

CHAPTER 6

THE POWER OF THE OATH

THE PLANTAGENETS

EDWARD IV

The preceding chapter traced the development of the coronation oath down to the time of Edward IV, and posed the possibility that it was Edward IV's failure to take a coronation oath which led to the distinction made by Sir John Fortescue between a purely regal autocrat who did not take a coronation oath (Edward IV?), and the political king who did take a coronation oath and thus bound himself to the observance and maintenance of the laws of the land (every king except Edward IV?).

An argument against this hypothesis, however, is that Bouchier, Archbishop of Canterbury, is said by the recorder of the Archbishops, Edward Carpenter, to have crowned three kings : Edward IV, Richard III, and Henry VII.¹ It is unlikely that an archbishop would have crowned a king without obtaining from him the coronation oath. Moreover, a copy of a coronation oath can be found in Archbishop Bouchier's Register²

¹ See Edward Carpenter, *Cantuar, The Archbishops and their Office*, Cassell & Company, London, 1971. He gives no source.

² See *The Coronation of Richard III, the Extant Documents*, Anne F Sutton and P W Hammond, Alan Sutton Publishing Limited, Gloucester, 1983, British Library: Add. Ms. 18669 p. 220, and p. 3 and p. 4—Archbishop Bouchier's Register (*Registrum Thome Bouchier*, ed. Du Boulay, 60-61). [This register is that of the Archbishop of Canterbury, and a copy of the oath in English exists in this register. The authors state that the text in the register represents the final and preferred translation, which exists in a rough form in the manuscript of the *Little Deceit*, or coronation programme, of 1483—see Introduction, p. 3 and p. 4] 'Underlined, presumably as a deletion for either Richard III or Henry VII, although underlining is used for emphasis in this section, see note 80 etc. The words do not appear in the other

which contains words different from those in the *Little Device* for Richard III, giving rise to speculation that it could perhaps have been used for Edward IV, or possibly Henry VII.

On the other hand, Edward IV's relations with the clergy were ambiguous at best,¹ and he had assisted in the creation of Bourchier as Cardinal in 1467. In addition, the *Little Device* refers throughout to 'the cardinal' performing the most important offices—thus it is unlikely that the *Little Device* was drawn up for any coronation of Edward IV, as there was no English Cardinal existing at that time—the only English Cardinals were Bourchier from 1467 till his death in 1486, and Thomas Wolsey, Cardinal from 1515 until his death in 1530. This in turn suggests that any text of a coronation oath found in Bourchier's Register was one contemplated in the context of the *Little Device* for Richard III, Henry VII, or Henry's son, but not for Edward IV. The possibility of Edward IV not taking a coronation oath still therefore remains. Or alternatively, he may have taken an oath, but acted in complete disregard of it, thus giving rise to Sir John Fortescue's spleen.

RICHARD III

An omission by Edward IV to take the coronation oath, or a conspicuous failure by him in observation of it, would go a long way towards explaining the apparently innovative actions of Richard III on his claiming the throne, after the publication of Edward's precontract and the subsequent declared illegitimacy of his children. Richard's first action after accepting the election by the people on 26 June 1483 was to 'take the royal oath'² and his second to give the judges 'a long exhortation and strait commandment for the ministering of his laws, and to execute justice, and that without delay.'³ Richard's only *parlement* overturned many of the extortions that had flourished under Edward IV,⁴ and even his enemies admitted that

versions of the *Little Device* (as collated by Legg, *Coronation Records*, 230) nor in the oath as given in But it should be noted that Bourchier crowned three kings, Edward IV, Richard III, Henry VII, and Bourchier had been created a Cardinal in 1467 under the *aegis* of Edward IV. Bourchier died in 1486.

¹ For example, his relationship with the Bishop of Bath and Wells, Stillington—for references, see Kendall, *Richard III*, *op. cit.*, pp. 217-219.

² see T F T Plucknett's 11th edition of *Taswell-Langmead's English Constitutional History From the Teutonic Conquest to the Present Time*, Sweet & Maxwell Limited, London, 1875, 11th edn. 1960, pp. 499-500 [no source given]; and see Allison Weir, *The Princes in the Tower*, The Bodley Head, London, 1992; Pimlico edition, London, 1993, at 128. [no specific source given; inferentially, Croyland's Chronicle]; and see James Gairdner, *History of the Life and Reign of Richard the Third, to which is added the story of Perkin Warbeck from original documents*, Cambridge University Press, Cambridge, 1878, revised edition 1898, p. 94, sourced to Robert Fabyan, *The New Chronicles of England and France*, Henry Ellis (ed.), London, 1811, p. 669.

³ see Gairdner, *History of the Life and Reign of Richard the Third*, *loc. cit.*, p. 94, sourced to Fabyan, *ibid.*, p. 669.

⁴ See T F T Plucknett in *Taswell-Langmead's English Constitutional History*, *loc. cit.*, pp. 184-186.

he had enacted wise and good laws.

Richard as Lord Protector had set in train arrangements for Edward Plantagenet's coronation on 22 June, they being cancelled only about 17 June, presumably after the Council had been convinced of the existence of Edward IV's pre-contract.¹ It is not unlikely then that the *Little Device* prepared for the coronation of Richard III and his queen had been begun for that of Edward Plantagenet. It is the first coronation Ordo to be entirely set out in English.²

It must be borne in mind, however, that the *Little Device* was merely a device, and there is no certainty that the text of the draft oath contained in it was actually used by Richard III. Indeed, it is quite possible that he took some other oath, perhaps even the unamended 'Henry VIII' oath³, which had been printed by Lettou and Machlinia in 1483⁴, just before Richard became king.⁵ To assist in the following analysis, two tables are provided below. The first compares the c.1483 oath in *Little Device* for Richard⁶ with an c.1272-1377 Anglo-French version of an English coronation oath,⁷ and the c.1300-1350 oath in the *Corounement de nouel Roi* (The Coronation of the new King) for an English coronation dating from some time in the early fourteenth century.⁸ The second compares the *Little Device* for Richard III with the English translation of the 1483 Lettou/Machlinia oath (the 'Henry VIII oath')⁹,

¹ For the discussion on this, see *supra*, p. 105 ff.

² See discussion at p. 109, and note 1, p. 109 *supra*.

³ Further detailed analysis of the 'Henry VIII oath' is to be found *infra* at 'Henry VIII and his coronation Oath', pp. 255 ff.

⁴ See William Blackstone, *Commentaries on the Laws of England, A Facsimile of the First Edition of 1765-1769*, with an introduction by Stanley N Katz, University of Chicago Press, Chicago, 1979, Vol. I, at p. 229, note h—'the old folio abridgement of the statutes, printed by Lettou and Machlinia in the reign of Edward IV, (*penes me*) there is preserved a copy of the old coronation oath; which, as the book is extremely scarce, I will here transcribe.' Tit. Sacrementum regis. Fol. M. ij; and Stubbs, in *Const. Hist.*, Vol. II, §179, p. 109, n. 2, sourced to sources it to Machlinia's edition of the *Statutes of the Realm*. Henry R Plomer, *Wynkyn de Worde & His Contemporaries from the death of Caxton to 1535, a Chapter in English Printing*, Grafton & Co, London, 1925, at p. 159 notes that '...During 1482 and a part of 1483, Lettou and Machlinia printed ... the *Abbreuiamentum Statutorum*, [Abridgment of the Statutes]...'

⁵ See discussion *infra*, at p. 248, pp. 250-252, and pp. 257-263

⁶ From *The Coronation of Richard III, the Extant Documents*, Anne F Sutton and P W Hammond, Alan Sutton Publishing Limited, Gloucester, 1983, British Library: Add. Ms. 18669.

⁷ From J Wickham Legg, (ed.), *Three Coronation Orders*, for the Henry Bradshaw Society, printed for the Society by Harrison and Sons, London, 1900, said by Legg to be an Anglo-French version of an order for the coronation of the English king, in 'a manuscript, No. 20, belonging to Corpus Christi College, Cambridge (Legg, Introduction, p. xxxi), and dating from between 1272 and 1377, with a preference towards the earlier time span. (see Legg's Introduction, pp. xxxi-xxxii). Text at Appendix I, *post*.

⁸ See *Corounement de nouel Roi*, from J Wickham Legg, *Three Coronation Orders*, *loc. cit.*, Appendix XI, pp. 121-124, extract from a Chancery Miscell. Roll 18/3 (dors.), Public Records Office. Legg relies on a dating for the writing given by a Mr Salisbury of the first half on the 14th century. Text at Appendix I, *post*.

⁹ Text examined by Henry VIII, British Museum Cotton Manuscript Tib. E. V iii. Fo. 89, as quoted and reproduced in facsimile in Legg, *English Coronation Records*, p. 240. This is a translation in English of the Oath, published by Lettou and Machlinia in *Abbreuiamentum Statutorum* 1482-3, and referred to by Blackstone in his *Commentaries*, *op. cit.*, Vol. I, at p. 229, note h.

and with the text of the oath in the *Liber Regalis* (*The Royal Book*, or *The Book of the Royal Office*) (c.1351-1377).¹

¹ Text of *Liber Regalis* to be found in Leopold G Wickham Legg, *English Coronation Records*, *loc. cit.*, at p. 81 (Latin Text); translation of Oath at p. 117; Legg uses a manuscript held by the Dean of Westminster, dated at about the time of Richard II; Legg gives no specific date. Texts of the oath in Latin, and the English translation, together with other major variants including the French text of the English *Liber Regalis* oath(s) are to be found in Appendix I, *post*. The text of the final recension of the *Liber Regalis* dates from 1351-1377, according to H G Richardson, 'The Coronation in Medieval England', *Traditio*, Vol. 16, 1960, 111-202, see p. 112, and p. 149.

Little Device for Richard III

c.1272-1377 Anglo-French
Oath

Et puis apres prechera le
erceusque et quant il auera
preche si demaundera de celui
que est a coroner. Si uoudra
granter & garder et par sermant
& confermer a seint eglise & a
son people les leys & les
custumus que grante furunt des
aunciens roys & que a deu furent
deuout & nomement les leys
coustumus & les franchises que
furent grantees a la clergie & al
people par seint edward

Et il oudra promettre & se
assents a tut ceque lerceuesque
lui ad demande.

Donks lui dirra lerceuesque sur
que le chose il iurra.

Garderet uous a seint eglise la
clergie & al people la pes
entierement & lamur en deu
solompk oustre poer.

E li roy respoundera. Ie les
garderoy.

Freetz faire en touz uos
iugementz owel & droiturel myse
et descrecio od uerite & merci
solont uostre poer.

Et il respo.' Ieo les fray.

Grantez vous les leys & les
custumus & promittiez a tenir les
& defendre al honur de dieu que
la commune de uostre realme
eslirra.

Respo' Ieo les grant & les
promet.

Et puis a ceo serra aiustee ceo
que comune uoudera ordiner
solonc ceo que hom entendra
que bien soit.

Et quant tut ceo serrs fait et lui
roy serra corone il auera tut ceo
grante il fera le serment en la
manere que le erceusque luy
chargera.

Et apres ceo lerceuesque
comencera deuotementez.

Ueni creator. ...

Coronnement de nouel Roi
c.1300-1350

...et a donques a lieu auantdit,
issi apparaiez se assemberont les
Prelatz, et les nobles de la tere de
la consecracion de nouel prince
et de confermer et establer
fermer les lays et les custumes du
Roialme: ...

Apres sarra vn sermon couenable
dit par ascun prelat, si le temps le
soffre.

Apres li demandera lerceueuk
oue mene et distincte voice, sil
voil les lays et les custumes
anciens, et droiturels de
terroituels Rois, et a dieu
deuotz, granter al people
dengleterre oue confirmacion de
serement, garantir, et garder et
numement les lays, et les
custumes, et les Franchis, grantiz
al clergie, et al people de
Glorieuse Roi Saint Edward

et sil promette assentir atotes
cestes choses, adonc li die
lercheueuk de queles choses ile
iurra; vous garderez a saint eglise
et a clergie, et al people pees de
tut, et concord en dieu solonc
vostre poer: *et le Roi respondera, Jeo
garderay.*

vous freez faire entoutz voz
iugementz ouel et droiturel
iustice et descretioun en mercy et
en verite solonc vestre poer: *le
Roi respondera, ieo fray.*

vous grantez les droiturels leyset
les custumes estre a tenir, et
promettez a defendre, et al
honour de dieu confermer les
droiturels leis quels le people
eslira solonc vostre poer; *et le roi
se abessera deuant lautere, jeo grante et
jeo promette.*

Cestes chose parfaites,
encommence lerceueuk par haut
voice, *veni creator...*

1483 Richard III *Little Device*

The sermone ended if any suche
be the Cardynall and the Kynge
that is to be coronyd soo sitting
as above saide the same Cardinall
with an open and distincte voice
shall aske the Kynge under this
forme,

Woll ye graunte and kepe to the
peopill of England the lawes and
the custumys to them as of olde
rightfull ande deuoute Kinges
graunted and the same ratefye
and conferme by your othe and
specielly the lawis custumys and
liberties graunted to the clergie
and peopell by your noble
predecessours and glorieux Kynge
Seinte Edward. The Kynge shall
answer I graunte and promytt.

And when the Kynge befrom all
the people hath promitted truly
to graunte and kepe all the
premisses [then shall the said
Cardinall open unto him the
special] articulis wherunto the
[king shalbe sworn the sa]me
cardinall sayyng as folowith.

Ye shall kepe after youre
strength and powoir to the
chirch of God to the clergie and
the people hoole peace and
Goddely concord, the Kynge
shall answer I shall kepe.

You shall make to be doon after
your strength and powoyr egall
and rightfull justice in all your
doomys and judgements and
discretion with mercy and
troueth. The Kynge shall answer
I shall doo.

Doo ye graunte the rightfull
lawes and custumes to be holden
and promytt ye after your
strength and pouer lawes as to
the worship of God shalbe
(made) chosyn by your people (in
parlement) by you to be strengted
and defended. The King shall
answer I graunte and promyt.

Little Device for Richard III

1483 Lettou ('Henry VIII Oath')

The Othe of the kinges highnes

This is the oath that the king shall swere at y[e] coronacion that he shall kepe and mayntene the right and the liberties of holie church of old tyme graunted by the rightuous Cristen kinges of Englonde.

And that he shall kepe all the londes honours and dignytes rightuous and fre of the crowne of Englonde in all maner hole wtout any maner of mynyschement, and the rightes of the Crowne hurte decayed or lost to his power shall call agayn into the auntyent astate,

And that he shall kepe the peax of the holie churche and of the clergie and of the people wt good accorde,

And that he shall do in his iudgementes equitye and right justice wt discrecion and mercye

And that he shall graunte to holde lawes and customes of the realme and to his power kepe them and affirme them which the folk and people haue made and chosen And the evil Lawes and customes hollie to put out, and stedfaste and stable peax to the people of his realme kepe and cause to be kept to his power.

[Text examined by Henry VIII, British Museum Cotton Manuscript Tib. E. V iii. Fo. 89, as quoted and reproduced in facsimile in Legg, *English Coronation Records*, p. 240. This is a translation in English of the Oath, published by Lettou and Machlinia in *Abbreuiamentum Statutorum* 1482-3]]

LIBER REGALIS c.1351-1377

'Sire, will you grant and keep and by your oath confirm to the people of England the laws and customs given to them by the previous just and God-fearing kings, your ancestors, and especially the laws, customs, and liberties granted to the clergy and people by the glorious king, the sainted Edward, your predecessor?' 'I grant and promise them.'

'Sire, will you in all your judgements, so far as in you lies, preserve to God and Holy church, and to the people and clergy, entire peace and concord before God?' 'I will preserve them.'

'Sire, will you, so far as in you lies, cause justice to be rendered rightly, impartially, and wisely, in compassion and in truth?' 'I will do so.'

'Sire, do you grant to be held and observed the just laws and customs that the community of your realm shall determine, and will you, so far as in you lies, defend and strengthen them to the honour of God?' 'I grant and promise them.'

1483 RICHARD III *LITTLE DEVICE*

The sermone ended if any suche be the Cardynall and the Kynge that is to be coronyd soo sitting as above saide the same Cardinall with an open and distincte voice shall aske the Kynge under this forme,

Woll ye graunte and kepe to the peopill of England the lawes and the custumys to them as of olde rightfull ande devoute Kinges graunted and the same ratefye and conferme by your othe and specially the lawis custumys and liberties graunted to the clergie and peopell by your noble predecessours and glorieux Kyng Seinte Edward. The Kynge shall answer I graunte and promytt.

And when the Kynge befrom all the people hath promitted truly to graunte and kepe all the premisses [then shall the said Cardinall open unto him the speciall] articulis wherunto the [king shalbe sworn the sa]me cardinall sayinge as folowith.

Ye shall kepe after youre strength and powoir to the chirch of God to the clergie and the people hoole peace and Goddely concord, the Kynge shall answer I shall kepe.

You shall make to be doon after your strength and powoyr egall and rightfull justice in all your doomys and judgements and discrecion with mercy and troueth. The Kynge shall answer I shall doo.

Doo ye graunte the rightfull lawes and customes to be holden and promytt ye after your strength and pouer lawes as to the worship of God shalbe (made) chosyn by your people (in *parlement*) by you to be strengted and defended. The King shall answer I graunte and promyt.

The first observation to be made is that the *Little Device* is quite different from the text of the oath reproduced in the *Liber Regalis*.¹ The former has quite a different fourth clause, and in the third clause refers to ‘dooms² and judgements’, strongly suggesting that the compiler had an Old English text before him. Secondly, there is a close correlation between the *Little Device*’s fourth clause, and that of the *Coronnement de nouel Roi*³ the writing of which dates from the early part of the fourteenth century⁴—that text uses the words *les droiturels leyset les custumes* to refer to the laws and customs which the king must grant. That word *droiturels* is difficult to translate, having no immediate equivalent in English; ‘droit’ means something equivalent to ‘right,’ ‘law,’ ‘just’ ‘duty’ all combined, to something inherent.⁵ English kings since the time of Richard I use the motto, ‘*Dieu et mon droit*’. This is usually translated these days as ‘God and My Right’. But it would be more correct to say ‘God and My Duty-Right-Obligation-Justice’. So *droiturels* has a meaning pertaining to righteous, just, and also has a flavour of association with the king and his law and duty. The Latin text of the *Liber Regalis* translates this as *Concedis iustas leges et consuetudines esse tenendas*⁶ (just or lawful laws and customs), the French *Liber Regalis* has *les leyes et les custumes droitures*⁷, and Leopold Wickham Legg translated this into English in 1901 as meaning ‘the Laws and rightful Customs’,⁸ which in turn is what Charles I is reported by Clarendon to have said that he swore.⁹ But the *Little Device* has the terminology ‘rightful’ laws and customs, which is almost

¹ See text of *Liber Regalis* oath at Appendix I, and also at p. 216, and p. 238 *supra*.

² O.E. *dom*, judgement, law, decree, sentence; plural, *domas*

³ vous grantez les droiturels leyset les custumes estre a tenir, et promettez a defendre, et al honour de dieu confermer les droiturels leis quels le people eslira solonc vostre poer—will you grant to hold the *droiturels* righteous/just laws and customs, and to the honour of God confirm the righteous/just laws the people *eslira*/choose to the utmost of your power.

⁴ from J Wickham Legg, (ed.) *Three Coronation Orders*, for the Henry Bradshaw Society, Vol. XIX, printed for the society by Harrison and Sons, London, 1900, Appendix XI, pp. 121-124. Extract from a Chancery Miscell. Roll 18/3 (dors.), Public Record Office. Legg says that ‘The writing, Mr Salisbury tells me, is of the first half of the fourteenth century.’ [refers to an English coronation—references to Westminster]

⁵ See also discussion at p. 316, *infra*, and refer to Robert S Hoyt, ‘The Coronation Oath of 1308,’ *English Historical Review*, Vol. 71, 1956, 353-383, at pp. 363-364.

⁶ From Leopold G Wickham Legg, *English Coronation Records*, Archibald Constable & Company Limited, Westminster, 1901, at p. 88 (Latin Text); Legg uses a manuscript held by the Dean of Westminster, dated at about the time of Richard II; Legg gives no date

⁷ From Sir Matthew Hale, *Prerogativa*, at p. 66, sourced to Rot. claus. 1 Edw. 2, m.10 (schedule); *Cal C.R.* (1307-1313) p.12; *Foedera*, iii, 63.

