2\) Edward the Confessor also had this power: Bloch, p. 45.

\(^3\) Bloch, pp. 66, 68, 74, 135, 141, 207. Cf. also J. Wickham Legg, *The Searing of the English Kings* (1894), pp. 3–8, especially his reference to Wm. Lyndewode, *Provinciale*, lib. iii. tit. 2 (Oxford, 1679), p. 126, “Quod rex uncus non sit mere persona laica, sed mixta”, unlike the chancellor, e.g., who may some day be a layman (p. 125): the anointing was limited to England, France, Jerusalem, Sicily, and towards the end of the Middle Ages Scotland: there were twenty-two kings in Christendom who were neither crowned nor anointed, and only England and France had the right to the “christma”. Legg says also (p. 3) that of the three swords borne before the king at his coronation one shows his claim to spiritual jurisdiction, and that this ceremony can be traced back to Richard I (the three swords were borne before Henry VII, *Rutland Papers*, pp. 9–11). And note especially that Lyndewode’s point is that the king for all his unction cannot by any length of prescription acquire “Jure suo potestatem circa spiritualia, videlicet circa ea quae pertinere ad Reginum Ecclesiasticum, et ministrationem Sacramentorum et Sacramentalium; necnon circa Ecclesiasticae Jurisdictionis exercitum”. [The title which he is here glossing is that against clerks keeping concubines in their houses or visiting prostitutes with scandal.] Cf. also the so-called Anonymous of York and
at his coronation and which conveyed to him a peculiar consecration and something of the priestly character: not all of the priestly character, not as much in England as in France, nor anything very definable, but still something of the priestly character and certainly something very sacred.

It was here that the Lancastrians had succeeded in effectively increasing royal pretensions. The ceremony of unction began in England towards the end of the eighth century, probably in imitation of the rite with which Pippin the Short’s usurpation was sanctified. From the end of the ninth century the legend was believed in France that the oil for the royal unction had been brought down from heaven by a dove at the baptism of Clovis. It was clearly desirable that the kings of England, whether or not they had indeed borrowed the rite from France, should be anointed with oil of not less lofty origin than the oil at Reims. Accordingly, Edward II sought to obtain from John XXII authorisation for the use of a phial of oil alleged to have been presented for the purpose by the Blessed Virgin to St Thomas of Canterbury. Edward failed, but Henry IV was anointed with this

his very regalist, anti-papal, views: see on him Z. N. Brooke, The English Church and the Papacy, p. 160. “His views were as extreme on the one side as were the papal on the other, and to neither would the normal bishop adhere. He remains therefore isolated. However, I think the normal English bishop at the beginning of the twelfth century would have inclined to his standpoint more readily than to Anselm’s. They still believed it to be their duty to obey the royal commands, and Anselm’s refusal to do so undoubtedly shocked many of them. Belief in the sacred character of the kingly office was not confined to this anonymous cleric...” Cf. also H. Spelman, at the end of the Larger Treatise concerning Tithes (1st pubd. 1646), pp. 147 ff. in his English Works (1727), especially p. 148 “anointed also by the Bishops with the Oil of Priesthood”; p. 149 “touching their unction, the very Books of the Law do testify to be done, to make them capable of Spiritual Jurisdiction”, only four monarchies had it, and how and why; p. 150, Edward the Confessor’s Church at Westminster “granted and confirmed” by Nicholas II “a Place of Regal Constitution”—“In which Words I note, first, that the Kings of England in those ancient Days, being before their Coronation merely Lay-Persons, were by their Consecration made candidate Ecclesiasticæ Potestatir... For to what other purpose was Consecration...?”.  

1 Or rather cream, *christma*, olive oil and balm mixed: cf. Legg, p. 5; it was especially a vehicle for the infusion of the Holy Ghost, pp. 5–7 (cf. Rutland Papers, p. 15 for the singing of *Veni Creator Spiritus* and praying *Te invocamus* before the unction): Legg, p. 8, shows how much the royal sacring resembled an episcopal consecration.
Regnal Dates

miraculous oil and succeeded in adding to its legend the belief that the first king so distinguished would reconquer Normandy and Aquitaine: all his successors used the same oil, till James I refused.¹

Nor was this the only way in which the house of Lancaster emphasised the sacred character of kingship and the extent to which it escaped the laws and courts of men. If the transmission of kingship is altogether to escape human control, the insistence upon unction, which might make priestly intervention seem indispensable, requires some qualification. Now, as long ago as Edward I (and ever since) kings had dated their regnal years from earlier than the days of their coronation and unction. The Lancastrians went further.² Henry V and Henry VI each dated his reign from the morrow of his father’s death, and the accession of Henry VI to the realm of France was proclaimed by his heralds over the tomb in which Charles V had just been placed. And Fortescue, the great Lancastrian publicist and our principal authority for what it is rather rash to call the constitutional ideas of the fifteenth century, explained that though the unction was necessary to the king’s curative power yet it was efficacious only when applied to the proper person, to the king legitimate by blood. Otherwise the unction no more conveyed the royal character than ordination would make a woman a priest (said Fortescue),³ or than baptism would make a penguin a Christian.⁴ And Fortescue adds that the right to be king, the fitness to receive the unction, cannot be transferred by the people of England or by anything less than a “disposition of God... known openly by manifest, certain, and authentic revelation”. Nevertheless, the sentimental value of

