

# The Legislation of Richard III

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An Extract

## Introduction

"AND ALTHOUGH HE WERE A PRINCE in military virtue approved, jealous of the honour of the English nation, *and likewise a good law-maker, for the ease and solace of the common people*; yet his cruelties and parricides, in the opinion of all men, weighed down his virtues and merits; and in the opinion of wise men, even those virtues themselves were conceived to be rather feigned and affected things to serve his ambition, than true qualities ingenerate in his judgment or nature."<sup>1</sup> So wrote Bacon in Stuart times, and was echoed by Gairdner in 1878. Posterity may well be baffled by the psychological notions of eminent historians. It is difficult to imagine a ruler who was at once solicitous for the common people, and yet guilty of cruelties and parricides. The character of Richard III may be said to be in the process of restoration. It has been pointed out with much force that the traditional view of him as a monster of iniquity is borne out by little contemporary evidence, that St. Thomas More, during his reign, was a mere child, and that he, as also the Monk of Croyland, was much under the influence of Morton, Bishop of Ely, and afterwards Archbishop of Canterbury, whose hostility to Richard was notorious and persistent. But it is not the purpose of this article to enter into historical controversy, for which indeed the writer is but ill-equipped.<sup>2</sup> It is, however, its purpose to follow the divine exhortation "Every tree is known by his own fruit,"<sup>3</sup> and to examine the legislation of the first and last Parliament of Richard III, which sat in 1484. It cannot be suggested that from an evil and licentious ruler can never come a good law. Thus Nero, for whose character, at any rate during the later part of his reign, after his matricide, it would be idle to attempt to find a palliative or excuse, did in his early manhood issue the Sc. Neronianum, a statesmanlike measure which prevented the failure of legacies through inattention by the testator to technical rules.<sup>4</sup> Yet posterity might have been kinder to his memory, could it have been shown that the measure was not a solitary effort, but part of a consistent scheme of beneficent legislation. Can this be shown by the legislation of Richard III?

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<sup>1</sup> *History of King Henry VII*, vol. V, p. 6, *Works of Francis Bacon*, Baron of Verulam, Viscount St. Albans, Lord High Chancellor of England (edition of 1819, London).

<sup>2</sup> Reference to every important commentary is made in Appendix II of PAUL MURRAY KENDALL'S *Richard III*. See also the controversy between James Gairdner and Sir Clements Robert Markham, which concentrates mainly on the identity of the murderer of "the Princes in the Tower," in *English Historical Review*, vol. VI, 250, 444, 806.

<sup>3</sup> ST. LUKE, chapter VI, verse 44.

<sup>4</sup> GAIUS, *Institutiones Iuris Civilis*, II, 197, 218.

## Titulus Regius

Gairdner tells us that the accession of Richard III must be dated 25 June, 1483,<sup>5</sup> a "sort of Parliament" having enacted the statute known as "Titulus Regius," which pronounced Edward V and his brother illegitimate, on the strength of Edward IV's marriage to Lady Eleanor Butler, who was still living when he went through a form of marriage with Elizabeth, Lady Grey, the mother of the boys.<sup>6</sup> The coronation of Richard III took place on 6th July, and it was intended that Parliament should assemble on 6th November. But this event was postponed, owing to Buckingham's uprising on behalf of Henry, Earl of Richmond, until 23 January, 1484. It passed fifteen public, and eighteen private statutes.

Of the private statutes the most interesting is Titulus Regius itself. It was repealed by Henry VII, who ordered the destruction of all copies, the original, of course, as Gairdner points out, being always preserved in the custody of the Master of the Rolls.<sup>7</sup> The repeal, in restoring the legitimacy of his queen, Elizabeth of York, furnished Henry with one more support, wherewith to bolster up his weak title through conquest, and his title by descent, which was weaker still. It was, however, a support whose usefulness he was very unwilling to acknowledge, as is shown by his ungracious delay in allowing the queen's coronation, which did not take place until the end of 1487, after the suppression of the rebellion of Lambert Simnel. But the repeal, paradoxically, furnishes fuel for the contradictory theories of Gairdner, that the Princes were murdered by Richard, and of Markham, that they were murdered by Henry. If they were already dead when Henry came to the throne, the destruction of Richard's title could but strengthen that of Henry. If, however, they survived their uncle, and were still alive when Titulus Regius was repealed, they, as well as their sister, were legitimated, and their title necessarily overrode that of Henry.