⁸ Legg, *loc. cit.*, p. 117, and p. 251

⁹ See p. 157, para. 299 of Edward, Earl of Clarendon in his *History of the Rebellion and Civil Wars in England*, written between 1641 and 1648, in Book V, paragraphs 292 ff., at Vol. II, (Books V and VI), p. 155 of the ‘edition re-edited from a

a direct translation from the *Corounement*, and would seem a more sensible reading—'rightful' customs implies that these are opposed to 'unrightful' customs, which seem unlikely ever to have existed.

RICHARD III AND THE WORSHIP OF GOD

But then that part of the oath goes on: 'Do you grant [to be held] the rightful laws and customs, and promise after your strength and power [to strengthen and defend] *laws as to the worship of God* as shall be (made) chosen¹ by your people (in *parlement*)².'

It is in this text that we are directly confronted with the dilemma of the fourth clause that arose from the seventeenth century interpretation. The word 'chosen' is written above the word 'made', and the words 'in *parlement*' are underlined, either for emphasis or to indicate deletion, and are not included in any other copy of the *Little Device* nor the copy of the oath in Archbishop Bourchier's register. I doubt that any definite conclusion may be made about whether or not this text of the oath was actually taken.³ I would hazard a guess however, that if the oath were taken it would more likely have been that of Richard III than that of either Edward IV or Henry VII, mainly because of Richard's emphasis from the beginning of his reign on the maintenance of just laws, and his use of *parlement* to rectify the abuses that had become endemic under Edward IV.⁴ In any event, it was on those 'rightful' laws and customs which the king was to grant to uphold.

fresh collation of the original MS. in the Bodleian Library', by W Dunn Macray, in six Volumes, Clarendon Press, Oxford, 1888; reprinted Oxford University Press, Oxford, 1958.

¹ *The Coronation of Richard III, the Extant Documents*, Anne F Sutton and P W Hammond, Alan Sutton Publishing Limited, Gloucester, 1983, British Library: Add. Ms. 18669; at p. 213, and at p. 220 respectively—'*Chosyn* written above'.

² Sutton and Hammond, *ibid.* p. 220—'in *parlement*' 'underlined, presumably as a deletion for either Richard III or Henry VII, although underlining is used for emphasis in this section, see note 80 etc. The words do not appear in the other versions of the *Little Device* (as collated by Legg, *Coronation Records*, 230) nor in the oath as given in Archbishop Bourchier's Register (*Registrum Thome Bourchier*, ed. Du Boulay, 60-61). [This register is that of the Archbishop of Canterbury, and a copy of the oath in English exists in this register. The authors state that the text in the register represents the final and preferred translation, which exists in a rough form in the manuscript of the *Little Device*, or coronation programme, of 1483—see Introduction, p. 3 and p. 4] But it should be noted that Bourchier crowned three kings, Edward IV, Richard III, Henry VII, and Bourchier had been created a Cardinal in 1467 under the *aegis* of Edward IV. Bourchier died in 1486. Any oath in his keeping could have represented a draft for any of these kings; or a text taken by one but not another.

³ cf.: note Jerdan's caution about accepting what was written in the *Little Device* of Henry VII as what the king actually swore; see *Rutland Papers, Original Documents*, William Jerdan, (ed.), Printed for the Camden Society, 1842; reprinted with permission of the Royal Historical Society, by AMS Press, New York, 1968, at p. 1.

⁴ Cf. His speech to the judges on assuming the crown, and also refer to Plucknett, *Taswell-Langmead's English Constitutional History*, *loc. cit.*, pp. 184-186.

But perhaps a more significant aspect of the *Little Device* oath is that part of the fourth clause obliging the king to grant 'to uphold *the* rightful laws and customs' (which must I think mean those laws and customs already referred to in the first clause), and then he swears to strengthen and defend *those laws as to the worship of God as shall be chosen by his people*. (This is quite different from the *Liber Regalis* text which speaks of upholding the laws to the honour of God, rather than the laws themselves being for the worship of God).

The *Little Device* text makes a clear distinction between these two aspects of the promise in the oath's fourth clause. 'The worship of God' here could have two meanings—it could mean laws relating only to religion and the worship of God, and there had been many made in the past, usually to combat purported incursions on English sovereignty by the pope, and to regulate the affairs of the church. Or it could mean only those laws which the people choose which are not incompatible with the laws of God—clearly the king by his oath cannot swear to uphold unjust laws : but if this interpretation is accepted, then there is clearly a tautology, or a redundancy between this second part of the fourth clause, and its first part; and also with the first clause of the oath.

It is possible Richard envisaged making changes to the laws regarding the church. He exhorted church leaders to reform the church.¹ He was a rudimentary Puritan, he owned and had inscribed in his own hand a text of Wycliffe's translation of the New Testament.² But it certainly appears that laws as to the worship of God, in one way or another, were fundamental to this *Little Device* text. Whether Richard uttered these words is another matter.

However, it should be remembered that his *Titulus Regius* included specific reference to Richard's title being 'grounded upon the laws of God and nature, and also upon the ancient laws and laudable customs of this said realm'.³

¹ See Richard's address to the clergy, 1484, reported in David Wilkins, *Conalia*, 4 Vols., London, 1737, III, pp. 614-616, extracted and quoted from in Paul Kendall, *Richard III*, George Allen & Unwin, London, 1955; reprinted 1956, 1957, 1961, 1965, 1968, 1973; published in paperback by Unwin Paperbacks, London, 1987, at p. 315, and see note 8, p. 487.

² See *Grants of King Edward the Fifth*, J G Nichols, (ed), Camden Society, 1854, p. xxxiv, and Kendall, *Richard III*, *loc. cit.*, at p. 314, p. 320, and note 12, p. 488.

³ *Titulus Regius*, 1484, 1 Ric. III, *Rot. Parl.* VI, 240-242. For Text see Appendix II.

CONTINUING JURISDICTION

But in either case, the king is promising to strengthen and defend such laws 'after' his strength and power. This phrase in later years was interpreted variously in the oaths as : 'as much as in you lies'; or 'to your power', and in the 'Henry VIII oath' the analogous phrase was rendered by 'to your power'.

There are a number of meanings which could attach to 'to his power', or 'after his strength and power'. The phrase could mean that the just laws chosen by his people are strengthened and defended by him because they are aggregated to his power. After just laws are chosen (and there can be no just law unless it is agreed to by all who use it, which includes the king, as he is the source of jurisdiction), then these laws automatically become part of existing the laws of the land which the king already has promised to grant and hold to in clause 1 of the oath. In this fashion it could well be argued that the fourth part of the oath, or any part of the oath which uses the words 'to your power' or 'after your strength and power', means that whatever is there mentioned is added to the already existing jurisdiction of the office of king, as it had existed at the demise of the preceding king.¹ This

¹ I had thought initially that this interpretation of the oath could well have overcome the need for a *Demise of the Crown Act*, in that the oath itself provided for a continuous jurisdiction. But these Acts relate to offices, while the Oath relates to the laws, and are probably necessary to maintain the continuity of the office-holders, though they are not necessary for the continuity of the law, this being secured by the Oath and the other common law procedures of the coronation. (See my comments *infra* at p. 473) There is an hiatus between the death of one king and the coronation of the other; thus while at law, there is a presumption that the office of king passes to the heir, also at law that heir is not specifically known to the law until the coronation ceremony, when he is recognised as king, undertakes the office by swearing his oath, and is elevated into it by the anointing. For example, at law in 1649, the office of king presumptively passed at once to Charles II, notwithstanding the Interregnum, and his office of king was recognised and formally ratified at law by his coronation in 1661. The laws of the land which Charles II promised to uphold in 1661 did not include any of those of the Interregnum, as they were not 'just' laws nor were they chosen by his people according to the law. Thus no 'laws' of the Interregnum appear on the statute book to this day. On the other hand, James II and VII was still anointed and crowned king when William and Mary were invited to the throne. They had no legal title whatsoever when they were proclaimed king and queen, and the laws as under James II and VII continued to run. Legally, James II and VII was still king, and the heir apparent was his son by his second marriage (the children of his first marriage being female). However, as soon as William and Mary were recognised, took the coronation oath and were anointed, they legally became king and queen, with the king exercising the royal power: that is, having the jurisdiction to enforce and uphold just laws. James II and VII no longer had the legal jurisdiction which had been conferred on him by his coronation oath, and was therefore legally no longer king; although he was still a king anointed, he had no temporal power. Thus in every legitimate succession, there is a small hiatus in the jurisdictional capacity of the king, until the coronation of the next king, but the taking of the coronation oath retrospectively ratifies any just laws which may have been made in the interim. In illegitimate successions, the laws as under the legitimate king continue to run until the illegitimate successor is recognised, takes the oath, is anointed and crowned (cf. James II). If the illegitimate successor does not take the oath and is not crowned according to the common law, then the laws as under the legitimate deceased king continue to run, (cf. Charles I) until someone meets the common law requirements for the office of king. Invasion involves the possibility of imposition of the conquerors' laws upon the populace, but could not, I believe, eradicate the allegiance owed by the people to their king unless that allegiance was willingly renounced by the people. A king can never renounce his responsibilities to his people, because of his oath of governance, except possibly at the request of his people. No revolution disposing of the king and the office of king can have any legal effect,

phrase could be seen as allowing the king's jurisdiction to be forward-looking, and as giving him the authority to enforce not only already existing laws, but also those laws which are to be made in the future. In effect, what this part of the oath does is to guarantee a seamless continuation of the jurisdiction of the king, with a new king effectively ratifying all just laws and customs which have occurred up to the date of his coronation, and also guaranteeing a continuation of the enforcement, observance, and making of just laws into the future.

If one were to read the phrase as meaning 'as much as in you lies', then clearly this also is a reference to the powers of the king—that is, he must strengthen and defend the laws 'as much as lies within his power to do so'. In real terms, I do not believe that this gives rise to any different result from the one I have just outlined. The major point, however, is that it is the king's power which grants, strengthens and defends the laws.

It should be noted here that the *Titulus Regius*¹ of Richard III specifically expressed Richard's title as 'perfect in itself, as being grounded on the law of God and nature, the customs of the realm, and the opinion of the wise.' This echoes, as to from whence the office of king emanates, (at least as to the laws of God and nature and the customs of the realm) the precepts of Glanvill, Bracton and Fortescue, as well as the position of the judges in the *Duke of York's Claim to the Throne* – though the judges in that case also included the 'lords of the king's blood' as being able to decide upon the question, thus probably leading to the inclusion of 'the opinion of the wise' in the rehearsal. And *Titulus Regius* goes on that

without continued support of the people over a long period of time which could give it legitimacy on the basis of the doctrine of prescription. The effect of these two instances (invasion and revolution) in the modern British context have not been discussed in this work, because of their complexity—either would however completely revolutionise British governance and its laws, and raise issues relating to obedience and allegiance, because the king is the pivot as well as the apex of British governance. Moreover, the British kingship and British governance being a Christian kingship and governance, any such invasion or revolution would also raise profound questions relating to the laws of God/nature/reason which have underpinned all British governance to the present time. This work examines the legal position of the British king; and space has not permitted, as I have said elsewhere, an examination of the religious aspect or the natural law aspects relating to the kingship, except in so far they have impinged upon the development of the legal foundation of the office of king (through election/recognition, and the oath of governance)—see my comments in the Preface at p. viii, and see also my note 6 p. 16 *supra*, and note 4 p. 152 *supra* and discussion at p. 346 *infra* and the notes thereto. The upshot is that while the coronation retrospectively ratifies any just laws between the death of one king and the crowning of the next, the *Demise of the Crown Acts* ensure that *office-holders* under one king can continue in their office notwithstanding that the next putative king has not yet been crowned; this is a matter of administrative common sense. The *Demise of the Crown Act* 1901 (1 Edward VII, c. 7), is still the law correcting a situation whereby *offices* held under the crown (including Ministers) are not affected by the death of the monarch. An earlier Act, the *Representation of the People Act* (30 & 31 Victoria, c. 102, s. 51, §§ 8, 9) provided that the duration of parliament was independent of the death of the king. (The *Demise of the Crown Acts* deal with offices under the crown.)

¹ *Titulus Regius*, 1484, 1 Ric. III, *Rat. Parl.* VI, 240-242. For text see Appendix II.

he is king 'by right of lawful election, consecration and coronation.' This was the means by which Richard assumed legally the office of king. They then state that in addition to these well established precedents, he was also king 'by right of consanguinity and inheritance.' This if Edward Plantagenet and his siblings were still alive in the Tower or elsewhere, and if their declared illegitimacy were untrue, was clearly false; if Edward IV's children were dead, or were in truth illegitimate, or if Edward IV had indeed been a bastard, it would be true.¹ But in either event, once Richard had been elected, taken the oath and been anointed and crowned, he was legally king until his death or until someone else had been crowned according to the ancient ceremony in his stead.

Richard died fighting on Bosworth Field. But the jurisdiction and laws of the realm continued unimpeded and undiminished because Henry VII was recognised, took the coronation oath, was anointed and crowned, and proceeded to establish the Tudor dynasty.

THE TUDORS

For some two hundred years, from the later years of Edward I in the declining days of the thirteenth century, until the resolution of the Wars of the Roses by Henry Tudor's victory at Bosworth, England had been dominated by the struggle between the Crown and the magnates, and between the magnates for the crown. Edward III and Richard II were in their minorities when they ascended the throne in 1327 and 1377 respectively, and Henry VI was a mere nine months old when he became king in 1422.² This had led to an aggregation of power to the magnates in the name of the crown, and led also to lawlessness, disorder, maladministration, and corruption on the widest scale. Henry VI's minority had seen 'the least effective government it had experienced for three centuries.'³

¹ It is worth considering carefully the statement by Sir Francis Bacon in his *History of the Reign of King Henry VII*: 'Neither wanted there even at that time [1485] secret rumours and whisperings, which afterwards gathered strength and turned to great troubles, that the two young sons of King Edward the fourth, or one of them, which were said to be destroyed in the Tower, were not indeed murdered, but conveyed secretly away, and were yet living: which, if it had been true, had prevented the title of the lady Elizabeth.' (see, Sir Francis Bacon, *History of the Reign of King Henry VII*, written 1621-1622, published 1622, based in turn on a fragment written some time earlier and drawn upon by John Speed in his 1609 *History of Great Britain*, reprinted with notes by Rev. J Rawson Lumby, as *Bacon's History of the Reign of King Henry VII*, Cambridge University Press, Cambridge, 1876, reprinted 1880, 1881, 1885, 1888, 1889, revised edn. 1892, reprinted 1902, at p. 8).

² And see discussion by Professor S B Chrimes, in *English Constitutional History*, Oxford University Press, Oxford, 1948; 4th edn. with new material published as an Oxford University paperback 1967, reprint 1978, at p. 84.

³ Chrimes, *English Constitutional History*, *ibid.*, p. 84.

Henry's Chancellor, Sir John Fortescue, had propounded a scheme for administrative reform in his *Governance of England*.¹

Commentators invariably see the 'modern monarchy' as beginning with Henry VII, and use 1485 as the date from which the 'modern' period dates. Henry VII is credited with using Sir John Fortescue's examples in the *Governance of England*, and in taking steps to redress the exchequer and the laws,² though of course Richard III had enacted many reforms during his only *parlement*, and was far more emphatic on the observance of the law at the beginning of his reign than was Henry VII. But the Plantagenet blood was almost gone—Richard III was dead, and the Princes had disappeared; Henry planned to marry the daughter of Edward IV and to kill the other legitimate male Plantagenet, Edward Earl of Warwick³. However, the rule of the common law and its institutions remained, in part because of Richard III's emphasis on maintenance of the law, and in part due to the magnates' refusal to acknowledge any title in Henry *de jure belli*⁴, thus maintaining the flow of the laws. Henry's pursuit of legitimacy, and his attainder or eradication of potential opponents, led eventually to stability.

Great constitutional changes occurred under the Tudors, and scholars have for centuries debated the circumstances of king Henry VIII's 'Great Matter', and the Reformation of the catholic church in England. But little is known of the coronation oath during this pivotal time, when the incumbent of the office of the crown was catholic, then protestant, then catholic then protestant again. (This would appear to be because the parliamentarians, perhaps William Prynne, stole the copies of the coronation books during the trial of Archbishop Laud for allegedly changing Charles I's coronation oath.)⁵ And what little is known of the situation of the coronation oath under the Tudors is itself far from clear.

¹ See pp. 230-231, *supra*. And see Chimes, *English Constitutional History*, *loc. cit.*, pp. 89-90; and see Chimes, Introduction to Sir John Fortescue, *De Laudibus Legum Anglie*, *op. cit.*, at p. cv.

² Refer to any historical compilation of documents for the cut off at 1485; and see Chimes, *Constitutional History*, *loc. cit.*, at p. 84 ff.

³ See note 3, p. 115 *supra*.

⁴ See discussion *supra*, at p. 111.

⁵ See Extract from *The Tryal of the most Reverend Father in God, William Laud, Archbishop of Canterbury*, which began March 12, 1643. Wrote by himself during his imprisonment in the Tower, from *State Tryals*, London, 1719, Vol. IV, p. 427, extracted in turn in Rev. Joseph H Pemberton, *The Coronation Service according to the use of the Church of England with Notes and introduction, with reproductions of the two celebrated pictures in medieval coronation Mss., inserted by special permission, with three pictures, viz: the Coronation of James II, and the vestments used thereat*, 2nd edn., Skeffington & Son, Piccadilly, (Publishers to His Majesty the King), London, 1902, pp. 83-84. See also text at my Appendix I.

HENRY VII

Henry Tudor's preoccupation with legitimacy led to the passage of his *Titulus Regius*,¹ which attempted to remove 'all ambiguities and questions' concerning his title, while simultaneously eradicating any record of Richard's *Titulus Regius*.² Scholars have stated that Henry VII used the *Little Device* prepared for Richard III's coronation. For example, Leopold Wickham Legg has asserted in his *English Coronation Records*,³ that Henry VII took an oath similar to that of Richard III, as represented in the *Little Device* for Henry VII which he reproduced. But the *Little Device* oath was not, as William Jerdan⁴ perceptively remarked in 1842, necessarily the same as that which the king actually made, as the *Little Device* was merely a liturgical plan for the ceremony, and intended to be submitted for the correction of the king. The Archivist of the College of Arms, Dr Robert Yorke, has stated that 'the herald's and other accounts (of the coronation) are concerned with the general nature of the coronation ceremonies they describe, being in some cases schemes written before the event. The precise wording of the oath or oaths would not have been a major concern of their compilers.'⁵

An examination of the texts of the *Little Device* leaves considerable doubt as to whether it was ever actually used by Henry VII⁶— moreover, one has the clear impression that Henry would not touch anything that smelled of Richard III with a barge-pole, except his crown

¹ *Titulus Regius*, 1485, 1 Henry VII (*Rot. Parl.* VI, 270); and see *Rot. Parl.*, VI, 270b, quoted in *English Historical Documents*, Vol. V, 1485-1558, C H Williams, (ed.), David C Douglas (gen. ed.), Eyre & Spottiswoode, London, 1967, at p. 445.

² See discussion *supra*, at pp. 115-115

³ Leopold G Wickham Legg, *English Coronation Records*, Archibald Constable & Company Limited, Westminster, 1901, p. 219, at p.230; his source is a manuscript in the British museum, [Brit. Mus. Egerton MS. 983, fo. 1]. He has collated it with three other copies of the *Little Device*, which he identifies thus: B, that copy in the possession of the Duke of Rutland, edited for the Camden Society by W Jerdan, 1842; D, Brit. Mus. Add. 18,669, supposedly dating from the early sixteenth century; and H, Brit. Mus. Harl. 5111 (fo. 77), which Legg says is of a much later date than the other copies, and which he says contains a copy of the *Little Device* for Henry VIII. [see pp. 219-20]

⁴ Jerdan, William, (ed.), *Rutland Papers, Original Documents*, Printed for the Camden Society, 1842; reprinted with permission of the Royal Historical Society, by AMS Press, New York, 1968, at p. 1: 'The following paper is not an account of Henry VII's coronation, of which there has not yet been discovered any narrative, but, in accordance with its title, is a device for that ceremony, prepared probably by some officer at the College of Arms, and intended to be submitted to the correction of the King and his advisers. It was framed on former models of the same kind, and it may be conjectured to have been adapted from some general form or precedent, perhaps contained in a Pontifical, or collection of ecclesiastical ceremonies. ...'

