

VI

# SIC MUR AD ASTRA

EDITORS  
GERGELY GOSZTONYI  
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DUNJA MILOTIĆ

Collection  
of papers  
on **Hungarian**  
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legal history 2022

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University of Zagreb / Faculty of Law / Chair of Croatian History of Law and State / 2023

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# **Eszter Kata HORVÁTH: The Wars of the Roses as a War of Succession**

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The Wars of the Roses were a series of dynastic conflicts in late medieval England between the houses of York and Lancaster. This period can be described as a near-constant political struggle between the parties, interspersed with shorter periods of armed struggles. These wars – albeit their historical significance is debated<sup>1</sup> – have captured the interest of scholars and novelists alike. The wars were centred around the question of the succession to the throne. The rules and realities of how the crown is inherited. Therefore, the main focus of this work is to investigate the rules concerning the succession.

## **1. Historical Context**

The events of the Wars of the Roses took place between 1455 and 1485. The struggle culminated in the Battle of Bosworth in 1485, when the victorious Tudor-dynasty began their rule in England. Since the war-waging factions, i.e., the houses of York and Lancaster, were both descendants of Edward III (1312-1377), his reign shall be a good start in our paper. Edward III was one of the longest reigning monarchs of his time. By the end of his life, he outlived several of his children, including his eldest son and heir, Edward, the 'Black Prince.' After the king's death, his grandson, Richard of Bordeaux (Richard II), the son of the 'Black Prince' succeeded the throne, who reigned for a relatively short period, between 1377 and 1399, when he was forced to abdicate the throne for the sake of his cousin, Henry Bolingbroke (Henry IV). Henry IV ruled between

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<sup>1</sup> HICKS, Michael: *The Wars of the Roses, 1455–1487*. Oxford, 2003, Osprey Publishing, p. 8., <https://doi.org/10.4324/9780203499481>

1399 and 1413 as the first Lancastrian king. For a brief period, the rule of the Lancastrian dynasty seemed sure by giving three consecutive monarchs to the throne. Namely, Henry IV was succeeded by his son, Henry V (1413-1422), who was also succeeded by his son, Henry VI (1422-1471).

The Wars of the Roses began during the reign Henry VI, who was deemed unfit to rule by his contemporaries, thus the economic and military crisis of the 1450s (the end of the Hundred Years War, with the defeat of the English) bloomed into a political crisis.<sup>2</sup> The nobles called for reform, with Richard, Duke of York spearheading the cause. Richard was not only the richest and most influential nobleman at the time, but he was also a prince of the blood. Henry VI refused the call for reform, and the nobles were unable to carry their will through with political or military force.

The defeat of the reform-nobles did not, however, mean that they were no longer interested in change. More political and military battles followed, which lead to the Duke of York eventually claiming the throne of England for himself, based on his descent from Edward III through his mother (Anne Mortimer), who was a descendant of the second oldest son of Edward III (Lionel). His claim rested on the fact that the Lancaster were descendants of the third son of Edward III (John of Gaunt), making the York line senior. At the same time, House York and their supporters gained political and military advantage. This was the context of the birth of the Act of Accord in 1460. The Accord ordered that after the death of Henry VI the Duke of York would succeed the throne, followed by his descendants. This was not enough to bring peace to the kingdom because the fights continued, and the Duke of York himself was killed in the battle of Wakefield in 1460. His son, Edward continued his politics, by securing victory. As Edward IV, he began the first phase of his reign in 1461.

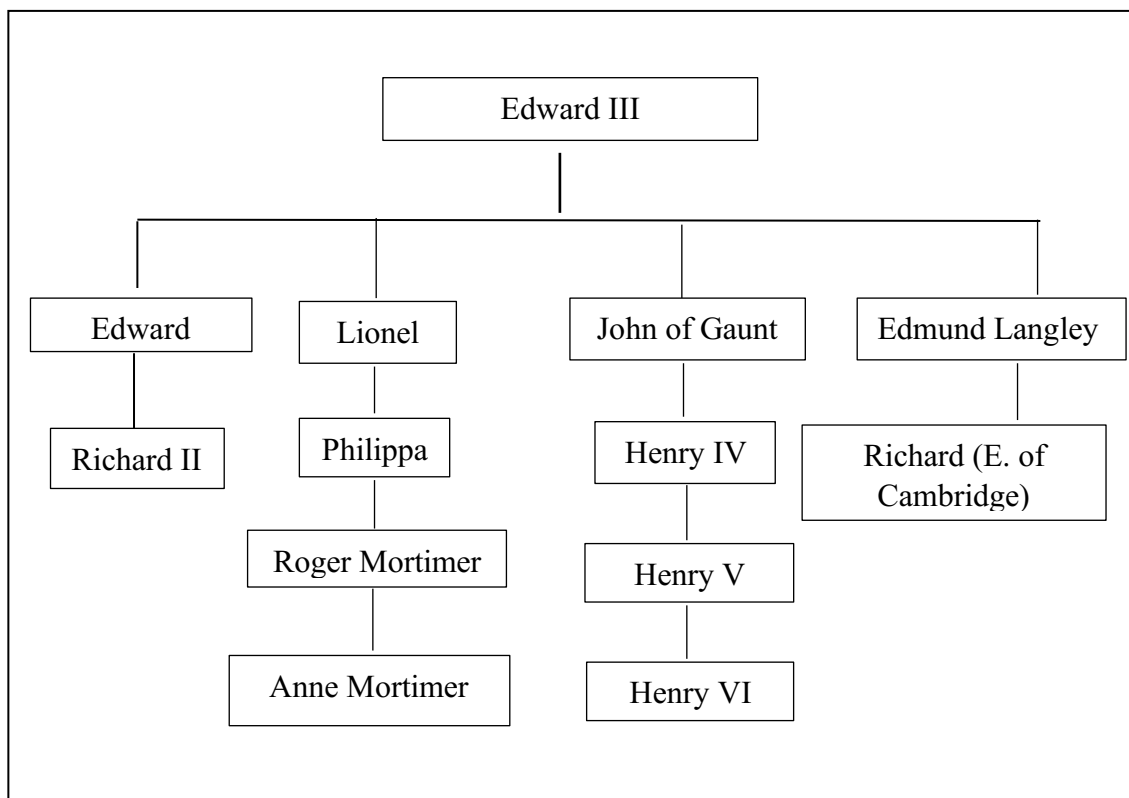
Edward IV reigned in relative peace for the next ten years, but the tension started to resurface at the turn of 1469 and 1470. It was this year when his former ally, Richard Neville, the Earl of Warwick (the 'Kingmaker') rebelled against him, trying – and failing