## Act of Attainder

Most of the other private statutes are of no particular interest. They follow the familiar contemporary pattern. Some confer benefits on individuals, others visit individuals with attainder. But it must be said, in favour of Richard, that the latter were by no means regularly implemented. Morton was one of the objects of an Act of Attainder, but, so far from suffering execution, was committed to the custody of Buckingham. Having encouraged his rebellion, he left him, when he found it doomed to failure, to face its consequences alone, and escaped to join Henry in France."<sup>8</sup> The sixth private statute is entitled "an Act against Margaret Countess of Richmond". She was Lady Margaret Beaufort, the mother of Henry VII, who, although she attended Anne Nevill, Richard III's queen, at his coronation, constituted a constant danger to him throughout his reign, by her regular communications with her exiled

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<sup>5</sup> *Dictionary of National Biography*.

<sup>6</sup> *Encyclopaedia Britannica*. This is enumerated as the first of the private statutes of Richard III. Dominic Mancini, who was in England in 1483, and left it just after Richard's coronation, makes no reference to Edward's pre-contract with Eleanor Butler, but does hint at a pre-contract overseas with another lady, who was, in all probability, Bona, sister of Louis XI of France (see SHAKESPEARE, Henry VI, Part 3, Act 4, Scene 3). But CHARLES ARTHUR JOHN ARMSTRONG, in his edition of MANCINI'S work, *The Usurpation of Richard III* (London, 1936), points out that there is no foundation for this story.

<sup>7</sup> *English Historical Review*, vol. VI, 444, 455.

<sup>8</sup> BACON, *History of Henry VII*, Works, vol. V, p. 158.

son. The statute stripped her of her property, but she never really lost it, for it was given into the custody of her second husband, Lord Stanley, whose treachery to Richard at Bosworth lost him the battle, his crown and his life.<sup>9</sup> Richard's magnanimity is in striking contrast to the unscrupulous chicanery of Henry, as shown in the Act of Attainder passed in the first year of his reign, against Richard's faithful followers. Henry's enactment may be described as conviction and confiscation by fiction, as it dated his accession as having occurred on the day before the Battle of Bosworth. It is satisfactory to note, that this nauseating falsification of history disgusted not only the contemporary Monk of Croyland, but also Henry's zealous apologist Gairdner.<sup>10</sup> The distaste of the English people took very practical shape ten years later, in the form of an Act of 1495, which laid down that in no case could loyalty to one who was at the time king de facto be treated as treason to a subsequent king.<sup>11</sup>

### **Personal Will of the King**

Let us turn to the Public Statutes of Richard III. Bacon gives vent to a certain impish and perverse strain which may be discerned in other parts of his writing, in the enigmatic sentence, "as for the politic and wholesome laws which were enacted in his time, they were interpreted to be but the brocage of an usurper, thereby to woo and win the hearts of the people, as being conscious to himself, that the true obligations of sovereignty in him failed, and were wanting."<sup>12</sup> If the implications of this sentence be resolutely probed, we shall surely find the tongue well embedded in the cheek! Richard was no doubt fortunate in his Chancellor Russell, Bishop of Lincoln, but much legislation in medieval times would never have come to fruition without the personal will, and sometimes initiative of the king.

### **Benevolences**

The second statute is probably the most beneficent of all the legislation of Richard III. It provides, quite simply, that "the subjects of this realm shall not be charged with any benevolences, etc." Its terms are most emphatic. It describes benevolences as illegal exactions, and enacts that the king's subjects be not charged with them, "nor any like charge." It even attempts to arrest the power of future Parliaments to copy Edward IV's precedents, laying down that such charges are to be "damned and annulled for ever."<sup>13</sup> When we recall to mind Richard's unflinching devotion to his brother Edward IV, we must acknowledge that this statute is a very strong demonstration of Richard's even greater devotion to "the ease and solace of the common people."<sup>14</sup> The significance of the statute cannot be appreciated without some account of the medieval history of taxation. Stubbs pointed out that "out of taxation is born a Parliament." Henry II had adopted the jury system for the assessment of taxes. At the same time he taxed other interests than the landed interest. He taxed the merchants in the towns while giving recognition to the principle that the new sources of supply must have a voice in the contributions which they were called upon to make. The

<sup>9</sup> See GAIRDNER, *Life of Richard III*, p. 241, n. 2 (2nd ed., Cambridge, 1898).

<sup>10</sup> *Henry the Seventh* (Twelve English Statesmen), pp. 37-38 (London, 1892).

<sup>11</sup> *Sir William Oldnall Russell on Crimes* (11th ed., by James William Cecil Turner, London, 1958), p. 224.

<sup>12</sup> *History of Henry VII, Works*, vol. V, p. 6.

<sup>13</sup> [32] Cf. ALBERT VENN DICEY, *Law of the Constitution* (10th ed. By Emyln Capel Stewart Wade, London, 1959), p. 65.