⁵ Letter to the author from Dr R C Yorke, Archivist, College of Arms, 14 November, 1997.

⁶ See discussion *supra* at pp. 113-114

itself and his niece—the former only of necessity and the latter only with hesitation.¹

It is worth noting, in the light of later developments, that the *Little Device* oath attributed to Henry VII contains no specific reference to the prerogative or to the estate of the king—unlike the coronation oath later taken by the Stuart kings, and the ‘Henry VIII oath’.² One can but speculate as to the nature of the oath which Henry actually took.

Leopold Wickham Legg in *English Coronation Records* noted that there was in existence a *Little Device* for the coronation of Henry VIII³, and his implication is that Henry VIII took

¹ Henry did not marry Elizabeth of York before his coronation, and had to be formally requested by his first parliament to give an undertaking to do so. (He married her during that first parliament's sitting.). Sir Francis Bacon in his *History of Henry VII*, notes that relations between Henry and Elizabeth were strained, that Henry insisted on the crown in his own right, and never by any shadow of Elizabeth's right, and that Henry was ‘not uxorious’. (Bacon, p. 217) Moreover, Elizabeth was not crowned queen until well after the birth of her first son. No original portrait of Elizabeth survives, and all extant pictures are derivative from the same one original now lost, but which had been in Henry VIII and Edward VI's inventories. (Chrimes, *Henry VII*, p. 335.)

² See *infra*.

³ See L G Wickham Legg, (ed.), *English Coronation Records*, Archibald Constable & Co Ltd, London, 1901; at pp. 219-220; Legg in *English Coronation Records*, at p. 220, states that the manuscript Brit. Mus. Harl. 5111 (fo. 77), containing a copy of the *Little Device* for Henry VII (which is of a much later date than those manuscripts containing the other copies), also contains a copy of the *Little Device* for Henry VIII. [see pp. 219-20] He says that this manuscript agrees with one of the others in its main variants. From looking at Legg's footnotes on p. 230-231, he has noted some distinctions between the text of the oath printed in the *Little Device* for Henry VII and some of the other manuscripts. He does not note any differences in the text from that in the manuscript Brit. Mus. Harl. 5111 (fo. 77), which he says contains a *Little Device* for Henry VIII. It seems then that the text for Henry VII's oath in both copies of the *Little Device* is identical; but whether this also means that the text of the oath in the *Little Device* for Henry VIII reproduces the same words, is not stated. The implication Legg makes by omission is that the texts are the same. There is no evidence to show that Richard III's *Little Device* was used for Henry VII or for Henry VIII, nor is there any evidence to show what Elizabeth swore at her coronation—*contra* Schramm, at p. 213, who appears to rely (see P E Schramm, *History of the English Coronation*, L. G W Legg, (trans.) Clarendon Press, Oxford, 1937, Appendix, No 45) on Legg's *English Coronation Records*, at p. 220, where he implies that the *Little Device* for Henry VII was used for Henry VIII; but there is no evidence marshalled to support this implication. It must be noted here that it will be seen from the detail of the texts of the oath as reproduced in my Appendix I, *infra*, that there are differences between the texts as Legg reproduces them, and those of other compilers—some minor differences in text with *The Little Device* for the Coronation of Richard III, as reproduced in *The Coronation of Richard III, the extant Documents*, edited by Anne F Sutton and P. W Hammond, Alan Sutton Publishing Limited, Gloucester, 1983, at p. 213; British Library: Add. Ms. 18669; but a major difference with them exists over the source of the document used by Sutton and Hammond—Legg sources it to Brit. Mus. Add. 18,669, supposedly dating from the early sixteenth century, while Sutton and Hammond source it to British Library: Add. Ms. 18669. There are some differences in the text also between the Henry VII *Devises* as transcribed by Legg, and that transcribed from the text in the Duke of Rutland's papers, see *Rutland Papers, Original Documents*, William Jerdan, (ed.), Printed for the Camden Society, 1842; reprinted with permission of the Royal Historical Society, by AMS Press, New York, 1968, the major one being a notation that it was the ‘spiritual’ laws for the clergy which the king was to grant to uphold in the first part of his oath, and that the *Devises* refers to Henry VIII, not Henry VII. There are also significant differences between the oath which Legg says was taken by James VI and I and Charles I, and the text taken from the Tanner manuscript, in the Bodleian Library (Tanner MSS. (Bodl.), Vol. 94, f. 121, as reproduced at p. 391 in *Select Statutes and other Constitutional Documents illustrative of the reigns of Elizabeth and James I*, edited by G W Prothero, 1st edn. 1894; 4th edn reprinted 1963, Clarendon Press, Oxford. [Legg has both James VI and I and Charles I using the words ‘Gospel established in the Church of England’ rather than the words ‘Gospel established in this kingdom’ which he says were used only by James II of England; but the Tanner manuscript has James VI and I using the words ‘in this kingdom’. Charles I himself stated that he had used the words ‘...in this kingdom’—see Edward, Earl of Clarendon in his *History of the Rebellion and Civil Wars in England*, written between 1641 and 1648, in Book V, paragraphs 292 ff., at Vol. II, (Books V and VI), p. 155 of the ‘edition re-edited from a fresh collation of the original MS. in the Bodleian

the same oath as his father, that is, the one represented in the *Little Device* for Richard III.¹

But there is considerable doubt as to what Henry VIII actually swore at his coronation. Legg included in *English Coronation Records* what he called a 'draft new coronation oath' prepared for Henry VIII, and amended in his own hand.² Legg notes:

Henry VIII appears to have been dissatisfied with the coronation oath as it stands in the Liber Regalis, and to have ordered a new oath be drafted. The new oath does not seem to have pleased him, and with his own hand he has corrected it so as to bring it into absolute accordance with his own views. ...but there is no evidence that the oath thus revised was ever used; indeed, were it ever used, the object of the oath, which was an attempt to keep the King in check in the exercise of his powers, would have been destroyed by the elasticity of the saving clauses.... at Edward VI's coronation, the oath used was that found in the Liber Regalis³. ... Nor was this the oath administered to Henry VIII himself. ...it appears that the oath used [for Henry VIII] was that of the Liber Regalis.⁴

Legg was wrong in my submission in saying that the object of the oath was 'an attempt to keep the King in check in the exercise of his powers.' The coronation oath of the British kings was not an attempt to check the king in his exercise of his powers; rather it represented the assumption by the king of his powers and his entry into the office of king, and delineated the fashion in which he was to use those powers. It established both the king's prerogative rights, and his obligations with respect to those rights.

But Legg was also wrong in saying that the text which Henry VIII amended was a 'new oath'. It was in fact quite an old oath, the French version of which had been published in Lettou and Machlinia's abridgement of the *Statutes of the Realm* in 1482-1483 during the

Library', by W Dunn Macray, in six Volumes, Clarendon Press, Oxford, 1888; reprinted Oxford University Press, Oxford, 1958, at p. 157 and paragraph 296. The words 'in this kingdom' were subsequently used in the texts attributed to Charles II—see C Grant Robertson,, *Select Statutes, Cases and Documents to illustrate English Constitutional History 1660-1832*, Methuen & Co, London, 1904, 5th edn. enlarged, 1928, at 118; and see *The Law and Working of the Constitution: Documents 1660-1914*, W C Costin and J Steven Watson (eds.) Adam and Charles Black, London, 1961, reprinted 1967, 2 Vols.; Vol. I, pp. 57 ff. at p. 58; they source their text to 'From the Forms of Prayers etc. of the Coronation... London, Printed for Randal Taylor, 1689'; and James II of England—see Lois G Schwoerer in 'The Coronation of William and Mary, April 11, 1689', *The Revolution of 1688-1689 - Changing Perspectives*, Lois G Schwoerer (ed.) Cambridge University Press, Cambridge, 1992, Appendix, pp. 128-130, at p. 128. She sources her text to 'the Coronation Order of James II'; and Legg, at p. 297-297; he sources the text to a manuscript held at St John's College, Cambridge, MS. L. 14. (see p. 288). The phrase 'to the people' which was included in the text of the Order for James VI and I in Legg, is omitted in all copies of texts for the coronation oaths of the following Stuarts.

¹ see Appendix I; cf. Legg, *op. cit.*, p. 220

² See Illustration 2, at p. 255.

³ But Legg is wrong here also—see discussion below under Edward VI, *infra*. And note that Maitland says that a change had been made at Edward VI's accession — he 'had sworn to make no new laws but such as should be to the honour and glory of God and to the good of the commonwealth, and that the same should be made by consent of his people as hath been accustomed.' Maitland, *Constitutional History*, *op. cit.*, at p. 286, but he gives no source for this.

⁴ Legg, *English Coronation Records*, *loc. cit.*, p. 240

reign of Edward IV, and may well have had an existence much older than that. This text was noted by Blackstone in his *Commentaries on the Laws of England*¹ in the late 1760s, and by Bishop Stubbs in his *Constitutional History*.²

The 1937 translation by Leopold Wickham Legg of the work of the German scholar, P E Schramm, (*A History of the English Coronation*),³ has continued to be regarded as the 'standard work' on the English Coronation, at least by Oxford University Press.⁴ Schramm appears to accept that Henry VII took the oath in the form of the 'old text' of the '1308 oath' as represented in the *Little Device*,⁵ and that this was also used by Henry VIII 'with a few verbal improvements'⁶—but he apparently draws upon Legg's texts and statements to this effect in *English Coronation Records* as his source.⁷ Schramm dismisses the text which Henry VIII amended in his own hand; Schramm asserts that this oath was an expansion of the '1308 oath' attributed to Edward II, made by the compiler of the collection of statutes in which it was first printed—he advances absolutely no justification for this⁸—and goes on to say that

¹ William Blackstone, *Commentaries on the Laws of England, A Facsimile of the First Edition of 1765-1769*, with an introduction by Stanley N Katz, University of Chicago Press, Chicago, 1979, Vol. I, at p. 229, note h.

² William Stubbs, *The Constitutional History of England in its Origin and Development*, 3 Volumes, 3rd edn., Clarendon Press, Oxford, 1884; reprint edition, William S Hein & Co Inc., Buffalo, New York, 1987; Vol. II, §179, p. 109, n. 2. Stubbs sources this to Machlinia's edition of the Statutes, *Statutes of the Realm*, I. 168; and to Taylor, *Glory of Regality*, pp. 411, 412. He goes on to say: 'This oath certainly has a transitional character, and may possibly be that of Edward I. Trokelowe, p. 37, says of him, "Nihil erat quod rex Edwardus III^{us} pro necessitate temporis non polliceretur," possibly referring to some novelty in the oath. The following extract from a MS. Chronicle perhaps may illustrate the point; "Qui statim coronam deposuit, dicens quod nunquam capiti suo redideret donec terras in unum congregaret ad coronam pertinentes quas pater suus alienavit, dando comitibus et baronibus et militibus Angliæ et alienigenis." MS. Rawlinson, B. 414; and Ann Hagnebie.'

³ P E Schramm, *A History of the English Coronation*, translated by Leopold G Wickham Legg, Oxford, Clarendon Press, 1937.

⁴ See John Cannon and Ralph Griffiths, *The Oxford Illustrated History of the British Monarchy*, Oxford University Press, 1988, reprinted with corrections, 1989, 1992, p. 682, 'Further Reading', 'The Age of Empires', 'Court Life'—P. E Schramm, *A History of the English Coronation*, (etc) , —'still the standard work'. [Cannon and Griffith repeat this claim in the 1997 reprint of their work, at p. 682] And see Randolph Churchill, *The Story of the Coronation*, Derek Verschoyle, London, 1953, at p. 20.

⁵ Although the discussion *supra* shows that there were considerable differences between the *Little Device* oath and the *Liber Regalis* oath.

⁶ Schramm, *English Coronation*, p. 213.

⁷ Schramm, *English Coronation*, *ibid.*, at p. 213, and Appendix Nos. 44, 45, 46, and 32, drawing upon Legg's texts and statements in *English Coronation Records*.

⁸ See Schramm, *English Coronation*, *loc. cit.*, p. 215.

...it was never authoritative. It was an error to include it in a collection of statutes, but, as soon as it had appeared there, it was translated into English along with other texts. Hence the text which Henry VIII examined...¹

Perhaps his assertion had been coloured by the publication in 1935-1936 by Professors Richardson and Sayles of their article, 'Early Coronation Records' in the *Bulletin of the Institute of Historical Research*², where they dismiss the Lettou/Machlinia oath as anomalous, and assert that 'it was never used', and can be 'dismissed from consideration by the constitutional historian.'³

After examination of the evidence, I find myself unable to agree with the conclusions of any of these writers.

The printers, Lettou and Machlinia, published a copy of a coronation oath in their Abridgement of the Statutes of the Realm (*Abbreuiamentum Statutorum*) sometime during 1482-1483 in the reign of Edward IV. This text was noted by Blackstone in his *Commentaries on the Laws of England*⁴ in the late 1760s, and by Bishop Stubbs in his *Constitutional History*⁵:

Ceo est serement que le roy jurre a soun coronement : que il gardera et meintenera lez droitez et lez franchisez de seynt esglise grauntez auncienment dez droitez roys christiens dEngleterre,

et quil gardera toutez sez terrez honoures et dignitees droiturelxs et franks del coron du roialme dEngleterre en tout maner dientierte sanz null maner damenusement, et lez droitez dispergez dilapidez ou perduz de la corone a soun poiair reappeller en launcien estate,

et quil gardera le peas de seynt esglise et al clergie et al people de bon accorde,

et quil face faire en toutez sez jugementez owel et droit justice oue discrecion et misericorde,

¹ See Schramm, *English Coronation*, loc. cit., p. 216.

² H G Richardson and G O Sayles, 'Early Coronation Records' in *Bulletin of the Institute of Historical Research*, [BIHR] Vol. 13, 1935-36, p. 129, at pp. 144-145.

³ See Richardson and Sayles, 'Early Coronation Records', xiii *BIHR*, 1935-36, *ibid.*, at p. 144. They assert these as conclusions, without in my view, supporting evidence; it is noteworthy that H G Richardson later confessed to having changed his mind often with regard to the coronation oath.

⁴ William Blackstone, *Commentaries on the Laws of England, A Facsimile of the First Edition of 1765-1769*, with an introduction by Stanley N Katz, University of Chicago Press, Chicago, 1979, Vol. I, at p. 229, note. h.

⁵ Stubbs, *Constitutional History*, Vol. II, §179, p. 109, n. 2. Stubbs sources this to Machlinia's edition of the Statutes, *Statutes of the Realm*, I. 168; and to Taylor, *Glory of Regality*, pp. 411, 412. He goes on to say: 'This oath certainly has a transitional character, and may possibly be that of Edward I. Trokelowe, p. 37, says of him, "*Nil erat quod rex Edwardus III^{us} pro necessitate temporis non polliceretur*," possibly referring to some novelty in the oath. The following extract from a MS. Chronicle perhaps may illustrate the point ; "*Qui statim coronam deposuit, dicens quod nunquam capiti suo redideret donec terras in unum congregaret ad coronam pertinentes quas pater suus alienavit, dando comitibus et baronibus et militibus Angliæ et alienigenis*." MS. Rawlinson, B. 414; and Ann Hagnebie.' Richardson and Sayles in 13 *BIHR* at 144, loc. cit., say that Stubbs was mistaken—but see my discussion of this *infra*.

et quil grauntera a tenure lez leyes et custumez du roialme, et a soun poiar lez face garder et affermer que lez gentez du people avont faitez et esliez, et les malveys leyz et custumes de tout oustera, et ferme peas et establie al people de soun roialme en ceo garde esgardera a soun poiar: come Dieu lay aide. *Tit. Sacramentum regis. Fol. M. ij.*¹

This text is the text which, translated into English, was later scrutinised by Henry VIII.²

Henry VII entered into a kingdom impoverished, exhausted, and still racked by the remnants of hereditary antipathy—for fifteen years the primary business of his government was to maintain itself against dynastic dangers³, and to refurbish the exchequer by every possible means, using every legal and some illegal, means.⁴ Henry VII was, like Fortescue, a pragmatist; the political anarchy of the Wars of the Roses, and the confiscation by Henry and absorption into the royal domain of lords' estates, 'engendered both the desire and the means for the establishment of a monarchy greater than its any of its parts. The rising middle class, yearning for an ordered society in which it could ply its trade more aggressively, supported centralised government wholeheartedly.'⁵ Chief Justice Fortescue's guidance in the *Governance of England* clearly pointed towards the embellishment of the exchequer, a strong king and use of the royal prerogative, while simultaneously allowing for a role for *parlement*. The oath which Henry VIII later amended was certainly extant at the time of Henry VII, having been published very shortly before the Battle of Bosworth, the defeat of Richard III, and the accession of Henry VII;⁷ it clearly enumerated the necessity of maintaining the crown and restoring those crown rights which may have been 'hurt,

¹ See Blackstone, at p. 229, note h, of Vol. I of his *Commentaries on the Laws of England*, sourced to 'the old folio abridgment of the statutes, printed by Lettou and Machlinia in the reign of Edward IV, (*penes me*) there is preserved a copy of the old coronation oath; which, as the book is extremely scarce, I will here transcribe.'; and Stubbs, in *Constitutional History*, Vol. II, §179, p. 109, n. 2, sourced to *Statutes of the Realm*, i. 168; Taylor, *Glory of Regality*, pp. 411, 412. Text at Appendix I, together with my translation.

² See text *supra* at p. 216, and also at Illustration No. 2, at p. 255.

³ see Kenneth Pickthorn, *Early Tudor Government, Henry VII*, Cambridge University Press, Cambridge, 1934, reprinted by Octagon Books, New York, 1967, – pretenders included Lambert Simnel, Perkin Warbeck, and rebellions in Ireland and Cornwall – see p. 9.

⁴ See Chrimes, *Constitutional History*, *op. cit.*, p. 90. Henry was adept at using attainders to acquire property and revenue.

⁵ See Franklin le Van Baumer, *The Early Tudor Theory of Kingship*, Yale University Press, 1940; reissued 1966, New York, Russell & Russell., at p. 21.

⁶ On Fortescue and the Tudors, particularly Henry VII, see generally Pickthorn, *Early Tudor Government*, *loc. cit.*, pp. 1-5.

⁷ See Henry R Plomer, *Wynkyn de Worde & His Contemporaries from the death of Caxton to 1535, a Chapter in English Printing*, Grafton & Co, London, 1925, at p. 159: 'John Lettou is next found in partnership with William de Machlinia, a native of Mechlin in Belgium. During 1482 and a part of 1483, Lettou and Machlinia printed an edition of Sir Thomas Littleton's *Tenores Nouelli*, the *Abbreuiamentum Statutorum*, and *Year Books* for the three years of Henry VI.' Blackstone noted in his *Commentaries* that 'the old folio abridgment of the statutes, printed by Lettou and Machlinia in the reign of Edward IV, (*penes me*) there is preserved a copy of the old coronation oath; which, as the book is extremely scarce, I will here transcribe.'—see Blackstone, *Commentaries*, *op. cit.*, at Vol. 1, at p. 229, note h.

decayed, or lost to his power,' while reaffirming the role of the people in making the laws.

If I were a pragmatist like Henry VII, who had just taken the throne by force and with such a tenuous pretension to any legitimacy, and if I were aware of the oath published by Lettou and Machlinia, (for whose earlier existence, I believe there to be substantial, and possibly compelling, circumstantial evidence), and if my goal were to establish as quickly as possible my grasp upon the realm, would I not be inclined to take that oath, (despite its being taken by the hated Richard, or perhaps, even *because* it had been taken by the hated Richard) and operate upon the basis of Fortescue's guidance, rather than take an oath dating from almost two centuries earlier and which had been slavishly reproduced by clerics in the sporadic reinscription of the coronation orders for the ceremony? For ease of reference, I include a table comparison of the Lettou 'Henry VIII' oath, the text of which in English translation was examined by Henry VIII¹; that same text as amended by Henry; and the *Little Device* for Henry VII.²

¹ Text examined by Henry VIII, British Museum Cotton Manuscript Tib. E. V iii. Fo. 89, as quoted and reproduced in facsimile in Legg, *English Coronation Records*, p. 240. This is a translation in English of the Oath published by Lettou and Machlinia in *Abbreviamentum Statutorum* in 1482-83. Henry VIII's amendments are italicised in column 2.