¹ Bloch, p. 241: but Legg says that though Elizabeth was the last to use the Latin service for her coronation and unction, the Stuart kings were anointed with a pure cream, p. 7.
² J. E. W. Wallis, English Regnal Years, p. 22, and Bloch, pp. 219, 223. Cf. p. 16, n. a. Rather oddly, the Yorkists were in this respect rather less legitimist: Edward IV dated his reign from his father’s death 30 Dec. 1460 (although his father had been spoken of by the commons as king of right) but from his own recognition 4 March 1461 (on the other hand, he took no count in his regnal years of Henry VI’s restoration 9 Oct. 1470–14 April 1471): Richard III reckoned from 26 June 1483, not from his brother’s death on April 9 nor from his nephews’ on June 22.
³ Works (ed. Lord Clermont), pp. 85 f.
unction remained considerable, as may be seen from Henry VII’s scruples about his treatment of Lambert Simnel, who had undergone the ceremony of coronation at Dublin: “They say”, reported Raimondo de Soncino, the Milanese envoy, “that His Majesty, out of respect for the sacred unction, wants to make a priest of him”.¹

It is not intended to suggest that the view of kingship indicated in the above paragraphs was the only possible view at the end of the Middle Ages, nor even that it is the whole of one view: but it is necessary to insist that if the Tudors were inclined by the previous history of their party and dynasty, and driven by the inexorable necessities of their situation, to some acknowledgment of parliament and to some courting of their subjects, yet at the same time their dynasty and party inclined them no less to make the highest claims for their royalty and to refuse all admissions that it was derived from any human source. And while in twentieth-century sentiment about politics the first impulse is usually to ascribe almost a monopoly of mystical force and theological virtue to the people, in fifteenth- and sixteenth-century feeling, on the contrary, if there was any claimant to such monopoly it was the king: and political thinking, at any rate among English politicians, had till then exacted so little definition that there was not even any fixed and clear method of telling who was king, although the king’s claims were loftier than those of any modern government, outside Russia, and his action was indispensable to every legal and social act.

The primary business of any government is to maintain itself: for fifteen years the primary business of Henry VII’s government was to maintain itself against dynastic dangers, and even after that it was always apprehensive of such dangers. By the end of the century—with the capture of Warbeck,² the quieting of Ireland,³ enhanced prestige abroad, the defeat of the Cornishmen at Blackheath⁴—the danger had

¹ Mil. Cal. i, 325, 16 Sept. 1497, quoted in Pollard, Reign of Henry VII from Contemporary Sources, i, 163.
² End of 1497.
³ By the end of 1495: cf. A. Conway, Henry VII’s Relations with Scotland and Ireland, p. 88 and earlier.
⁴ June 1497. Add the execution of Warwick, Nov. 1499: and the return of Suffolk to England and to court about then: and the negotiations for marrying Mary Tudor to James IV, Sept. 1499 to Jan. 1502.
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**Commencement of Reign**

ceased to be imminent: but even then the Spanish ambassador was too optimistic when he wrote that “not a doubtful drop of royal blood remains in this kingdom, except the true blood of the king and queen”.

Suffolk (son of Edward IV’s sister Elizabeth) still represented the White Rose and the government could still be scared of him until (and even after) it got him into the Tower in 1506.

It is not known certainly that Henry assumed the title of king before his victory, but he acted as king on Bosworth field and ever after: that very evening he exercised a royal right by knightling eleven of his followers: and according to Bacon “the king presently that very day being the two and twentieth of August, assumed the title of King in his own name without mention of the Lady Elizabeth at all, or any relation thereunto. In which course he ever after persisted: which did spin him a thread of many seditions and troubles”. Very soon after the battle, almost certainly the next day, he sent out a circular letter which began, “Henry by the grace of God, king of England and of France, prince of Wales and Lord of Ireland”.

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1 “...above all, that of the lord prince Arthur”, *L. and P. 1*, p. 113; C. H. Williams, *England under the Early Tudors*, p. 54.

2 C. L. Kingsford, *Chronicles of London*, p. 233. On 5 March 1503 he and his supporters were solemnly cursed at Paul’s Cross with bell, book, and candle, Kingsford, p. 259. For other evidence of the importance of the dynastic factor, cf. Williams, p. 129.

3 J. Gairdner, *Henry VII*, p. 31: cf. Gairdner’s *Paston Letters*, III, no. 883 (edn. 1900), where is Richard III’s proclamation (23. 6. 1485) denouncing Henry Tudor’s “ambitiousness and insatiable covetousness which encroacheth and usurped upon him the name and title of royal estate of this realm of England”; cf. also Hall’s account of Henry’s harangue before the battle (ed. H. Ellis, 1809), e.g. “such as by murder and untruth committed against their own king and lineage yea against their Prince and sovereign Lord, have disinherited me and you and wrongfully detain and usurp our lawful patrimony and inheritance. For he that calleth himself king keepeth from me the Crown and regiment of this noble realm and country contrary to all justice and equity”. Cf. also Bernard André (ed. Gairdner, *Rolls Series*), pp. 26, 30.


5 Bacon is here following the contemporary authorities, Bernard André and Polydore Vergil, II, p. 1434 (edn. 1603); Bacon’s *Works* (ed. Spedding), VI, p. 31.

6 It is usually said that he reckoned his reign from Aug. 21, but according to A. F. Pollard, *Inst. Hist. Res. Bul.* VII, p. 3, the grounds for this assertion have never been properly investigated. Cf. p. 8 above.