<sup>14</sup> [33] BACON, *History of King Henry VII* (Works, vol. V), p. 6; *supra*,

basic principle developed, that the king must, for the ordinary expenses of government, "live of his own," that is to say, on the money paid to him by his tenants in capite in commutation for feudal services; if he required an extraordinary grant, he must apply to Parliament. John's attempts to impose new taxes were checked by Clause 12 of the original issue of Magna Carta, wherein he agreed to levy no new aids or scutages except by the common counsel<sup>15</sup> of the realm. The Wars of the Roses threw into confusion the middle years of the fifteenth century. Much of the flower of Parliament had perished, and Edward IV seems to have preferred to "wrest the law to his authority" by the imposition of benevolences, rather than to go back to the regular process of requests to a Parliament, which must have been politically inexperienced, and undergoing a painful process of reconstruction throughout the period of his reign. Richard III would appear to have been determined to turn his back on the abuses of the past, and rely on Parliament for all extraordinary grants, but treachery at home, and the certainty that an invasion by Richmond from France, backed by French help, could only be a matter of time, forced him to keep the country in a state of readiness to meet it. Even Gairdner acquits Richard of a violation of his own statute. What he did, to cope with the exigencies of the moment, was to institute forced loans. But these differed radically from benevolences, which were out-and-out gifts. The repayment of the loans was safeguarded in every case by "good and sufficient pledges."<sup>16</sup>

But benevolences, to which Richard III, in his direst extremity, scorned to stoop, were unashamedly revived by the insatiable greed of Henry VII. In this policy he was much assisted by the unscrupulousness of "Cardinal Morton's fork,"<sup>17</sup> and the nefarious activities of Empson and Dudley, the prototypes of all agents provocateurs. The money may be said, when first exacted, to have been needed for the war with France, but later Henry continued in his rapacious course simply for the purpose of filling his privy purse.<sup>18</sup> Some of his predecessors might have been justly condemned as spendthrifts, but of all rulers the most odious must be the inveterate miser, who hoards for the sake of hoarding.

### **Bail Extension**

The third statute gave much protection to the liberty of the subject, and sanctity of his property. It is entitled "Every Justice of the Peace may let a prisoner to mainprize. No officer shall seize the goods of a prisoner until he be attained." The preamble recites the inconvenience of imprisonment pending trial, which may give full play to a prosecutor's malice. But the statute contains a provision of a different kind, empowering Justices to inquire into escapes and rescues<sup>19</sup> of persons "arrested and imprisoned<sup>20</sup> for felony." As to the

<sup>15</sup> [34] Or through the Common Council, according as *Consilium* is spelled with an S or a C.

<sup>16</sup> [38] GAIRDNER, *Life of Richard III*, 196.

<sup>17</sup> [39] BACON, *History of King Henry VII* (Works, vol. V), p. 81.

<sup>18</sup> [40] BACON, *History, III*, writes "about this time began to be discovered in the king that disposition, which afterwards, nourished and whet on by bad counsellors and ministers, proved the blot of his times: which was the course he took to crush treasure out of his subjects' purses, by forfeitures upon penal laws. At this men did startle the more at this time, because it appeared plainly to be in the King's nature, and not out of his necessity, he being now in float for treasure." See also *ibid.*, 172, concerning a new commission, late in his reign, "for a general benevolence, though there were no wars, no fears."

<sup>19</sup> [41] Cf. *Russell on Crime*, 11th ed., chapter 21.

<sup>20</sup> [42] This would appear to refer only to untried prisoners.

goods of suspected felons, these are not to be taken, before their owner be convicted, or attainted,<sup>21</sup> or the goods be lawfully forfeited.

### **Adequate Jurors**

The fourth statute is entitled "Of what credit and estate those persons must be which shall be impanelled in the sheriff's tourn." The preamble recites that perjury had been rife in the Court; the innocent had been convicted, the guilty acquitted. To cure these abuses, the statute laid down a property qualification for jurors, property at that time, and until late in the nineteenth century, connoting respectability.

### **Courts at Fairs**

The sixth statute is entitled, "Statute 17 Edward IV c. 2 rehearsed and made perpetual. That in every court of piepowders plaintiff or his attorney shall be sworn." The Courts of piepowder were concerned with inland, the Courts of the Staple with foreign trade. The object of the statute of 1477 was to ensure against the misuse of the Courts by stewards and other officers; the plaintiff must take an oath that the contract in dispute was made in the time and under the jurisdiction of a fair. The preamble recites the danger of "feigned plaints," facilitated by actions which fail to correspond with the actual contracts. The penalty of 100/- against a steward who proceeded without such sworn deposition by the plaintiff, was made recoverable by action of debt. The oath of the plaintiff is not final; the defendant may traverse an allegation that a contract was made within the time and jurisdiction of a fair.