² *The Little Device* for Henry VII (based on *The Little Device* for Richard III), *Rutland Papers, Original Documents*, William Jerdan, (ed.), Printed for the Camden Society, 1842; reprinted with permission of the Royal Historical Society, by AMS Press, New York, 1968.

THE HENRY VIII OATH

The Othe of the kinges highnes

This is the othe that the king shall swere at ye coronacion that he shall kepe and mayntene the right and the liberties of holie church of old tyme graunted by the rightuous Cristen kinges of Englund.

And that he shall kepe all the londes honours and dignytes rightuous and fre of the crowne of Englund in all maner hole wtout any maner of mynyshement, and the rightes of the Crowne hurte decayed or lost to his power shall call agayn into the auncyent astate,

And that he shall kepe the peax of the holie church and of the clergie and of the people wt good accorde, And that he shall do in his iudgementes equitye and right justice wt discrecion and mercye

And that he shall graunte to holde lawes and customes of the realme and to his power [fo. 89b] kepe them and affirme them which the folk and people haue made and chosen

And the evil Lawes and customes hollie to put out, and stedfaste and stable peax to the people of his realme kepe and cause to be kept to his power.[]

The Othe of the kinges highnes at every coronacion

The king shall then swere that he shall kepe and mayntene the lawfull right and the libertees of old tyme graunted by the rightuous Cristen kinges of Englund to the holy chirche of england nott preiudiciall to hys Jurysdicaion and dignite ryall

and that he shall kepe all the londes honours and dignytes rightuous *nott preiudiciall to hys Jurysdiction and dygnite ryall and fredommes*¹ of the crowne of Englund in all maner hole wtout any maner of mynyshement, and the rightes of the Crowne hurte decayed or lost to his power shall call again into the auncyent astate,

And that he shall *Indevore hymself* to kepe *unite in hys clergy and temporell subiect[is]* And that he shall *according to hys consienc[e]* in all his iudgementes *mynystere* equitye right justice *shewing wher is to be shewed mercy*

And that he shall graunte to holde lawes and *approve*d customes of the realme *and lawfull and not preiudiciall to hys crowne or Imperiall Juris[diction]* to his power kepe [fo. 89b] them and affirme them *which the nobbys and people haue made and chosen wt hys consent,*

And the evill Lawes and customes hollie to put out, and stedfaste and stable peax to the people of his realme kepe and cause to be kept to his power *in that whych honour and equite do require.*

1485? *Little Device* for Henry VII

Will ye graunt and keepe to the people of Englande the Lawes and customes to them as olde rightfull and devoute kinges graunted, and the same ratifie, and confirm by yor oth, and specially² the lawes customes and Liberties graunted to the Clergie and people by your predecessor³ and glorious king Saynct Edward? *The king shall answer, I graunt and promit.*

And when the king before all the people hath promised trewly to graunte and kepe all the premisses, than shall the said Cardinall open vnto him the speciall Articles whervnto the king shalbe sworne the same Cardinall saying as followeth.

Ye shall keepe after your strength and power, to the church of god to the clergy, and the people hoole peace and goodly concorde. *The king shall answer I shall keepe.*

Ye shall make to be done after your strength and power, egall and rightfull Justice in all your domes and iudgementes, and discrecion wt mercie and throwthe. *The king shall answer I shall do.*

Do ye graunte the rightfull Lawes and customes to be holden and promitte yow after your strength and power such lawes as to the worship of god shalbe (chosen)⁴ by your (people)⁵ by yow to be strengthenid and defended? *The king shall answer, I graunte and promitte.*

² note b in *Rutland Papers*, 'the spiritual' in *MS*.

³ note c in *Rutland Papers*, 'predecessours' in *MS*.

⁴ Legg, p. 230, n. 5. [note 5: made, struck through and corrected to chosyn - manuscript D, Brit. Mus. Add. 18669]

⁵ Legg, p. 230, n. 6. [note 6: in *parlement*: add D, struck through : D is Manuscript Brit. Mus. Add. 18669]

¹ Inserted by Henry and then struck out by him.

HENRY VIII AND HIS CORONATION OATH

It seems to me more likely than not, that Henry VII was aware of the existence and the content of the 'Lettou/Machlinia' oath. Certainly, he would have been aware of Fortescue's writings¹—his whole reign was directed towards achieving the kind of governance Fortescue had outlined. Certainly, there seems to me to be compelling circumstantial evidence for Henry having taken an oath not unlike the one published just before he came to the throne. All comments of course of this nature are highly speculative, particularly in the absence of the pieces of paper on which the oaths were written. But there is one solid fact—that later Henry VIII went to the trouble of analysing and amending this particular oath. Why would he have bothered to do this, if that particular oath had no significance?

Now, H G Richardson and G O Sayles, in their earliest article on 'Early Coronation Records' in *Bulletin of the Institute of Historical Research*, remarked in relation to the 'Henry VIII' oath:

We cannot close this section of this paper without some reference to the anomalous form of oath printed by Lettou and Machlinia under Edward IV in an abridgement of statutes. Its appearance in an abridgement makes it not unlikely that it may have been shortened from some longer form. There is no ground whatsoever for believing it to be of an earlier date, as Stubbs suggested,² and it is quite certain that what lay behind the abridgement was a fifteenth-century manuscript collection of statutes, with the usual apocrypha of statutes of uncertain dates and miscellaneous tracts. When this collection was digested under titles arranged in alphabetical order the compiler was careful to add, wherever possible, a precise reference to the chapter of the statute from which each paragraph was drawn; where this reference is omitted we may assume that he was abstracting from the apocrypha. We could, in fact, without great difficulty reconstruct the collection behind the abridgement. The 'sacramentum regis' is, of course, followed by no such reference, and we may be sure that it was of no authority; and since additions were constantly being made to the apocrypha in manuscript collections, the oath in this form may have been invented quite late in the fifteenth century.

Abridgements based on Lettou and Machlinia's were frequently reprinted, and in this form the coronation oath became well known, better, perhaps, than the authentic forms. It appears in an English translation for the first time in Rastell's 'Abridgement' of 1527, and in a slightly different version in Redman's 'Abridgement' of the following year. It was Rastell's English version, however, that found its way into later abridgements³ and, curiously enough, a manuscript copy being known with alterations in the hand of Henry VIII, devised, so it has been conjectured, for use at subsequent coronations.⁴ If so, the mistake must have

¹ Though Pickthorn in *Early Tudor Government*, Henry VII, *op. cit.*, at p. 2 says: 'We are scarcely justified in supposing that Henry VII consciously appropriated Fortescue's ideas, but circumstances, aided by his own policy, placed him in a position where Fortescue had desired a king to be. ...'

² H G Richardson and G O Sayles, 'Early Coronation Records' in *Bulletin of the Institute of Historical Research*, [BIHR] Vol. 13, 1935-36, p. 129, at p. 144, n. 3. Cf. Maitland, *Constitutional History*, p. 99

³ Richardson and Sayles, 13 BIHR, *ibid.*, p. 144, n. 4. 'e.g. an edition ascribed to 1533 and another to 1540.'

⁴ Richardson and Sayles, 13 BIHR, *ibid.*, p. 145, n.1 'L G W' Legg, pp. 240-1: the document is reproduced in facsimile. Sir Henry Ellis, who also printed a facsimile, seems to have believed that the oath, as altered, was that used at Henry's coronation. (Original Letters, second series, I. 176-7) Neither editor recognized the source of the manuscript copy.'

been discovered, and it is safe to say that this form was never used, whether in medieval or modern times, and can be dismissed from consideration by the constitutional historian.¹

Professor Richardson writing much later in *Traditio* in 1960 admitted: 'I have changed my own mind too often to permit me to imagine that there may not be answers to those questions [on the tangled history of the English coronation] more satisfying than mine.'²

I am far from satisfied that the Lettou and Machlinia oath can be dismissed as readily as Professors Richardson and Sayles thought.

In the first place, the oath did not appear in English for the first time in Rastell's 1527 Abridgement. In the absence of forensic dating of the Henry VIII oath, one would have to say that the first time we know it appeared written in English was that text which Henry VIII amended.

In the second place, when Lettou and Machlinia produced their text *Abridgement of the Statutes of the Realm (Abbreviamentum Statutorum)*, in 1482-1483, printing in England was still in its infancy. William Caxton had established the first printing press in London only in 1476, having printed the first book in English (*Recuyell*) in Bruges on the continent in 1475; the first dated book printed in England in English (printed from Westminster by Caxton) was *Dictes and Sayings of the Philosophers*, which appeared in November 1477. His publications apparently did not include any legal texts. Caxton himself was no great typographer, showing little originality and producing no books of remarkable beauty.³

Henry R Plomer, writing concerning Wynkyn de Worde⁴ a printer first employed by Caxton at his press at Westminster from its establishment in 1476, and who, after assuming control of the business on Caxton's death in 1491, became a successful commercial printer⁵, said in relation to Lettou and Machlinia:

¹ H G Richardson and G O Sayles, 'Early Coronation Records' in *Bulletin of the Institute of Historical Research*, [BIHR] Vol. 13, 1935-36, p. 129, at p. 144

² H G Richardson, 'The Coronation in Medieval England, the Evolution of the Office and the Oath', *Traditio*, Vol. 16, 1960, pp. 111-202, at p. 111.

³ see *Encyclopædia Britannica, Micropædia*, 15th edition, 1992, Vol. 2, p. 979.

⁴ Henry R Plomer, *Wynkyn de Worde & His Contemporaries from the death of Caxton to 1535*, a Chapter in English Printing, Grafton & Co, London, 1925

⁵ See *Encyclopædia Britannica, Micropædia*, 15th edition, 1992, Vol. 12, p. 751

John Lettou is next found in partnership with William de Machlinia, a native of Mechlin in Belgium. During 1482 and a part of 1483, Lettou and Machlinia printed an edition of Sir Thomas Littleton's Tenores Nouelli, the Abbreviamentum Statutorum, and Year Books for the three years of Henry VI. This change in the character of the work was evidently due to the new partner, who realised that there was an opening for a printer with a knowledge of law French. These five books were printed in two new founts of type, an evenly cast Black Letter with numerous contractions and joined letter, and a larger fount for the opening words of divisions, these founts being clearly modelled on the law hand of the period. None of these books bore any date, neither had they any title-pages, and the work became slovenly. Only one of them bore any kind of address, the Tenures having an imprint, "Juxta ecclesiam omnium sanctorum," but as there was more than one church in London called All Saints, it was not much help in identifying the position of the printing bouse.

*After printing these five books, the partnership was dissolved and John Lettou ceased to print, and nothing more is known about him. William de Machlinia continued printing alone from some time in 1483 until 1490...*¹

*... As a printer Machlinia was much inferior to Lettou. Not only was he careless about dates, but in the matter of signatures his books were unlike those of the majority of printers, some having them and some being without. ...*²

It would seem as though Lettou and Machlinia printed some of the earliest, if not the earliest, legal texts, mainly because Lettou saw a commercial opening; Lettou was clearly acquainted with law French, and based some at least of his Black letter fonts on the law hand of the period. Clearly also, at least in Mr Plomer's view, Lettou was the more careful of the two printers. It seems more likely than not that a printer publishing one of the earliest legal texts for a market would print the more important items.

Professors Richardson's and Sayles' assertion that the absence of 'a precise reference to the chapter of the statute from which each paragraph was drawn' makes it 'quite certain' that the oath printed in the *Abbreviamentum Statutorum* was 'apocrypha' and 'of no authority', overlooks three vital factors.

Firstly, printing in England was in its infancy and few if any legal texts had been published before in England. In addition, these particular printers were somewhat slovenly, and to none of their five works did they append dates, title pages, and only to one a vague and indeterminate address of the printing press. The absence of a citation or source for the oath, while slipshod, does not necessarily vitiate its validity.

Secondly, the coronation oath never appeared in a statute until the *Coronation Oath Act* of

¹ Henry R Plomer, *Wynkyn de Worde*, loc. cit., pp. 159-160.

² Henry R Plomer, *Wynkyn de Worde*, loc. cit., p. 162.

1688 (1689).¹ By its very nature it had an ephemeral physical existence, being uttered by the king in the vernacular from words on a piece of paper, which was then laid upon the altar during the coronation ceremony. (Professor Richardson had later demonstrated that the English kings swore their oath in the vernacular, not in Latin,² that the precise words may well have varied from one occasion to another,³ and that the spoken oath, being in the vernacular, was liable to diverge from the liturgical form.⁴ He accepted that the Coronation Orders, or *Devices*, are merely that: devices for the coronation ceremony, a liturgical form of the order of proceedings,⁵ that they do not represent what the king actually said at the time; and that neither can the words of chroniclers about the oath necessarily be taken as accurate.⁶) At a time of turmoil, when Richard III was about to take the throne while his nephews were in the Tower, when Henry Tudor was poised to invade England, when the War of the Roses for the power of the crown was reaching its culmination, it would be wonderful if legal publishers and their market were not interested in what undertakings the king had given, or would give, to the people. The fact of publication of this particular oath at this particular time by Lettou and Machlinia of itself does not prove that this was the oath that the kings of England had taken—but it must give at least some semblance of real currency to it. Moreover, when one considers the circumstantial evidence for the prior existence of an oath very similar to that published in the *Abbreviamentum Statutorum*, and the fact that coronation oath of the English kings would not be in a statute, but would rather be inscribed on an isolated piece of paper amongst someone's collection of documents, then I would submit that there is sufficient reason to consider seriously the possibility that the 'Henry VIII oath' as printed by Lettou and Machlinia was the oath that the English kings (or some or one of them) took at their coronations.

Thirdly, much of what is dismissed by modern scholars as 'apocrypha', either is 'real law', or was treated by the people at the time of its circulation as 'real law'. For example, the

¹ 1 Will. & Mary c. 6, 1688, *Statutes in Force*, Official Revised Edition, Revised to 1st February 1978, Her Majesty's Stationery Office, London, 1978 gives this citation. See also Ruffhead, (ed.), *The Statutes at Large*, Magna Charta to the Twenty-fifth year of the reign of George III inclusive, Vol. 3, Charles Eyre and Andrew Strahan, London, 1786, at p. 393.

² H G Richardson, *Speculum*, 24, (1949), 46, and *Traditio*, Vol. 16, 1960, pp. 111-202, at p. 162.

³ H G Richardson, *Traditio*, 1960, p. 165.

⁴ H G Richardson, *Traditio*, 1960, p. 171.

⁵ See the prefatory remarks to *Rutland Papers, Original Documents*, Jerdan, *loc. cit.*

⁶ See Richardson, *Traditio*, 1960, at p. 162.

Prerogativa Regis has been treated by scholars as apocrypha¹, at least to the extent that it was treated as a 'real' statute², and the judges in the case of *The King v The Bishop of Ely*,³ Littleton J and Choke J both held that the *Prerogativa Regis*⁴ could not be held as a true statute, but only as 'an affirmance of the common law.'⁵ While Littleton J's view was undoubtedly correct, the *Prerogativa Regis* quite clearly was a statute declaratory of the common law; at least it would appear that Her Majesty's Stationery Office in 1978 certainly saw the *Prerogativa Regis* as being a Statute, since they reprinted it, to the extent it had not been repealed, in their compilation of *Statutes in Force*⁶. Similarly, the *Leges Edwardi Confessoris*, the 'Laws of Edward the Confessor' were no real laws at all, since Edward the Confessor enacted no laws; rather they were a compilation of laws dating from before the conquest, and which 'represented the law of the first half of [the twelfth] century'⁷, (and which of course was to be continued to be quoted by lawyers as 'real law' down to the end of the seventeenth century).⁸ This, however, had not stopped churchmen referring in the version of the coronation oath for the English kings in the *Liber Regalis* to 'the Laws Customs and franchises granted to the Cleargy and to the people by the glorious King St. Edward your predecessor'⁹ As Maitland has said, Edward the Confessor had become

¹ See for example, D C E Yale, at p. xlvii of his Introduction to Sir Matthew Hale's *The Prerogatives of the King*, in Selden Society Volume 92, London 1976, D C E Yale (ed.) refers to 'the so-called statute *de Prerogativa Regis*'. This view is perpetuated by modern constitutional scholars—see for example, D L Keir and F H Lawson, *Cases in Constitutional Law*, Clarendon Press, Oxford, 1928, 5th edn. 1967, reprinted 1968, at p. 74 where they refer to 'the apocryphal statute *Prærogativa Regis*...'

² Note that Ruffhead, in his Preface to *The Statutes at Large*, refers to the fact that Sir Matthew Hale in his *History of the Common Law* had mentioned a number of 'Acts' which were not 'of Record, that he knows of'; among those listed is *Prerogativa Regis*—see *Statutes at Large*, pp. xxiv-xxv.

³ *R v Bishop of Ely* (1475, Y.B. 15 Edward IV, Mich. pl. 17); and see discussion in Chrimes, *English Constitutional Ideas loc. cit.*, at p. 44, and the text reproduced in his Appendix at p. 373.

⁴ Cited as 17 Edw. II; *Statutes at Large*, Vol. I, p. 180.

⁵ See Chrimes, *English Constitutional Ideas*, loc. cit., at p. 44; Littleton J did not see the king's prerogative (at least in that case which was to do with wardship) as dependant on, derived from, or derivable from, a statute—'*...mes come un affirmance del comon ley*', see Chrimes at p. 373; and Y.B. 15 Edw. IV, Mich. pl. 17, at pp. 44, 254, 256.

⁶ *Statutes in Force*, Official Revised Edition, *Prerogativa Regis Of the King's Prerogative*, (temp. incert.) Cc. 13, 17, Revised to 1st February 1978, Her Majesty's Stationery Office, London, 1978. It is noted at the beginning of the statute that '*This is inserted in all the Printed Copies as a Statute of 17 Edw. II: The Copy from MS. Cott. Claud. D. II was printed by Cay; the Various Readings markes MS. Cott. and MS. Harl. are from a Cotton Manuscript, Appendix XVI, fo. 85, and a Harleian MS. No. 947.*'

⁷ Maitland, *Constitutional History* p. 108.

⁸ See Janelle Greenberg, 'The Confessor's Laws and the Radical Face of the Ancient Constitution,' *EHR*, Vol. 104, 1989, pp. 611-637

⁹ *presertium leges consuetudines et libertates a glorioso rege edwardo clero populoque concessas*—Legg, *English Coronation Records*, at p. 81 (Latin Text); translation of Oath at p. 117; Legg uses a manuscript held by the Dean of Westminster, dated at about the time of Richard II; (Legg gives no date)—p. 117 for the English translation, p. 87 for the Latin text.

something of a myth.¹ But the *Leges* and that other apocryphal text, *The Mirror of Justice*,² were accepted as genuine law by lawyers, including Sir Edward Coke³, Twysden, Sir Henry Spelman, Sir William Dugdale, and John Selden; by Edward Hyde the Earl of Clarendon and by Robert Brady; and by polemicists such as Nathaniel Bacon, John Sadler and John Milton.⁴

Certainly some things which may have appeared to be apocrypha, like the *Prerogativa Regis*, turn out to be genuine; while other things, like the *Leges Edwardi Confessoris* and the *Mirror of Justice*, which were certainly apocryphal, were treated as being genuine, and had a not inconsiderable impact on the legal and political understandings of men for centuries. Thus, to designate the Lettou and Machlinia oath as 'apocrypha', does not mean that it was not used in the coronation of the kings.

While Professor Richardson had admitted the possibility that there may be answers other than his to the question concerning the English coronation and the coronation oath of its kings,⁵ he nevertheless still referred to Henry VIII's 'manipulation of the oath' as a 'well-known and rather ludicrous incident'.⁶ On the other hand, he, together with Professor Kantorowicz, would appear to have proved conclusively that at their coronations, kings at

¹ See Maitland, *Constitutional History*, *loc. cit.*, p. 100.

² *The Mirror of Justice*, written originally in the Old French, long before the Conquest, and many things added, by Andrew Horne, to which is added *The Diversity of Courts and their Jurisdictions*, translated into English by W. H. [William Hughes], of Gray's Inn, Esq, 1642, John Byrne & Co, Washington DC, 1903; reprinted from the 1903 edition by Rothman Reprints, Inc, N J; Augustus M Kelley, Publishers, New York NY, 1968; and see Maitland, in his Introduction to *The Mirror of Justice*, edited for the Selden Society by William Joseph Whittaker, with an introduction by Frederic William Maitland; Publications of the Selden Society, Vol. VII, 1898; reissued, 1978. Maitland says: at p. xxvi – 'The right to lie he [the author, whoever he might have been] exercised unblushingly.'; at p. xxxvii – 'That he deliberately stated as law what he knew was not law, if by law we mean the settled doctrines of the king's court, will be sufficiently obvious to anyone who knows anything of the plea rolls of the thirteenth century.'; and at p. xxxviii – 'His political theory is simple. He is strongly opposed to an unfettered monarchy and to a king who is above the law.'; at p. xlvi – '... he is fantastic and irresponsible.'; and at p. xlviii – '... We feel sure that in Paradise, or wherever else he may be, he was pleasantly surprised when Coke repeated his fictions as gospel truth, and erudite men spoke of him in the same breath with Glanvill and Bracton'.

³ See Maitland, at pp. ix and x of his Introduction to *The Mirror of Justice*, *loc. cit.*, says: 'Coke obtained [a manuscript copy], and, as his habit was, devoured its contents with uncritical voracity. "I have," he said, "a very ancient and learned treatise of the laws and usages of this kingdom whereby the commonwealth of our nation was governed about eleven hundred years past."' [n. 1 Coke, preface to 9 Rep.]

⁴ See Janelle Greenberg, 'The Confessor's Laws', *art. cit.*, at p. 619, p. 620, p. 622, and pp. 624-31 respectively.

⁵ Richardson, *Traditio*, Vol. 16, 1960, *art. cit.*, at p. 111.

⁶ Richardson, *Traditio*, Vol. 16, 1960, *art. cit.*, at p. 149, n. 49.

least before Edward II, and perhaps as late as Elizabeth I,¹ took an oath not to alienate the rights of the crown²; further, that the *Leges Edwardi Confessoris*³ included a prescription against violation of the rights of the Crown⁴; and finally, that the *Liber Regalis* had had an anonymous note appended to the form of the coronation oath 'that the king at his coronation has to swear to maintain undiluted the rights of his kingdom.'⁵

I might add here, that the concern expressed in the Lettou/Machlinia oath that the king 'shall keep all the lands, honours and dignities righteous and free of the crown of England in all manner whole and without any manner of diminishment, and the rights of the crown which have been hurt, decayed, or lost to the king's power, the king shall call again into the ancient estate' is exactly the sort of preoccupation that both king and council, and pretenders to the throne, would have had during the upheavals of the struggle between Lancaster and York. It is also exactly the major matter with which Henry VII preoccupied himself—namely, restoring the estate of the crown and the wealth and power of the kingdom, as well as fitting Fortescue's precepts in the *Governance of England*.⁶

¹ Ernst H Kantorowicz, 'Inalienability,' *Speculum*, Vol. XXIX, 1954, pp. 488-502, at p. 501 quotes Baldus: 'Take note that all kings in the world have to swear at their coronation to conserve the rights of their realm on the honour of the Crown.' Baldus, on c.33 X, 2, 24, n.3, *In Decretales*, (Venice 1580) fol. 261v. And see the extract from Sir Simonds d'Ewes Journal of the opening of Elizabeth I's first parliament: 'Sir Nicholas Bacon, lord keeper, [said].. "... For although divers things that are to be done here in parliament might by means be reformed without parliament, yet the queen's majesty... reposing herself not a little in your fidelities, wisdoms and discretions, meaneth not at this time to make any resolutions in any matter of weight before it shall be by you sufficiently and fully debated, examined, and considered... (the last thing to be considered...)...to consider... the estate and condition of this realm and the losses and decays that have happened of late to the imperial crown thereof..."'; quoted in Stephenson, C, and Marcham, F G, (eds.), *Sources of English Constitutional History: Vol. I: A Selection of Documents from AD 600 to the Interregnum*, New York, Harper & Row, rev ed. 1972, at p.358.

² Richardson, *Traditio*, art. cit., p. 163; and Richardson, *Speculum*, XXIV, 1949, 44-75, and Kantorowicz, 'Inalienability', art. cit., at p. 501

³ If in the seventeenth century the *Leges* (though now known to be no laws of Edward the Confessor, but rather a compilation of the old dooms prior to the conquest — 'the good old law', as Maitland called it [*Constitutional History*, p. 8]) were admitted by lawyers as law, as demonstrated by Janelle Greenberg in 'The Confessor's Laws' art. cit., it is hardly unlikely that they were not admitted as law in the fourteenth century; indeed Maitland says that 'they represent the law of the first half' of the twelfth century. (Maitland, *ibid.*, p. 108).

⁴ Richardson, *Traditio*, 1960, at p. 168; and also Richardson, 'The English Coronation Oath', *Speculum*, Vol. XXIV, 1949, pp. 44-75; and see F Liebermann, *Die Gesetze der Angelsachsen*, Text und Übersetzung, Unveränderter Neudruck der Ausgabe 1903-1916, Scientia Aalen, Sindelfingen, Germany, 1960; in 3 Vols.; at Vol. I, p. 635 — *Debet uero de iure rex omnes terras et honores, omnes dignitates et iura et libertates corone regni huius in integrum cum omni integritate et sine diminutione observare et defendere, dispersa et dilapidata et amissa regni iura in pristinum statum et debitum iuribus omnibus reuocare.* (c) Liebermann notes the similarity between this text and that quoted by Stubbs and referred to above.

⁵ Kantorowicz, *Speculum*, at p. 490; Richardson, *BIHR*, XVI, 11.

⁶ See *Governance of England*, Charles Plummer, (ed.), Oxford, 1885, Chapters 8-13, and Chapter 15, and p. 148; and see Le Van Baumer, *Early Tudor Theory of Kingship*, loc. cit., at p. 19. And see discussion at p. 230, p. 231, and p. 245 *supra*.

Sir Matthew Hale¹, who wrote *The Prerogatives of the King* some time after 1640 and during the Interregnum, is the most proximate legal writer to Henry VIII's time who examines his oath. He said that the oath in French as taken by Edward II² had been continued to be used 'in substance', with 'some small alterations being made by Henry 8.'³ It would appear that Hale believed that Henry had made amendments to a text of an actual coronation oath similar in substance to the one in French attributed to Edward II.

Professor Ullmann writing in 1979 accepts that the 'Henry VIII' oath was in fact taken by Henry VIII.⁴ He does not believe that earlier writers had adequately assessed the evidence of the oath and Henry's hand-written amendments. Ullmann's conclusion that Henry VIII had taken this oath was accepted also by Diarmaid MacCulloch in 1995 in his 'Henry VIII and Reform of the Church.'⁵

I have been unable to find any contemporary reference to the actual oath sworn by Henry VIII. The source on Henry's coronation most often quoted is Edward Hall's *Chronicle*,

¹ Hale, *The Prerogatives of the King*, *op. cit.* Yale in his introduction says that the *Rights of the Crown* was composed sometime after 1640 and before 1649 [xxiii]; and the *Prerogativa Regis* was probably composed sometime during the Interregnum, and possibly not finished till the early 1660s. [xxiv-xxv]. But Hale's biographer says (*The Life and Death of Sir Matthew Hale*, 1682, at 24), that 'after the King was murdered, he laid by all his Collections of the Pleas of the Crown; and that they might not fall into ill hands, he hid them behind the wainscoting in his Study, for he said there was no more occasion to use them, till the King should be restored to his right; and so upon his Majestie's Restoration, he took them out, and went on in his design to perfect that great Work.'

² Sourced by Hale to 'Rot. claus. I Edw. 2, m.10 (schedule); *Cal C.R.* (1307-1313) p.12; *Foedera*, iii, 63, for coronation oath'; see Hale, *loc. cit.*, p. 83. n. 2

³ Hale, *Prerogatives of the King*, *loc. cit.*, p. 67—'This oath hath been in substance continued, some small alterations being therein made by Henry 8.'

⁴ See Walter Ullmann, "'This Realm of England is an Empire'", *Journal of Ecclesiastical History*, Vol. 30, No. 2, April 1979, 175-203, at 183.

⁵ Diarmaid MacCulloch, 'Henry VIII and the Reform of the Church', in *The Reign of Henry VIII, Politics, Policy and Piety*, Diarmaid MacCulloch (ed.), Macmillan Press Ltd., Basingstoke, 1995, 159-180, at 163. However, in his note II on p. 163 (see p. 279), MacCulloch appears to say completely the opposite, agreeing with P Tudor-Craig that 'it is most unlikely that Henry VIII drafted this oath in 1509 or then used it; nor was it subsequently used.'—see P Tudor-Craig, 'Henry VIII and King David', in D Williams, (ed.) *Early Tudor England*, Woodbridge, 1989, pp. 187-189, 199. Note that Jennifer Loach, in 'The Function of Ceremonial in the Reign of Henry VIII', *Past and Present*, No. 142, 43-68, at pp. 51-52 and note 49, p. 52, thinks that Henry amended the oath after the reformation. But the reference in his amendments to the 'church of England' does not necessarily mean that the amendments were made after 1539. For Henry, the catholic church was the only church, it was merely the headship of the church and its laws that concerned him (cf. T A Lacey, Introduction to *The King's Book, or A Necessary Doctrine and Erudition for Any Christian Man*, published 1543, T A Lacey, (ed.) published for the Church Historical Society, London, 1932.) and the Church of England could well have meant the catholic church in England in 1509. Indeed, the Rev. Pemberton, when castigating the text of the 1689 coronation oath, noted that the church in England had never called itself 'Protestant'—see the Rev. Joseph H Pemberton, *The Coronation Service according to the use of the Church of England with Notes and introduction, with reproductions of the two celebrated pictures in medieval coronation Mss., inserted by special permission, with three pictures, viz. the Coronation of James II, and the vestments used thereat*, 2nd edn., Skeffington & Son, Piccadilly, (Publishers to His Majesty the King), London, 1902, p. 15.

dedicated to Edward VI.¹ The *Chronicle* is, however, more preoccupied with the sumptuousness of the occasion, and says nothing about the coronation oath.² There is, however, some circumstantial evidence as to what Henry swore at his coronation. This evidence is to be found in documents and occurrences relating to the church of Rome.

THE OATH AND THE CHURCH OF ROME

Tension between the church of Rome and the English kingdom had grown as the kingdom had grown in sophistication and power.

For centuries, there had been a symbiotic relationship between the king and the church.³ In early times, there was clearly an almost servile attitude of the kings to the church—many of the kings of the Heptarchy abandoned the kingship to become monks or priests or to go on pilgrimages; Alfred the Great as a child went to Rome; and Cnut attended the coronation of the holy roman emperor.⁴ Edward the Martyr was later elevated to the sainthood. Edward the Confessor was reputed to be a 'holy' man, and was later canonised as a saint; while a cult arose about Henry VI, whom Henry VII tried unsuccessfully to have canonised.⁵ And in the later Middle Ages the great commitment of the Christianised western world to the salvation of the Holy Land from the infidels under Saladin, the great Muslim leader, led to the three great Crusades.

The church had had a vested interest in capturing the interest of these early kings, as it depended on their power to protect the church, and on their enactment of grants of land and laws to this end. The church also carried with it its own canon law and ecclesiastical courts; its bishops and archbishops in England were such only at the pleasure and will of the pope (whoever and wherever he may be). And to the extent that the archbishop consecrated the king as king and inaugurated him into his office, this, together with the fact

¹ See extracts reproduced from Edward Hall's *Chronicle* in *English Historical Documents, 1485-1558*, C H Williams, (ed.), Eyre & Spottiswoode, London, 1967, at p. 141 ff.

² Hall's *Chronicle*, *loc. cit.*, pp. 505-512, quoted in *English Historical Documents, 1485-1558*, *ed. cit.*, p. 149. And see my Appendix I.

³ This is discussed *supra* in Chapter 1, *passim*.

⁴ See Clare Stancliffe, 'Kings Who Opted Out', in *Ideal and Reality in Frankish and Anglo-Saxon Society, Studies presented to J M Wallace-Hadrill*, Patrick Wormald with Donald Bullough and Roger Collins, (eds.) Basil Blackwell, Oxford, 1983, 155.

⁵ See John Cannon, and Ralph Griffiths, *The Oxford Illustrated History of the British Monarchy*, Oxford University Press, Oxford, 1988, reprinted with corrections 1989, 1992, 1996, 1997, pp. 296-297.

that the coronation oath from its earliest known incarnation at the time of Edgar has always included an undertaking by the king to *the Christian people subject to me ... that the Church of God and all the Christian people preserve true peace at all times*.¹, and later to grant and keep ‘...*the Lawes Customes and fraunchesses granted to the Cleargie and to the people by the glorious King St. Edward your predecessor*,² appeared to give the church and the pope some power over the king. Although the anointed king (*rex christus*) was somewhat analogous to Christ the King³, the clergy always insisted that the king was not in any way a priest.⁴

Nevertheless, British kings saw themselves holding power not from the church, but from God—in their Dooms, and later their ordinances and enactments, they described themselves as ‘king...by the grace of God’⁵, and in England the cry of *Deo Gratia* became identified with the king, particularly from the time of the battle of Agincourt when Henry V won France⁶, and still is the case today.⁷ In a sense, Roman catholicism was too successful for its own perceived political good in its proselytism of the kings in Britain, as the emphasis that was placed by the church on the laws of God and need for kings both to acknowledge and to obey them, particularly through the taking of the solemn coronation oath, inculcated in the kings a sense of primary responsibility, allowing for no intermediary between them and their people, or them and God, insofar as the governance of their kingdoms was concerned.⁸

¹ See oath of Edgar, my Appendix I.

² See Leopold Wickham Legg, *English Coronation Records*, Archibald Constable & Co Ltd, Westminster, 1901, at p. 251.

³ See Clare Stancliffe, ‘Kings Who Opted Out’, in *Ideal and Reality in Frankish and Anglo-Saxon Society, Studies presented to J M Wallace-Hadrill*, Patrick Wormald with Donald Bullough and Roger Collins, (eds.) Basil Blackwell, Oxford, 1983, p. 155, at 160; and note the similarity between the service for the consecration of a bishop, and the service for the consecration of a king (using the old *Liber Regalis* of c.1308) as set out in the table Legg, *op. cit.*, at p. xvii.

⁴ The king never acted as a priest; the English kings however did practise the Royal Touch to cure ‘the king’s evil’ or scrofula, a practice that was frowned upon by the clergy, but which was continued to the time of Queen Anne, and by the Jacobite pretenders.

⁵ See for example, Æthelstan, Grant of Lands By King Æthelstan to the Old Minster, Winchester, *Anglo-Saxon Charters*, edited and translated by A J Robertson, Cambridge University Press, Cambridge, 1939; 2nd edn., 1959, at pp. 48-50, and see discussion at p. 86 and p. 152 *supra*. Cf. Hobbes’ vies, see p. 340 *infra*.

⁶ Cf. *Song on the Battle of Agincourt* c. 1415—‘Our king went forth to Normandy, With grace and might and chivalry; The God for him wrought marvellously. Wherefore England may call and cry : *Deo gracias, Deo gracias Anglia, Redde pro victoria*. The gracious God now save our King, His people and all his well-being, Give him good life and good ending That we with mirth may safely sing : *Deo gracias, Deo gracias Anglia, Redde pro victoria*.’

⁷ ‘Elizabeth, the Second, by the Grace of God, Queen of Australia and Her other Realms and Territories, Head of the Commonwealth...’—*Royal Style and Titles Act* (Cth.), 1973

⁸ This aspect of kingship is acutely discussed by Walter Ullmann, in his “This Realm of England is an Empire”, *Journal of Ecclesiastical History*, Vol. 30, No. 2, April 1979, 175-203.

As the kingdom of England grew in sophistication and power, so too did the tensions between the church of Rome and the English king. William I had undertaken to continue¹ to pay Romescot to the pope, while simultaneously asserting his autonomy from Rome². The pope complained to Henry II that his son's coronation oath did not recognise adequately the position of the church³. Richard I paid ransom to the holy roman emperor. John was excommunicated, and had to make an oath of fealty to the pope, effectively surrendering the kingdom to Rome⁴. (In a bull of 1213 the pope stated that 'the suzerainty of England belonged to Rome, and that therefore nothing could be done in the kingdom without papal consent.'⁵) Henry III while still a child took an oath of fealty to the pope together with his coronation oath.⁶ Edward I rejected papal supremacy, reiterating his famous maxim underpinning the growth of *parlement*, 'it is the custom of the realm of England that in all things touching the state of the same realm there should be asked the counsel of all whom the matter concerns'⁷. The barons in 1301 wrote to the pope asserting the sovereignty of the English king and the supremacy of the king's jurisdiction, and their commitment to the

¹ The pre-conquest kings had paid Romescot *Rómfeoh* (Peters Pence)—see the Dooms of Edmund and Guthrum, and discussion at p. 173 *supra*.

² See Hale, *Prerogativa* at p. 12, where he refers to 18th law of William I (sourced to Eadmerum, *Opera Omnia*, II, 1646-1647) which provided for the payment of Peter-pence (or Romescot) to the pope; at p. 21 Hale endeavours to show that this was not in any way tribute, and at p. 12 that the king of England took 'great care...then and ever...that the collection of Peter-pence given or confirmed [by William's law] might be taken notice of as alms and not as a recognition of subjection.' Peter-pence was removed by the Annates Acts of 23 Henry VIII, c.20 (1532), and 25 Henry VIII, c.20 (1534). And see the discussion at p. 74, and p. 173, *supra*.

³ c.1170 Pope Alexander to Henry II: *In coratione autem illius nulla ex more de conservanda ecclesie libertate cautio est prestita, vel, sicut aiunt, exacta; sed iuramento potius asseritur confirmatum ut regni consuetudines, quas civitas dicunt, sub quibus dignitas pertinetur ecclesie, illibatas debeat omni tempore conservare.* quoted in H G Richardson, 'The English Coronation Oath', *Speculum*, Vol. 24, 1949, p. 44, at p. 47, n. 17; sourced to 'Jaffe, n. 11836; printed in *Materials for the History of Thomas Becket* I, 93; VII, 366 *Foedera*, I, I, 26, from Roger of Howden (*ed.* Stubbs, II. 7-9); says young Henry's oath omitted any reference to maintaining 'the liberty of the church', but included an additional promise to maintain unimpaired the ancient customs of the realm, 'whereby', says the pope, 'the authority of the Church is imperilled'.

⁴ See Stubbs, *Select Charters* at pp. 246-248: on 15 May 1213 John made an Act of Submission to the Pope, at Dover, whereby he conceded the Kingdom to the Pope; he renewed the act of submission to Nicolas, Bishop of Tusculum at London on 3 October 1213 with a golden bulla, and with the actual performance of liege homage promised in the act. There was also an oath of fealty that John had to swear to the Pope.

⁵ W S McKechnie, *Magna Carta, A Commentary on the Great Charter of King John*, 1905, 2nd edn., revised and in part rewritten, Glasgow, 1914, reprinted by Burt Franklin, New York, at pp. 45-46; The first bull is in the British Museum (Cotton, Cleopatra E I), and is printed by Bémont, *Chartes*, 41, and is reproduced in Rymer and Blackstone. The text of the second bull is given by Rymer. Later Innocent excommunicated the English barons who had persecuted 'John, King of England, crusader and vassal of the Church of Rome, by endeavouring to take from him his kingdom, a fief of the Holy See.' (*ibid.*)

⁶ See Stubbs, *Constitutional History*, Vol. II, at p. 18; and my Appendix I

⁷ See Stubbs, *Constitutional History*, Vol. 2, p. 159, n. 3, sourced to M. Westminster, p. 439: 'consecutudo est Angliae quod in negotiis tangentibus statum ejusdem regni requiratur consilium omnium quos res tangit.'

maintenance of the rights of the crown.¹ Richard II was deposed in 1399 because he had, *inter alia*, abrogated the long-recognised rights and freedom of the crown from the pope or anyone else, by seeking papal confirmation of statutes.² Henry VII declared his obedience to Rome, and sought papal recognition of his title and excommunication of his enemies.³

But the long history of the British kings from the *Bretwaldas* through William the Conqueror and down to the Tudors in the maintenance of their realms as distinct sovereign bodies, treating on their own terms with the rest of the world, and being responsible internally for their own sovereign bodies, reached its culmination in Henry VIII. The question of the king's divorce brought into the clearest focus the issues of the laws applicable in England, and of the indefeasible sovereignty of the English king. Henry VIII found himself being called before foreign courts, under foreign jurisdiction, within his own land, and threatened with the dispossession of his crown and kingdom by the foreign power of the pope.