### **Commercial Dishonesty**

The eighth statute had the same broad object, the prevention of commercial dishonesty. It is entitled "The length and breadth of cloths, and the order of dyeing them and wools. The ability of the aulnager, and what cloths he may seal."<sup>22</sup> The safeguards are most elaborate, the provisions going into many technical details.

This statute may be said to provide a powerful index of Richard III's thoroughness, his insight into technical processes, and, above all, his appreciation of the necessity to keep in close touch and consultation with technical and commercial experts. He had a quality of many-sidedness which recalls Henry II and Edward I.

The next five statutes are measures of protection of the English merchant against unfair foreign competition, and were no doubt strongly urged by the burgesses in the Commons.

The twelfth statute has the same purpose of protection, but of native craftsmen. It differs from the tenth in that it contains no exceptions in favour of denizens. Its title is, "Certain merchandizes prohibited to be brought into this realm ready wrought."

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<sup>21</sup> [43] Qu.: does this refer to Act of Attainder, or is the word used in a special sense? GILES JACOB, *Law Dictionary* (8th ed., London, 1762).

<sup>22</sup> [46] Certain types of cloth are exempted.

The thirteenth statute is specifically directed against denizens. Its title is, "The contents of vessels of wine and oil, which may not be sold till gauged." Its object is to prevent the sale of wine and oil in short measure and for excessive price.

### **Resumption of Lands made to Elizabeth Grey, Late Queen of England**

The fifteenth statute is one which we might have expected to find as a private, rather than a public statute. Its title is, "A resumption of all grants, and estates of land, etc., made to Elizabeth Grey late Queen of England." We must surely insert "as" before "late." The appellation "Queen," without qualification, would be inconsistent with the parenthesis, above noted, to the mention of Henry VI in the thirteenth statute.<sup>23</sup> The object of the statute must have been to bolster up the statute *Titulus Regius*, and to emphasize that the "marriage" of Edward IV to Lady Grey was invalid.<sup>24</sup> That Richard III had no intention of really impoverishing her is clear from the fact that all the available evidence goes to show that, after the initial scare, caused by the brush between the forces of Richard, and those of her brother, Lord Rivers, while the young Edward V was being brought to London, the outcome of which was the execution of Rivers, she lived on the friendliest terms with Richard, and brought her daughter to his court, thus providing, incidentally, an almost unanswerable argument against the view that Richard was responsible for the deaths of Edward V and his brother.<sup>25</sup> Further evidence, both of her friendship with Richard III, and of his generosity to her, is provided by the Act of Henry VII, who, early in 1487, enclosed her for the zest of her life, which, in the event, was not long, in a convent at Bermondsey, having first stripped her of all her property, which, in view of the statute under discussion, can only have been bestowed upon her by Richard III in exchange for that which had been settled upon her as Queen, and which that statute took away. And it was expressly given as the reason for her treatment by Henry VII, that, as Bacon puts it, "she had delivered her two daughters out of sanctuary to King Richard, contrary to promise."<sup>26</sup>

### **Conclusion**

Richard III suffered, throughout Tudor times, from the calumnies of a chorus of detractors. This paper will have served its purpose if it has succeeded in portraying him as a singularly thoughtful and enlightened legislator, who brought to his task a profound knowledge of the nature of contemporary problems, and an enthusiastic determination to solve them in the best possible way, in the interests of every class of his subjects. It might be urged that Bacon, in the appraisal of him with which the paper began,<sup>27</sup> might have presented a truer picture if he had confined himself to the concessive clause and omitted the main body of the sentence.

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<sup>23</sup> [57] *Supra*,

<sup>24</sup> [58] *Supra*,

<sup>25</sup> [59] GAIRDNER, in his *Life of Richard III*, 250, writes of her that she "although reluctantly, gave one of her two sons into his keeping, and even after the murder of both, was persuaded to be reconciled and zealously to befriend him." Comment on the extreme unlikelihood of such inconsistent behaviour is surely superfluous! GAIRDNER'S disregard of elementary psychology is forcibly brought out by Miss JOSEPHINE TEY in her penetrating "historical detective" novel, *The Daughter of Time* (Harmondsworth, Middlesex, first published by Peter Davies, 1951, re-published by Penguin Books, Ltd., 1954).

<sup>26</sup> [60] *History of King Henry VII*, 22. BACON conjectures that there must have been "some greater matter against her, which the King, upon reason of policy, and to avoid envy, would not publish."

<sup>27</sup> [61] *Supra*,