In 1529, a Legatine Court was established in London by pope Clement VIII to try the matter of the king's divorce under the papal laws, to which the king was supposed to submit. Cardinal Wolsey's disgrace occurred in the summer of 1529, and after the suspension of the Legatine Court in October 1529, the king sent writs summoning a parliament which subsequently continued through several sessions until 1536 and is known to history as the Reformation parliament. The parliament briskly attacked the clergy, giving vent to long-standing and deep-seated grievances against the church's notorious abuses⁴. In 1531 the clergy in convocation gave Henry the style of 'protector and supreme head of the church and clergy of England', and was required to pay a huge sum (£100,000)⁵ to avoid

¹ See discussion at p. 75, and p. 191, *supra*, and Stubbs, *Constitutional History*, Vol. 2, *ibid*.

² See *Deposition of Richard II*, Rot. Parl. III. 416 [Latin], from *English Historical Documents*, 1327-1485, *ed. cit.*, at p. 407 ff.; translated from the original in Rot. Parl. III., 416 (Latin); and see my Appendix I.

³ See S B Chrimes, *Henry VII*, Eyre Methuen, London, 1972, reprinted 1977, at p. 240; and see Sir Francis Bacon, *Henry VII*, *op. cit.*, p. 15; and see Sir George Buck, *Richard III*, *op. cit.*, pp. 88-89; and for documentation about the papal bull see S B Chrimes, *Henry VII*, *op. cit.*, Appendix D, pp. 330-331. And see discussion at p. 117, *supra*. Henry apparently routinely sought papal imprimatur for his laws, at least in the early part of his reign.—see Chrimes, *loc. cit.*, pp. 240-241, and p. 304.

⁴ For this see G R Elton, (ed.) *The Tudor Constitution, Documents and Commentary*, Cambridge University Press, Cambridge, 1960, reprinted 1965, at pp. 318-321.

⁵ But most of the sum was later remitted—see Elton, *Tudor Constitution*, *ed. cit.*, at p. 330, n. 5.

attack under the old statutes of *Præmunire*¹. In March 1531 Sir Thomas More as chancellor laid the king's scruples concerning his marriage to Catherine before the parliament, and both houses approved the divorce, as did the convocation. Henry married Anne Boleyn about 25 January 1533². Later in 1533 the parliament removed all appeals to Rome from ecclesiastical courts, removing the king's marriage from the possibility of annulment by Rome.³

Also in 1533, Henry VIII wrote to the pope stating that he could not submit his marriage cause to a foreign jurisdiction without the consent of the realm, the laws of which he was bound by his coronation oath to observe.⁴ Cranmer became Archbishop of Canterbury on 30 March 1533⁵, and pronounced Henry's marriage with Catherine of Aragon invalid on 23 May 1533, and the king's marriage to Anne Boleyn valid on 28 May 1533.⁶ Anne Boleyn was crowned queen consort and anointed after the declaration of the divorce on 1 June 1533.⁷ Pope Clement VII in August 1533 declared Cranmer's certification of the annulment and his validation of Henry's marriage to Anne Boleyn to be invalid and excommunicated Cranmer, and in September 1533 issued a bull of excommunication against Henry himself, declaring the king to be deprived of his kingdom, and his subjects to be absolved of the oath of obedience to their lawful monarch.⁸ Henry was excommunicated (again⁹) by pope Paul III in 1538¹⁰—Cranmer later was to say that the pope wrote to Henry VIII saying,

¹ H Hallam, *The Constitutional History of England from the Accession of Henry VII to the Death of George II*, Alex. Murray & Son, London, 1869, p. 60; and see An Act concerning the pardon granted to the King's spiritual subjects of the province of Canterbury for *Præmunire* (1531, 22 Henry VIII, c. 15), as reproduced in Elton, *Tudor Constitution*, ed. cit., at pp. 337-338—note the use of the word 'subjects'.

² See Hallam, *loc. cit.*, at p. 58, n. 1; and *Encyclopædia Britannica, Micropædia*, 15th edn., 1992, Vol. I, p. 427.

³ See Hallam, *op. cit.*, at p. 60-61, and see the Act of Appeals, 1533, 24 Henry VIII, c. 12, *Statutes of the Realm*, III, 427-9, at Elton, *Tudor Constitution*, ed. cit., at pp. 344-349.

⁴ See Pocock, *Records of the Reformation*, II, 438-439, quoted in Le Van Baumer, *Early Tudor Theory of Kingship*, *op. cit.*, at p. 167. And see my observations *infra* at p. 269, p. 273, and especially p. 324 ff.

⁵ See John Strype, *Memorials of the Most Reverend Father in God Thomas Cranmer, sometime Lord Archbishop of Canterbury*, 1694, in three Books; a new edition with additions, in 2 Vols., Oxford University Press, Oxford, 1840; see Vol. I at p. 26.

⁶ See Elton, *Tudor Constitution*, at p. 8, notes 1 and 3.

⁷ See Retha M Warnicke, *The Rise and Fall of Anne Boleyn*, Cambridge University Press, Cambridge, 1989, Canto edition, Cambridge, 1991, at p. 128, and see pp. 123-130; and see *Encyclopædia Britannica, Micropædia*, 15th edn., 1992, Vol. 8, p. 315. Sir Thomas More refused to attend the coronation. Being queen consort, Anne did not have to take a coronation oath, as she was not queen regnant (unlike Mary I, Elizabeth I, Mary II, Anne, Victoria and Elizabeth II.)

⁸ See Franklin le Van Baumer, *The Early Tudor Theory of Kingship*, Yale University Press, 1940; reissued 1966, New York, Russell & Russell, p. 88. And see S T Bindoff, *Tudor England*, Penguin Books, 1950, 1964, at p. 93.

⁹ Clement VII's bull had been suspended (Clement died in September 1534)

¹⁰ See *New Encyclopædia Britannica*, Vol. 9, p. 205.

*Didst thou not promise, at our¹ permission of thy coronation, to forsake the devil and all his works, and dost thou turn to heresy? for the breach of this thy promise, knowest thou not, that it is in our power to dispose of thy sword and sceptre to whom we please?*² The pope then solicited the aid of France and Spain to enforce justice against Henry³, sending Cardinal Pole to consult concerning a league of Christian princes against Henry,⁴ raising the very real spectre of foreign invasion of England.

The king's 'Great Matter' of the divorce really boiled down to which law the king was obliged to obey; did he obey the law as stated by the pope; or did he obey the law as stated in England? Or to put it another way, was the law of England obliged to be what the pope said it should be? Who was sovereign in England—the king or the pope? In any real sense, this was the nub of the matter.

It is at this time that the dictum of Edward I, *ut quod omnes similiter tangit ab omnibus approbetur* [that which touches all shall be approved by all⁵], and the view of the indefeasible sovereignty of the British king as previously enunciated by both king and barons⁶, coalesced. The king by his coronation oath was bound to the law; but what was the law? Henry wished to divorce, according to the law—but which law? The king saw that to divorce his wife and get another to beget an heir, or for any other reason, was a matter which touched not only him, but the people as well. If the pope would not agree to a

¹ This must be a generic papal use of the 'Royal plural' or in his case the 'papal plural', as neither Paul III, nor his predecessor Clement VII was pope when Henry succeeded to the throne in 1509. (assuming that Cranmer was quoting correctly, and that he did in fact make this speech—see A F Pollard's doubts in *Thomas Cranmer and the English Reformation*, 1489-1536, Frank Cass & Co., London, 1905, reprinted Frank Cass And Company, USA, 1965, at p. 186, n.1

² From Cranmer's speech at the Coronation of Edward VI, sourced to J. E. Cox (ed.), *Cranmer's Miscellaneous Writings*, 126, as quoted in *English Historical Documents*, Vol. V, 1485-1558, C H Williams, (ed.), David C Douglas (gen. ed.), Eyre & Spottiswoode, London, 1967, pp. 466-470. But note Pollard's doubts in note above.

³ See le Van Baumer, *Early Tudor Theory of Kingship*, *op. cit.*, at p. 88, referring to Janelle, *Obedience in Church and State*, pp. 11-19 for text of pope's letter to France.

⁴ See le Van Baumer, *The Early Tudor Theory of Kingship*, *loc. cit.*, at p. 87, n. 8. The 'Enterprise of England', whereby continental princes threatened invasion of England dates from 1533, far earlier than merely Elizabeth I's time—see Franklin le Van Baumer, *ibid.*

⁵ Although Edward first used this maxim in a writ calling a *parlement*, while the 'matters touching all' related to a threat to the kingdom, where 'the English tongue, if Philip's power is equal to his malice, will be destroyed from the earth.'—writ for the *parlement* of 1295, Stubbs, *Constitutional History*, Vol. 2, p. 134-5; and see *Select Charters*, pp. 484-5. And see discussion at p. 75, and p. 191, *supra*.

⁶ See discussion at p. 191, *supra*.

divorce, then he would ask the people to agree to a divorce, and to put in it legislation.¹

The law then, (Henry reasoned), which the king was bound to uphold, was the law as made in England, in accordance with the law of God. But it was the English law², not any other law, which was to govern the activity of king and country—after all, his coronation oath stated that ‘he shall grant to hold laws and customs of the realm and to his power keep them and affirm them which the folk and people have made and chosen’³.

It is little wonder in these circumstances that Henry proceeded apace to establish, with his parliament, the absolute supremacy of English law and the sovereignty of the English king, against all incursions.

In early March 1534 the bill abrogating papal supremacy was introduced into the parliament; on 23 March 1534 the conclave at Rome finally determined against the divorce; and on 30 March 1534 Henry gave his royal assent to a bill abrogating papal supremacy.⁴

During parliament’s assault on the Roman church and its abuses, it continually referred not only to the specific abuses, but also to the fact that they were ‘prejudicial to the King’s prerogative royal and repugnant to the laws and statutes of this realm’⁵; to the fact that the ‘King’s highness before Almighty God is bound by the duty of a good Christian prince, for the conservation and preservation of the good estate and commonwealth of this his realm...’¹. This seems pretty unequivocally to indicate that the king’s coronation oath had included words along these lines. Parliament also stated that:

¹ Note that this kind of thinking would have been supported by A V Dicey, who propounded the view that all governors rule by the opinion of the governed—see A V Dicey, *Lectures on the Relation between Law & Public Opinion in England during the Nineteenth Century*, [a series of lectures given in 1898 to the Harvard Law School], Macmillan and Co., Ltd, London, 1905, pp. 2-3, restating Hume’s view in terms that ‘the opinion of the governed is the real foundation of all government’ *ibid.*, p. 3, referring to Hume, *Essays*, Vol. i., Essay iv., p. 110, Greene and Grose. Though Dicey carried this idea to an extreme, claiming slaves in the American south, for example, were subjugated by virtue of their opinion, that they agreed in the subjugation, because they could not win against their oppressors.

² Cf. William I’s view on the payment of Peters-pence: see p. 74, *supra*.

³ This is the text in the Lettou/Machlinia oath. The text in the *Little Denece* for Henry VII reads: ‘do you grant the rightful laws and customs to be holden and promise you after your strength and power such laws as to the worship of God shall be chosen by your people to be strengthened and defended?’

⁴ The information is drawn from Henry Hallam, *The Constitutional History of England from the accession of Henry VII to the death of George II*, Alex Murray & Son, London, 1869, at pp. 60-61. He attributes the sources of these facts to Strype (*Ecclesiastical Memorials*), Lingard (*History of England*), and Burnett, (*ed.*? of Reeves’ *History of the Law*)—although the precise names of the source texts are far from obvious.

⁵ See Preamble to An Act for the submission of the clergy to the King, 1534, 25 Henry VIII, c. 19, quoted in Elton, *The Tudor Constitution*, *ed. cit.*, p. 339.

Where by divers sundry old authentic histories and chronicles it is manifestly declared and established that this realm of England is an empire, and so hath been accepted in the world, governed by one supreme head and king having the dignity and royal estate of the imperial crown of the same, unto whom a body politic, compact of all sorts and degrees of people divided in terms and by names of spirituality and temporality be bounded and owe next to God a natural and humble obedience; he being institute and furnished by the goodness and sufferance of Almighty God with plenary, whole and entire power, pre-eminence, authority, prerogative and jurisdiction to render and yield justice and final determination to all manner of folk residents or subjects within this realm...without restraint or provocation to any foreign princes or potentates of the world...

...And whereas the King his most noble progenitors, and the Nobility and Commons of this realm...², made sundry ordinances, laws, statutes, and provisioned for the entire and sure conservation of the prerogatives, liberties and preeminences of the said imperial crown of this realm, and of the jurisdictions temporal and spiritual of the same...

in consideration whereof the King's Highness, his Nobles and Commons...doth therefore by his royal assent and by the assent of the Lords spiritual and temporal and the Commons...enact...[all causes 'spiritual' including causes relating to the king i.e. the divorce] shall be ...within the King's jurisdiction and authority and not elsewhere. ...³

It also said that the abuses had been 'in great derogation of your imperial crown and authority royal, contrary to right and conscience...' causing the 'state, dignity, superiority, reputation and authority of the said imperial crown of this realm...[to be] much and sore decayed and diminished, and the people of this realm thereby impoverished...'; it stated that the king was 'supreme head of the Church of England', and that the realm 'recognising no superior under God but only your Grace, hath been and is free from subjection to any man's laws but only to such as have been devised, made and ordained within this realm for the wealth of the same, or to such other as by sufferance of your Grace and your progenitors the people of this your realm have taken at their free liberty by their own consent to be used amongst them...'⁴

And finally in the *Act of Supremacy*⁵ the parliament enacted that the king was 'the only supreme head in earth of the Church of England called *Anglicana Ecclesia*, and shall have ...annexed...to the imperial crown of this realm as well as the title and style thereof...the

¹ See *Act of Annates*, 1532, 23 Henry VIII, c. 20, Elton, *The Tudor Constitution*, ed. cit., 341 at p. 342.

² And here they referred to Kings Edward I, Edward III, Richard II, and Henry IV: Elton, ed. cit., at p. 345 in notes 1-4 refers to: *Statute of Carlisle*, 1307, (35 Edw. I. st. 1); *First Statute of Provisors*, 1352 (25 Edw. III, st. 4); *First Statute of Praemunire*, 1353 (27 (Edw. III, st. 1); *Second Statute of Provisors*, 1390 (13 Rich. II, st. 2); *Second Statute of Praemunire*, 1393 (16 Rich. II, c. 5); and to 2 Henry IV, c. 3; 9 Henry IV, c. 8; and 2 Henry IV, c. 4.

³ See *Act of Appeals*, 1533, 24 Henry VIII, c. 12, Preamble, as quoted in Elton, *The Tudor Constitution*, ed. cit., pp. 344 ff., at p. 344-346; from *Statutes of the Realm*, III, 427-429.

⁴ See An Act for the exoneration of exactions paid to the see of Rome, 1534, 25 Henry VIII, c. 21, *Statutes of the Realm*, III, 464-471, quoted in Elton, *The Tudor Constitution*, ed. cit., 351, at 351, and 352.

⁵ See An Act concerning the King's Highness to be Supreme Head of the Church of England and to have authority to reform all errors, heresies and abuses of the same, 1534, 26 Henry VIII, c. 1, *Statutes of the Realm*, III, 492; quoted in Elton, *The Tudor Constitution*, ed. cit., at p. 355.

...dignity of supreme head of the same Church...' It then formally extinguished by enactment the authority of 'the bishop of Rome', and required an oath to this effect and in support of the royal supremacy from all office holders.¹

These events and the texts of the legislation assume not inconsiderable significance when considering the question of the coronation oath.

It is clear from Henry's letter to the pope² that he was cognisant of his coronation oath, and had it in the forefront of his mind; and if the speech attributed to Cranmer is correct, then the pope had forcibly brought Henry's coronation oath into prominence. Now, in these circumstances, what would Henry do? Most probably he would have a good hard look at the text of the oath which he had taken. That the text which he amended in his own hand is on a separate piece of paper, and is in English, all point towards its being either the actual oath which he made, or a copy of it, as the oath was traditionally made in the common language, (in Henry VIII's time this was English) from a piece of paper which was laid on the altar in front of the archbishop of Canterbury.

Henry VIII's amendments to the oath qualify the liberties granted to the church as being only those 'lawful' liberties; and they qualify also the 'holy church' to mean 'the holy church of England', and those liberties shall be only those 'not prejudicial to his jurisdiction and dignity royal'. These interpolations are clearly designed to reiterate the supremacy of the laws of England and of the king's jurisdiction. Moreover he specifically refers to holding those laws and customs which are 'lawful and not prejudicial to his crown or imperial jurisdiction' and which 'the nobles and people have made and chosen with his consent'. The similarities of Henry's interpolations with the words and sentiments of the legislation of the Reformation parliament, particularly that of the *Act of Appeals*³, seem to me to too great to admit of mere coincidence.

Moreover, when Dr Thomas Cranmer was consecrated as Archbishop of Canterbury in 1533, before taking the customary oath of fidelity to the pope, Cranmer made a

¹ See An Act extinguishing the authority of the bishop of Rome, 1536, 28 Henry VIII, c. 10, *Statutes of the Realm*, III, 663-6, extracted in Elton, *The Tudor Constitution*, ed. cit., at p. 356.

² See p. 269, *supra*.

³ *Act of Appeals*, 1533, 24 Henry VIII, c. 12, Preamble, as quoted in Elton, *The Tudor Constitution*, ed. cit., pp. 344 ff., at p. 344-346; from *Statutes of the Realm*, III, 427-429; see text quoted *supra*, at p. 272.

protestation before witnesses that

be intended not by the oath that he was to take, and was customary for bishops to take to the Pope, to bind himself to do anything contrary to the laws of God, the King's prerogative, or to the commonwealth and statutes of the kingdom: nor to tie himself up from speaking his mind freely in matters relating to the reformation of religion, the government of the church of England, and prerogative of the crown. And that according to this interpretation and meaning only would he take the oath, and no otherwise.¹

After taking this oath, and his oath to the pope, Cranmer also took an oath to the king whereby bishops 'sued for their temporalities'; this 'Oath for his Temporalities' was as follows:

I, Thomas Cranmer, renounce and utterly forsake all suche clauses, words, sentences, and graunts, whiche I have of the Popes Holynes in his Bulls of the Archbishopricke of Caunterbury that in any maner wise, is, or may be hurtful, or prejudiciall to your highnes, your heires, Successors, astate, or Dignite Roiall. Knowlaging my selfe to take and holde the said Archbishopricke immediately, and oonly, of your Highnes, and of none other. Moost lawly beseeching the same for the restitucon of the Temporalities of the said Archbishopricke; Promysing to be feithful, true and obedient subject to your said Highnes, your Heires and Successors, during my lyff. So helpe me God, and the holy Evangelists.²

There is distinct resemblance between the protestation and the Oath for Temporalities that Cranmer took, and the oath examined and amended by Henry VIII. Cranmer undertook to do nothing contrary to the king's prerogative or the prerogative of the crown, not against the government of the church of England, nor to do anything prejudicial to the king's estate or dignity royal. These terms used by Cranmer are very similar to Henry's interpolations, with regard to prejudice to the dignity royal, and those used with regard to the preservation of the rights of the crown in its estate are similar to the words of the text amended. The effect of Cranmer's oath also was to recognise the king's jurisdiction prior to any jurisdiction the pope may purport to assert in England.

Professor Maitland had suggested that Henry VIII's interpolations 'point to the notion of an indefeasible royal power which laws cannot restrain; the king will not bind himself to

¹ John Strype, *Memorials of the Most Reverend Father in God Thomas Cranmer, sometime Lord Archbishop of Canterbury*, 1694, in three Books; a new edition with additions, in 2 Vols., Oxford University Press, Oxford, 1840; see Vol. I, pp. 27-28. The original of both the protestation and the oath of Cranmer are reproduced by Strype in the Appendix, which appears in Vol. 2, as Num. V, at pp. 693-684. The relevant parts of the original read: '*...non est, nec erit meae Voluntatis aut intentionis per huiusmodi juramentum vel iuramenta, qualitercunque verba in ipsa posita sonare videbuntur, me obligare ad aliquod ratione eorundem posthac dicend. faciend. aut attemtand. quod erit aut esse videbitur contra legem Dei, vel contra illustriss. Regem nostrum Angliæ, aut Remp. huius sui Regni Angliæ, legesve aut prerogativas ejusdem. Et quod non intendo per huiusmodi juramentum aut iuramenta, quovis modo me obligare, quominus libere loqui, consulere et consentire valeam, in omnibus et singulis, Reformationem religionis Christianæ, Gubernationem Ecclesiæ Anglicanæ; aut Prærogativam Coronæ ejusdem, Republicæ commoditatem, quoquomodo concorrentibus, et ea ubiq; exequi et reformare, quæ mihi in Ecclesia Anglicana reformanda videbuntur.*'

² See John Strype, *Memorials of Thomas Cranmer*, loc. cit., at Vol. 2, Num. VII, p. 685; his oath to the pope is at Vol. 2, Num. VI, p. 684.

maintain laws that are prejudicial to his crown'.¹ P E Schramm saw Henry's amendments as 'clear... evidence of the nature of the early absolutism...made by the great champion of the royal supremacy'.²

It is true that Henry's interpolations refer to '*lawful* rights and liberties' granted to the 'church of England not prejudicial to his jurisdiction and dignity royal', and to his keeping and affirming 'approved customs' and laws '*lawful and not prejudicial to his crown or Imperial jurisdiction*'. But these statements are consistent with the long struggle to maintain England's sovereignty as against the church of Rome, and to ensure that England's laws were not subordinate to any foreign jurisdiction. Henry echoes the words of Edward I and the barons back in 1301, and the word 'Imperial' as used by the parliament in the *Act of Appeals*—*this realm of England is an empire*—meant that England was a people which had sovereignty, and did not admit of any authority over it from outside its borders³. Supremacy of the English jurisdiction was what was uppermost in Henry's mind. And as to the laws themselves, firstly he limited the rights of the church to *lawful* ones *not prejudicial to his jurisdiction*. This effectively addressed the situation in the original Lettou oath which may have left the obligation on the king to maintain the laws already granted by earlier kings to the church which would have maintained its reliance on Rome and its jurisdiction rather than on the king's⁴.

Secondly, they are laws which are not only lawful and supportive of his sovereignty, but also are made and chosen by *the nobles* and people *with the king's consent*¹. In many ways, the Lettou/Machlinia oath is wider in this regard than the *Little Device* oath—that oath specifically restricted the laws which the king is to strengthen and defend as being *rightful* law *as to the worship of God* as shall be chosen by his people, these words clearly importing a qualification, either as to means of worship, or as to general agreement of the laws made by

¹ Maitland, *Constitutional History*, *op. cit.*, p. 287

² Schramm, *English Coronation*, *op. cit.*, p. 216.

³ See Elton, *Tudor Constitution*, *loc. cit.*, p. 332, and notes 1 and 2 thereon. Cf. William Shakespeare, *Henry V*, Act I, scene ii, lines 222-229: '...and by God's help/ and yours, the noble sinews of our power,/France being ours, we'll bend it to our awe/or bring it all to pieces: or there we'll sit/ ruling in ample empery/ o'er France and all her almost kingly dukedoms,...

⁴ Note that the *Little Device* text clearly maintained the laws granted by 'your predecessor and glorious king Saint Edward', which surely could be seen as referring to laws supportive of the church of Rome.

the people with the laws of God; that is, the king would not have to defend or strengthen a law which was not 'rightful' nor in accordance with the law of God. But the Lettou/Machlinia oath is far less specific. Henry's amendments import both these restrictions, since he specifies that the laws shall be lawful (this must mean according to God's laws, as he has already dealt with the fact of his own assent), and the king's jurisdiction was based upon the fact that the king answered to no other power, but to God.

While there is no doubt that the text of the oath as amended by Henry certainly does support the royal prerogative, it would be a mistake to interpret it solely as if that prerogative was a personal prerogative. Here Henry is concerned with jurisdiction and dignity royal; these things are certainly prerogatives, but they are also assertions of a unified sovereignty in the nation which is represented by the king's prerogative, and which has its articulation through it. Henry was not saying, 'I am England'; he was saying 'England is England'.²

In the light of the foregoing evidence, it seems more likely that Henry VIII's coronation oath was either the text he had before him, or that text as he had amended it. It seems inarguable that it included words at least about the maintenance of the rights and dignities of the crown, and perhaps about the prerogative. We know, from his hand-written amendments on papers relating to theological arguments that he took matters pertaining to the church very seriously indeed³; we also know that the words of any oath, let alone the oath of kings, were of prime importance.⁴ We know that he considered the issues raised by the text of the oath, and we also know that orders for a coronation and the text of the oath

¹ The italics represent Henry's alteration to the Lettou/Machlinia oath, which referred to 'laws and customs...which the folk and people have made and chosen'.— *lez leyes et custumex du roialme, et a souen poiair lez face garder et affermer que lez gentex du people ont faitex et esliez*

² Cf. Henry's statement to parliament sitting as a court: 'We be informed by our judges that we at no time stand so highly in our estate royal as in the time of Parliament wherein we as head and you as members are conjoined and knit together in one body politic...'—from R Holinshed, *Chronicles of England, Scotland and Ireland*, London, 1808, III, 824-6, quoted in Elton, *loc. cit.*, p. 270. This extract is from *Ferrers' Case*, 1543, and although this quotation would appear to be very supportive of parliament, in fact Henry was addressing the question of privileges of a member of parliament, and indicating that as he was head of the parliamentary body politic, any offence against the meanest member was to be viewed as if it were done against the king and the whole Court of parliament.

³ See T A Lacey's Introduction to his edition of *The King's Book, or A Necessary Doctrine and Erudition for Any Christian Man*, published 1543, published for the Church Historical Society, London, 1932, at pp. xvii-xviii; Henry's comments on what was to become known as *The King's Book* were made in 1540.

⁴ Cf. Sir Thomas More's inability in 1534 to take the new oath under the Act of Succession (25 Henry VIII, c. 22; *First Act of Succession, Statutes of the Realm*, III, 471-4) which recognised the annulment of the Aragonese marriage and the validity

were submitted to the king for his approval.¹ The circumstantial evidence supports the conclusion that Henry VIII took either the Lettou oath, or the oath as he amended it in his own hand. Professor Ullmann is in my view correct, and the actual text of the Henry VIII oath could benefit from modern scrutiny, and forensic examination. Indeed, the taking this oath by Henry VIII and his successors, would explain why, in the next century, the Puritans and parliamentarians made no outcry at all about the inclusion of the reference to the king's prerogative in the coronation oath of any of the Stuarts, but concentrated rather on the kinds of laws to which it referred.

EDWARD VI

Edward was the first king of England to succeed as a Protestant member of the church of England (the second was to be Charles I²). He was nine years old. In these circumstances one would have expected some alterations to have been made to the coronation oath. There is no record of what Edward swore; but there is remaining a copy of a Privy Council meeting where they decided, because the length of the ceremony may be 'weary' and 'hurtful' to Edward because of his 'tender years', to alter the ceremony, and also because 'many points of the same were such as by the laws of the realm at this present were not allowable'.³ The Privy Council then drew up a shortened order of service, which, when compared to the *Little Device* for Richard III, omitted in the first part of the oath any reference to 'customs', did not refer to the laws and liberties as 'being granted' by the king, and did away altogether with the reference to the laws customs and liberties granted 'by your predecessor and glorious king, Saint Edward':

Will ye grant to keep to the people of England and others your realms and dominions the laws and liberties of this realm and others your realms and dominions?⁴

of the marriage to Anne Boleyn (both of which he was willing to do, as Anne had been anointed queen), but which also denied papal supremacy (which he was unwilling to swear to).

¹ See Jerdan, *Rutland Papers*, *op. cit.*, p. 1.

² It is impossible to say with any certainty what Elizabeth I's religious affiliations were. She had accepted the Catholic doctrine under Mary, and the Anglican/Protestant under Edward VI. During her reign she restored the religious laws of the realm to what they had been under Henry VIII, and her views seem most akin to his.

³ Dasent, *Acts of the Privy Council*, (A.P.C.), N.S., II, (1547-50), London, 1890, 1873, pp. 29-33, reproduced in *English Historical Documents*, Vol. V, 1485-1558, C H Williams, (ed.), David C Douglas (gen. ed.), Eyre & Spottiswoode, London, 1967, pp. 466-470. And see my Appendix I.

⁴ See Dasent, *Acts of the Privy Council*, *ibid.*, and EHD, Vol. V, *ibid.* And see my Appendix I.

The removal of the reference to the king's keeping and ratifying the laws and customs previously granted, as well as of the specific reference to 'king Saint Edward' represented a view obviously being more in accord with the protestant religious position, and ensured that the king would not be amenable to direction by the pope. All references to the clergy were deleted, and the church was described as 'the church of God'. But main and significant departure from the *Little Device* was in the fourth clause:

Do ye grant to make no new laws but such as shall be to the honour and glory of God, and to the good of the common wealth, and that the same shall be made by the consent of your people as hath been accustomed?

Effectively this reiterated the king's power to make the new laws, confining the people's role to that of consenting. But undoubtedly the text was drafted by the Privy Council exactly like this for the very good reason that the Privy Council under the Lord Protector was actually going to rule, and not the king; after all, they had the precedent of the Councillors advising the nine year old Henry III who in 1216 abrogated much of John's *Magna Carta* in order to restore to themselves those powers which they had the year before taken away from the king. (But the Council, if not the Lord Protector, was aware that Edward on his coming of age could repudiate if he wished the acts of the Council taken in his name, and using his prerogative).¹

But there is no evidence that Edward actually swore the oath the council had set down for him.

Archbishop Cranmer is reported to have said in his sermon at Edward's coronation :

Most dread and royal Sovereign: the promises your Highness hath made here, at your coronation, to forsake the devil and all his works, are not to be taken in the Bishop of Rome's sense, when you commit anything distasteful to that see, to hit your Majesty in the teeth, as Pope Paul the Third, late Bishop of Rome, sent to your royal father, saying, *Didst thou not promise, at our permission of thy coronation, to forsake the devil and all his works, and dost thou turn to beresy?...?*²

¹ The Council articulated that '[they did not doubt] that "our sovereign will when he cometh of age of knowledge and judgement ... graciously weigh our considerations, and accept benignly both that we do in this and in all other things during his ... minority"', from *Acts of the Privy Council*, [A.P.C.] II, 22, quoted in W K Jordan, *Edward VI: The Young King*, George Allen & Unwin, London, 1968, at p.64-65

² The speech from which this quotation is taken is hereinafter referred to as 'the Cranmer speech'. This speech by Cranmer at Edward's coronation is recorded in John Strype, *Memorials of Thomas Cranmer, op. cit.*, 1694, [Book II, Chapter 1, pp. 142 ff. at p. 145], and in the new edition with additions, OUP, Oxford in 2 Vols., 1840, at Vol. 1, pp. 202-207, at p. 205. Strype calls this 'and excellent speech' and said it was to be found among the collections of Archbishop Usher, from 'Foxes and Firebrands, part 2.' An almost identical text is to be found in *English Historical Documents, 1485-1558*, C H Williams (ed), pp. 466-470, sourced to J E Cox, (ed), *Cranmer's Miscellaneous Writings*, 126.

This clearly implies that Edward and his father Henry before him had at their coronations sworn or promised (presumably in an oath) to 'forsake the devil and all his works'. There is in fact no mention of the devil and all his works in any of the texts of coronation oaths extant¹, which I have been able to locate; nor is there any such reference in the procedure of service drawn up by the Privy Council², nor in the *Liber Regalis*³ or the *Little Device*⁴. The only reference that I have been able to find to the devil is in the *Liber Regalis* at the blessing of the ring,⁵ and in a prayer just after the taking of the coronation oath.⁶ Neither of these, however, fits the kind of description given by Cranmer.

On the other hand, Cranmer was responsible for the drawing up of *The Book of Common Prayer*,⁷ in which is a catechism which states:

Question:	What is your name?
Answer:	N. or M.
Question:	Who gave you this name?
Answer:	My Godfathers and Godmothers in my baptism; wherein I was made a member of Christ, the child of God, and an inheritor of the kingdom of heaven.
Question:	What did your Godfathers and Godmothers then for you?
Answer:	They did promise and vow three things in my name. First that I should renounce the devil and all his works, the pomps and vanity of this wicked world, and all the sinful lusts of the flesh. Secondly, that I should believe all the articles of the Christian Faith. . And thirdly, that I should keep God's holy will and commandments, and walk in the same all the days of my life.
Question:	Dost thou not think that thou art bound to believe, and to do, as they have promised for thee?

¹ Of course, there is no mention of the devil in the Lettou/Machlinia oath ('the Henry VIII oath') either.

² See text at my Appendix I

³ See text in L W Legg, *English Coronation Records*, *op. cit.*, pp. 81 ff. (Latin), pp. 112 ff. and pp. 245 ff. (English translation).

⁴ See Jerdan, *Rutland Papers*, *op. cit.*

⁵ *Liber Regalis*, English translation, Legg, *op. cit.*, p. 120.

⁶ *Liber Regalis*, English translation, Legg, *op. cit.*, p. 255; *Liber Regalis*, Latin, Legg, *op. cit.*, p. 89. This prayer was also included in the *Little Device* for Henry VII—see Jerdan, *Rutland Papers*, *op. cit.*, p. 16

⁷ *The Book of Common Prayer* drawn up by Thomas Cranmer, (a compromise between old and new ideas) was first authorised for use in the Church of England (1st prayer book) by the first *Act of Uniformity*, 1549 (2 & 3 Edw. VI, c. 1); amended in 1552 (→ protestantism) (2nd prayer book) second *Act of Uniformity* (5 & 6 Edw., VI, c. 1); abandoned by Mary in 1553 who restored the Latin liturgy as in the last year of Henry VIII's death (1 Mary, stat. 2, c. 2); 2nd prayer book restored by Elizabeth I in 1559 (1 Eliz. I, c. 2); Puritan insistence at amendment(→protestantism), but James VI and I supports Book of Common Prayer, 1604 (Proclamation enjoining conformity to the service of God established, 16 July 1604, Cardwell, *Documentary Annals*, II, 80-84, in Kenyon, *Stuart Constitution*, pp. 134-137, at p. 135); proscribed under the Interregnum; small revision in 1662, Book of Common Prayer prescribed in Act of Uniformity, 1662 (14 Car. II, c. 4); amendments (→catholicism) rejected by parliament 1928; amendments adopted at end of 1970s.

Answer: Yes verily: and by God's help so I will. And I heartily thank our heavenly Father, that he hath called me to this state of salvation, through Jesus Christ our saviour. And I pray to God to give me his grace, that I may continue in the same unto my life's end.¹

This catechism clearly was based on the original Roman catholic catechism. While there is no mention of renouncing the devil in the orders of service for the coronations, there are references in the *Liber Regalis* to times when the king paid service to certain observances; at these times, the king could well have iterated the catechism as a prelude to the coronation or the mass.² These occur—on the night before the coronation, when the prince is directed to give himself up to contemplation and prayer, in which observances he is to be instructed by the Abbot of Westminster;³ during the coronation when the *Liber Regalis* refers to passages after the reading of the Gospel and before the Communion called *Secret*, and, *Another Secret for the King and Queen*,⁴ where clearly some business appropriate to the king personally is conducted. And in the *Little Device* for Henry VII there was also referred to a '...divine service, (a) mass)...' wherein the putative king creates the knights of Bath and other sundry lords.⁵ These occasions could be ones appropriate to the personal catechising of the king, and he well may have, in his own personal capacity, in the light of the solemn vow he was about to undertake, or of the great commission which he had just received, reiterated all the statements of faith in the catechism, as an earnest of his understanding that he was king solely *Deo gratia*, 'by the grace of God'.⁶

¹ THE BOOK OF COMMON PRAYER and Administration of the sacraments and other Rites and Ceremonies according to the use of THE CHURCH OF ENGLAND, Random House Australia, Random Century Group, London, 1992, by arrangement with the Chancellor, Master and Scholars of the University of Cambridge, all rights 'are vested in the Crown in the United Kingdom, and controlled by Royal Letters Patent', p. 297.

² The coronation service, both according to the church of Rome, and under the Anglican orders, allowed for a mass—that is, a communion. It was the communion and the 'elevation of the host' to which Elizabeth I was said to object at her own coronation—see my Appendix I.

³ See *Liber Regalis*, Legg, *op. cit.*, p. 113. A 'vigil' is referred to in the *Little Device*—see Jerdan, *Rutland Papers*, *op. cit.*, p. 4.

⁴ See *Liber Regalis*, at Legg, *op. cit.*, p. 125. And for the Latin see Legg, at p. 104. And for the *Little Device* see Jerdan, *Rutland Papers*, *op. cit.*, p. 22. The *Little Device* refers to the '*secrete of the masse Munera*', amongst a list of things that clearly ordinarily would have been observed in a mass, coronation or not.

⁵ See Jerdan, *Rutland Papers*, *op. cit.*, p. 4.

⁶ In the Christian or theist lexicon, 'by the grace of God' means, 'by God's gift'—that is, it has nothing to do with the personal 'specialness' of the person concerned, rather it has to do with the fortuity of God's grace to that person; the emphasis is always on God and not on the person, and the phrase represents an expression of gratitude to God for his gift—cf. 'There but for the grace of God go I'. It seems to me that many of the misunderstandings which have occurred over the centuries is due to a confusion of interpretation of the idea represented by this phrase; for example 'divine right of kings' is a phrase which is associated by some with arbitrary and despotic rule, and by others with the idea that a king rules solely by God's gift alone, and therefore has commensurate responsibilities—see discussion under 'Divine Right of Kings' *infra*.

Therefore there are a number of options as to belief about this particular matter, which are possible of credence; they are:

- the Cranmer speech is not a speech by Cranmer at the coronation, (nor probably anywhere else) as Professor Pollard has suggested,¹ and bears no semblance to reality;
- the speech is that of Cranmer, but he was simplifying the notion of the consecration of the king for a young boy;²
- the speech is that of Cranmer, but he was mistaken as to what had happened between the pope and Henry VIII, and being mistaken, extrapolated along the lines of the point above for the edification of the boy king;
- the speech is that of Cranmer, but the references to the devil are pure metaphor, and no reference was made to the devil in either Henry's or Edward's coronation, nor by the pope;
- the speech is that of Cranmer, and he was meaning to refer to those parts of the service outlined above, even though they did not constitute any public promise, and likewise the pope in his letter to Henry;
- the speech is that of Cranmer, and some specific reference was made at some time either during the time devoted to preparation for the coronation or during the coronation itself, whereby it could have been said that both kings did make such a promise to forsake the devil and all his works which was known to both Cranmer and the pope, (but perhaps to nobody else), which could well have been a catechism for the king, and it is to this that both Cranmer and pope Paul were referring.

If one were not to believe that Cranmer was either an idiot or a fool, the only viable explanations are the first and the last two.

There exists also the strange circumstance of a document in the possession of the Library of the Church of Ely, said to be prepared in Cranmer's own hand detailing the coronation of Edward VI.³ It seems likely that it was written by Cranmer, as it includes details of the processions and the positions of various lords in it, and the Recognition is recounted in words quite different from those in the Privy Council draft, and of a archbishopean flavour⁴—but this document contains absolutely no reference at all to the oath. There is,

¹ A F Pollard, *Thomas Cranmer and the English Reformation, 1489-1536*, Frank Cass & Co., London, 1905, reprinted Frank Cass And Company, USA, 1965, at p. 186, n.1

² Although it must be noted that Henry VIII's Preface to *The King's Book* contains many references to the devil—see *The King's Book, or A Necessary Doctrine and Erudition for Any Christian Man*, published 1543, published for the Church Historical Society, London, 1932, T A Lacey, (ed.). Such references to the devil were commonplace in the sixteenth and seventeenth centuries.

³ See the Rev. Joseph H Pemberton, *The Coronation Service according to the use of the Church of England with Notes and introduction, with reproductions of the two celebrated pictures in medieval coronation Mss., inserted by special permission, with three pictures, viz: the Coronation of James II, and the vestments used thereat*, 2nd edn., Skeffington & Son, Piccadilly, (Publishers to His Majesty the King), London, 1902, taken from a volume of 'Extracts out of MSS. in Bennett College Library,' in the Library of the Church of Ely, and provided to Pemberton by the Dean of Ely. The text itself begins 'The Coronation of King Edward the Sixth on Shrove Sunday, being the 20th day of February A^o 1546, at Monastery of Westminster. Written with Archbp. Cranmer's own hand.'—see pp. 21-26. For text, see my Appendix I.

⁴ This text is the one also reproduced almost faithfully by John Strype, in his *Memorials of the Most Reverend father in God Thomas Cranmer, sometime Lord Archbishop of Canterbury...*, first published 1694, in three books; new edition with

however, mention of 'a certain Unction' and 'a while' between the recognition and the anointing.¹ It is therefore possible that during these times the oath was administered and perhaps a catechism made. (I do not believe that the oath would not have been administered, the constructive evidence arguing for its having been taken, and the law both canon and common making the taking of the oath a necessity).

In the light of the existence of the catechism referring to forsaking the devil, and of the strange lacuna in the Cranmer document from Ely, I incline to believe that the last explanation is the correct one. If it is, then it is one more example that the written orders of service are not the authoritative guide to *what actually happened* nor to *what actually was said by the king* at a coronation. That the oath as it had previously appeared in Richard III/Henry VII's *Little Device* was apparently altered in the order of ceremony proposed by the Privy Council, also demonstrates that there was at least a preparedness by a putative king and his councillors of the time to compile a new oath in accordance with what they perceived to be the views of the church, the needs of the country, and the obligations of the king, and suggests that the oath could well have varied markedly from one reign to the next.² Indeed the *Liber Regalis* contained an instruction :

On the day appointed on which the new king is to be consecrated, early in the morning the prelates and nobles of the realm shall assemble in the royal palace of Westminster to consider about the consecration and election of the new king, and also about confirming and surely establishing the laws and customs of the realm.³

This would suggest that common practice at the time the *Liber Regalis* was compiled¹ was, and had been through the centuries, at least while the *Liber Regalis* was used as the basis of the ceremony, for the prelates and nobles to consult about the ceremony *and* the text of the coronation oath—since the oath was that part of the ceremony which dealt with the laws

additions, in 2 volumes, Oxford University Press, Oxford, MDCCCXL (1840), at Vol. 1 [Book II, Chapter 1, pp. 142 ff.], pp. 202-205. For text, see Appendix II.

¹ See text at my Appendix I.

² cf. Maitland, *Constitutional History*, p. 197, '...In short, the more we study our constitution whether in the present or the past, the less do we find it conform to any such plan as a philosopher might invent in his study. ...[and, speaking of the time between Edward II and Henry VIII, he says] 'Changes in the letter of the law are it may be, few and gradual, but the real meaning of the kingship varies from decade to decade. The character of the king, the wants of the time, these decide not merely what he will do but what he can do: this we must learn by tracing history step by step,—by seeing that the kingship is practically a different thing in almost every reign...'

³ see Legg, *op. cit.*, p. 114; and for the Latin, see Legg, p. 83. And see also the Anglo-French version of the English coronation order, perhaps as early as Edward I, as set out in J Wickham Legg, (ed.) *Three Coronation Orders*, for the Henry Bradshaw Society, Vol. XIX, printed for the society by Harrison and Sons, London, 1900., at p. 39, text at my Appendix I, which also refers to this consultation about the oath.

and customs of the realm. This in turn suggests that there was no one fixed oath, but that the oath could indeed change from one reign to the next, and even, perhaps, was expected to change, according to the circumstances. There is evidence to show also that the orders for the coronation were submitted to the king for his correction², and one could infer that the text of the oath also was submitted to the king. (This again is circumstantial support for Henry VIII's corrections being to the text of an oath that either he or his predecessors had taken.) Thus while it is possible that Edward VI took the oath the council had outlined for him, it is also possible that he did not. All that can reliably be said about the text of the oath in the proposed order, is that it probably represented the thinking of the king's advisers as to what sort of thing should be in the oath.

One further thing may be said, and that is that it is the first oath specifically to draw the distinction between the old laws (those already granted by previous kings), and new laws (those to be made or chosen); this distinction had been implicit in all the earlier clerical drafts of the oath from the time of Edward II when the *Liber Regalis* was drafted. But it should be noted that the 'old laws' mentioned in some of the old drafts (in the first clause) referred to the laws and customs ...*namely* (or *specially*) those granted to the *church*, with some texts including 'and the people' as an afterthought, and in others those words are struck through.³

MARY

It is unknown what oath Mary swore. The only reference with any details of her coronation

¹ Some time in the fourteenth century.

² See Jerdan, *Rutland Papers*, *op. cit.*, at p. 1, speaking of the *Little Device*. 'The following paper is not an account of Henry VII's coronation, of which there has not yet been discovered any narrative, but, in accordance with its title, is a device for that ceremony, prepared probably by some officer at the College of Arms, and intended to be submitted to the correction of the King and his advisers....'. And see *Calendar of State Papers*, Domestic Series of the Reign of Charles I, Public Record Office, John Bruce (ed) HMSO 1858, reprinted by Kraus Reprint Ltd, Lichtenstein, 1967, references to Vol. I, nos. 111, 112, 113, and Vol. XX, nos. 8, 9, 10, 11, 12, 13, 14, 15.

³ See my Appendix I, especially the drafts the oath in the coronation orders set out in the *Liber Regie Capelle*, Manuscript in the *Biblioteca Publica*, Evora, edited by Walter Ullmann, Printed for the Henry Bradshaw Society at the University of Cambridge Press, 1961, Henry Bradshaw Society, Vol. XCII, pp. 82-83; and note the reference to the laws being 'spiritual' in *note b* in the text for the *Little Device* for Henry VII in *Rutland Papers, Original Documents*, William Jerdan, (ed.), Printed for the Camden Society, 1842; reprinted with permission of the Royal Historical Society, by AMS Press, New York, 1968, pp. 19-20. Charles I, Charles II and James II of England did not include the words 'and the people' in

oath is Froude in his *History of England*¹, who says that the lords of the council were considering altering the oath to preserve the independence of the English church, because the 'existing form was already inconvenient', that Mary intended to swear to observe only those *just* laws, and that she had resolved to refuse to swear to any words in the oath which in her view would amount to 'a denial of Christ and his church'.² If this record is reliable, it raises further conundrums about the oath which the councillors were looking at. They could hardly have been considering the form of oath which had been drafted for Edward, as that oath was not inconvenient from the point of view of protestants, but neither would it have been objectionable to Mary as it referred to the 'church of God', and the 'glory of God'¹; and as to the laws, there would have been no quibble by Mary with the text, as the laws were not tied in any way to protestantism. But neither could it have been the text of the oath in the *Little Device*—it certainly contained a reference to the (catholic) St Edward the Confessor, which could have been a problem for protestant councillors, but it referred also to 'rightful' laws, which would not have been a problem for Mary. But the Lettou/Machlinia oath, on the other hand, could have caused difficulties for both parties as outlined by Froude, as it did have a reference to the liberties granted to the church of old time by the righteous kings of England, which well may have caused Protestant councillors some disquiet, since Mary could have seen this as a specific justification of her catholicism. Whereas Mary may have had problems with the words relating to the king holding the laws and customs of the land chosen by the people, which were in no way qualified by the adjectives 'approved', 'rightful', or 'to the worship of God', as they had been either by Henry VIII's amendment, nor by the councillors preparing the draft for Edward VI. The oath as amended by Henry VIII could have been used, depending upon what Mary may have thought 'not prejudicial to imperial jurisdiction' meant. In the event, Froude says, Mary's preparedness to refuse to take any oath she thought objectionable to the catholic religion 'was not put to the test', leaving still more confused the question of the oath she ended up taking.

the first clause. The first clause of the Lettou/Machlinia oath and the 'Henry VIII' oath refer only to the rights and liberties of the church (not of the people also).

¹ James Anthony Froude, *History of England from the Fall of Wolsey to the Defeat of the Spanish Armada*, 9 Vols., First issued in the Silver Library, 1893; new impression, Longmans Green and Co, London, 1907, Vol. V, at pp. 273-275. P E Schramm, at p. 218 of his *History of the English Coronation*, L. G W Legg, (trans.) Clarendon Press, Oxford, 1937), p. 218, has little to say about Mary's coronation oath, and adds no information to that of Froude.—see my Appendix I.

² Froude, *History of England*, loc. cit., Vol. V, at p. 273, sourced in note 1 to 'Teriard to Charles V. : Rolls House MSS'—I have not been able to peruse this document.

ELIZABETH I

Elizabeth's coronation oath of 1559 is shrouded in even more mystery than that of Mary's.²

It would appear that the books of the coronations of the kings of England and records of the oaths which had been kept in the Exchequer and by Archbishop Laud in his study, were deliberately stolen by the parliamentarians, perhaps by William Prynne, during the Archbishop's trial, where the parliamentarians alleged (falsely) that Laud had changed Charles I's oath from that which had been taken by the kings before him. What happened to the records then is impossible to say. Laud himself noted in his own record of his trial that Elizabeth's oath was the same as that taken by Charles I.³

A document called 'Articles Concerning the Queen's Coronation',⁴ a copy of which is in the Public Records Office, but which I have not seen, is said to contain the following entry: 'Item a copy of the Othe that her Majestie shall take to be seene and perused by her highnes.' This is referred to by C G Bayne in his 1907 article, 'The Coronation of Queen Elizabeth';⁵ he does not however, say what was actually in the oath, nor whether this piece of paper actually contains any text of the oath. He notes that 'the oath was in the form of questions by the bishop and answers by the queen';⁶ others have stated that 'she swore to uphold the laws, defend the Church, and to use justice, discretion and mercy in her

¹ See my Appendix I.

² Schramm, *History of the English Coronation*, *op. cit.*, has nothing to say about Elizabeth's oath, noting merely that it has never come to light. (p. 218). But Maitland in his *Constitutional History*, p. 286, says that Charles I took the same oath as that taken by James VI and I and by Elizabeth I, indicating that Elizabeth's oath included a clear reference to the prerogative; but he gives no source for this. Archbishop Laud's record of his trial (see my Appendix I, and following note) specifically states that the oath of Charles I was the same as that of James VI and I and Elizabeth.

³ Extract from *The Tryal of the most Reverend Father in God, William Laud, Archbishop of Canterbury*, which began March 12, 1643. Wrote by himself during his imprisonment in the Tower, from *State Tryals*, London, 1719, Vol. IV, p. 427, see Rev. Joseph H Pemberton, *The Coronation Service according to the use of the Church of England with Notes and introduction, with reproductions of the two celebrated pictures in medieval coronation Mss., inserted by special permission, with three pictures, viz. the Coronation of James II, and the vestments used thereat*, 2nd edn., Skeffington & Son, Piccadilly, (Publishers to His Majesty the King), London, 1902, pp. 83-84. And for text see my Appendix I.

⁴ Documents referred to in C G Bayne, 'The Coronation of Queen Elizabeth', Vol. xxii, *EHR*, October 1907, 650-673, at pp. 650-651—['Article concerning the Queen's Coronation', Harleian MSS. British Museum, (no. 6064, p. 4; and copy in the Record Office, (S.P., Dom., Eliz., Vol. I, no. 51); dated from internal evidence to before 18 December 1558—see Bayne, p. 667, n. 74, and p. 651.]

⁵ Bayne, *loc. cit.*, Vol. 22, *EHR*, October 1907, 650-673, at pp. 650-651.

⁶ Bayne, *loc. cit.*, Vol. 22, *EHR*, October 1907, 650-673, p. 667, n. 74.

judgements,¹ or 'to keep the laws and customs of England, to keep peace to the Church and people, to execute justice in mercy and truth²—but these are omnibus unsourced statements which could have been derived from any of the oaths, including the original *tria precepta* of the Anglo-Saxon kings.

Some clue as to what Elizabeth swore may perhaps be garnered from Sir Edward Coke's report of *Cawdrey's case* of 1591.³ Coke had been Solicitor-General and later Attorney-General under Elizabeth. He wrote that Elizabeth's *Act of Supremacy* (An Act restoring to the Crown the ancient jurisdiction over the state ecclesiastical and spiritual, and abolishing all foreign power repugnant to the same)⁴

...did not annex any jurisdiction to the crown but that which in truth was, or of right ought to be, by the ancient laws of the realm parcel of the King's jurisdiction and united to his imperial crown...And therefore, as by that act no pretended jurisdiction exercised within this realm, being either ungodly or repugnant to the prerogative or the ancient law of the Crown of this realm, was or could be restored to the same Crown, according to the ancient right and law of the same, so that if that act of the first year of the late queen had never been made [all the judges resolved that] the king or queen of England could make such ecclesiastical commission...by the ancient prerogative and law of England. ...⁵

The specific references to 'jurisdiction', and 'repugnant to the prerogative or the ancient law of the crown' are reminiscent of the words of the Lettou/Machlinia oath—and the rights of the Crown hurt decayed or lost to his power shall call again into the ancient estate—and the amendments made thereto by Henry VIII—not prejudicial to his Jurisdiction and dignity royal and freedoms. These texts being the only ones of which I am aware that explicitly confer jurisdiction on the king through the coronation oath, it could be argued that the oath taken by Elizabeth was that either of the Lettou/Machlinia text, or the text as amended by Henry VIII. The oath taken by James VI and I specifically referred to the royal prerogative and the ancient laws, but not to 'restoring' the 'ancient jurisdiction' as had Henry VIII's drafts; it could be argued therefore, that Elizabeth's oath was more like those drafts of Henry,

¹ Ann Somerset, *Elizabeth I*, Weidenfeld and Nicolson, London, 1991, at p. 72, no source given.

² A L Rowse, 'The Coronation of Queen Elizabeth I,' *History Today*, Vol. 3, 1953, pp. 301-310, at p. 308, no source given

³ *Cawdrey's case*, 5 Co. Rep., 344-345, extracted in Elton, *Tudor Constitution*, ed. cit., pp. 226-227, and referred to at pp. 220-221.

⁴ *Act of Supremacy*, 1559, 1 Eliz. I, c. 1, An Act restoring to the Crown the ancient jurisdiction over the state ecclesiastical and spiritual, and abolishing all foreign power repugnant to the same, *Statutes of the Realm*, IV, 350-355, extracted in Elton, *Tudor Constitution*, ed. cit., pp. 363-368.

⁵ *Cawdrey's case*, 5 Co. Rep., 344-345, Elton *Tudor Constitution*, ed. cit., pp. 226-227 Although the date of the case is given as 1591, Coke clearly here is referring to James VI and I as the present king and Elizabeth as 'the late queen', probably because he wrote the report after Elizabeth's death.

than the one taken by James. Or, it could be argued, (as Maitland does, and as Archbishop Laud stated)¹ that James had taken the same oath as had Elizabeth.

One thing we do know, and that is that eight years later, when James VI was crowned king of Scotland in 1567, the Scottish coronation oath provided that the king undertook² :

- to serve God to the utmost of his power as required by the old and new testaments
- to maintain the true religion of Jesus Christ as received and practised within Scotland (that is, the protestant religion)
- to abolish all false religions
- to rule the people committed to his charge according to the will and command of God, and according to the lawful laws and constitutions received in Scotland which were not repugnant to the word of God
- to procure to the uttermost of his power true and perfect peace to the Kirk of God and all Christian people for all time
- to preserve and keep inviolate and not to alienate the right, rents and just privileges of the crown of Scotland
- to forbid and repress oppression and all kinds of wrong in all estates and degrees
- to command and procure justice and equity to be kept in all judgements to all creatures without exception, as the Lord of all mercies is merciful to them
- to root out in their land and empire all heretics and enemies of the true worship of God that shall be convicted by the true church of God
- to affirm faithfully all these things with their solemn oath³

The text of this oath includes the basic tenets of the old *tria precepta* (peace to the church and Christian people; justice and mercy in judgements; forbidding rapine in all degree to all people), but also includes a promise to maintain the rights and privileges of the Crown (that is the prerogatives) and not to alienate the rights of the crown (maintenance of the sovereignty of the realm); and also to rule according to the law of God and according to the laws of the realm not inconsistent with the laws of God. The oath also responded to the adoption in much of Scotland of the protestant form of the Christian religion. (James

¹ See Maitland, *Constitutional History*, p. 286; and see Laud's record of his trial referred to *supra*.

² James was an infant of thirteen months at the time he succeeded to the Scottish crown, the *Scottish Coronation Oath Act* being passed after his mother, Mary Queen of Scots, had been deposed by the Estates of Scotland. I assume that the oath was taken on James' behalf, and/or that he later took the oath when he came of age (the usual practice with regard to kings who succeeded as infants). D Harris Willson, in his *King James VI and I*, Henry Holt and Company, New York, 1956, says that at the age of 6 months, James had been baptised by the Archbishop of St Andrews into the catholic faith, (pp. 17-18); but after Mary's abdication/deposition, he was crowned King of Scots at Surling on 29 July, 1567; John Knox preached the coronation sermon, and 'two of the great lords took oaths on James' behalf that he would defend the Protestant faith.' (p. 19).

³ *Coronation Oath Act*, 1567 [Scotland], c.8; See *Statutes in Force*, Official revised Edition, Coronation Oath Act, 1567 [S], 1567 c.8, revised to 1st February 1978; HMSO, London, 1978, Short Title give by Statute Law Revision (Scotland) Act 1964 (c.80). Sch. 2. This act is still in force.

VI of Scotland was a Calvinist.)

This Scottish oath lends support to the idea that the oath printed by Lettou and Machlinia and amended by Henry VIII may well have been the oath which he actually took, and also reinforces the idea that the oath subsequently taken by James when he became king of England was not at all unusual in its maintenance of the prerogatives of the crown.

One new influence however upon the royal oath of governance in the time of the Tudors was that of protestantism. This is clearly reflected in the Scots oath drafted by John Knox. It is suggested by Henry VIII's references to the '*lawful* right and liberties...granted...to *the holy church of England*...', and his insistence on his exclusive jurisdiction, the rights of the crown, and the sovereignty of England and English law in his amendments to the Lettou oath. And the draft oath prepared by the Privy Councillors for Edward VI has a clear puritanical flavour in its references to 'the good of the common wealth', and its riddance of Saint Edward the Confessor.¹ But the terms of all the various possible English oaths of governance during Tudor times were still capable of being sworn to by any Christian, either catholic and protestant. This would remain the case until the interference of the bigoted revolutionaries of 1688 who insisted on binding the king to protestantism and to a public and audible traducement of Roman catholicism².

However the Tudor period, which saw religious upheaval, the growth of the authority of parliament, and the assertion by all the Tudor monarchs except Henry VII and Mary of the sovereignty of England and its laws³, is one where the knowledge of the kings' actual coronation oaths is most lean. Only by inference can we seek to determine what they swore; and it seems to me that in all likelihood, their oaths were more like that published by Lettou and Machlinia in 1483 than any other.

But when James VI of Scotland succeeded to the English throne, his oath was yet different again. And it was this oath and the constitutional arrangements which it represented, which

¹ See text of the arrangements for Edward's coronation, Dasent, A.P.C., N.S., 1547-1550, London, 29-33, in *EHD* Vol. V, pp. 466-470. Text at Appendix I under Edward VI.

² The anti-catholic declaration, against transubstantiation, etc.—see *Bill of Rights*, 1 Will. & Mar., sess. 2, c. 2, 1689, incorporating the requirement for the king to swear the oath as set out in the *Second Test Act*, 30 Car., stat. 2, c. 1, 1678. For text see Appendix I, *post*.

³ Both these monarchs were subject voluntarily to the pope, Henry VII going so far as to obtain papal recognition of his *Titulus Regius*.

became the cause of controversy prior to the civil war.