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<sup>2</sup> *Ibid.*, p. 10.

– to place Henry VI and his heirs back on the throne of England. His rebellion ended in 1471, with the battles of Barnet and Tewkesbury in the same year, so Edward IV could reign uninterrupted until his death in 1483.

The last period of armed conflict came with the death of Edward IV. His death left his two young sons not old enough to rule. Edward's brother, Richard of Gloucester came into power, first as Lord Protector, then, after the disappearance of the sons of Edward IV, as king, reigning from 1483-1485. His short reign was riddled with trouble, and ended with the uprising of Henry Tudor, which culminated in the 1485 Battle of Bosworth, where Richard III lost his life and his crown, and Henry VII (1485-1509) started the rule of the Tudor dynasty.



*Figure 1. Edward III and his children; the Houses of York and Lancaster*

## 2. The Ancestor of the Wars – Edward III's Reign and Entail

Edward III's entail (dated: 1376 or 1377)<sup>3</sup> aimed to ensure that the succession to the throne was problem-free, delineating a line of successors after the death of the king. Based on this, the line of succession was as follows. After Edward III's death the next ruler were to be his grandson, Richard of Bordeaux, and in the case of his death without leaving any heirs, Richard's uncle, John of Gaunt and his heirs were next in line to the throne. Edward III's second son, Lionel, and his heirs (his daughter, Philippa, and her son Roger Mortimer) are however rather conspicuously missing from the line of succession, posing the question: why would Edward III favour the line of his third son over the line of his second son?

This was not the first time in English history that a ruler designated his heirs on his deathbed. Examples can be found as early as the Anglo-Saxon times. One important case for this was the appointment of Harold Godwinson at the deathbed of Edward the Confessor (1042-1066) in 1066. (Though in that instance Godwinson's succession was not secure – in the end it was William the Conqueror (1066-1087), who managed to sit on the English throne.) Richard the Lionheart (1189-1199) acted similarly when he appointed his younger brother, John the Lackland (1199-1216), on his deathbed.

The entail as a legal instrument provided a more secure way of designating the heirs to the throne. Entails were used as a way to name successors outside of the frames of common law.<sup>4</sup> It is perhaps not surprising then, that Edward III was not the only one who used this legal device for the designation of his successors. One notable example prior to Edward III's entail was his grandfather's, Edward I's one. In that case, the order of succession was laid down as follows. After the king's death, his surviving son, and his heirs (male and female) would have followed, then the line would have continued with the king's surviving daughters and their heirs. This meant that hypothetically not

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<sup>3</sup> BENNETT, Michael: Edward III's Entail and the Succession to the Crown, 1376-1471. *The English Historical Review*, 1998, Vol. 113, No. 452., p. 583., <https://doi.org/10.1093/ehr/CXIII.452.580>

<sup>4</sup> SPRING, Eileen: *Law, Land & Family: Aristocratic Inheritance in England, 1300 to 1800*. Chapel Hill, 1993, University of North Carolina Press, p. 28.

only sons, but daughters could inherit the throne of England. Edward's III entail in turn stated the opposite. He entailed the crown in the male line, by excluding the heirs of his second son, Lionel, duke of Clarence, from inheriting the crown.<sup>5</sup> There is however one common feature between the two entails. Namely, both delineated a line of successors, rather than naming a single heir.

It is not clear why Edward III chose to exclude the female line from the line of succession. One possible explanation is that he wanted to stay in line with his politics regarding aristocratic inheritance at the time, understanding that it was during his rule that restricting the inheritance of aristocratic titles to tail male became more popular.<sup>6</sup> This decision is even more interesting if we consider his politics regarding France, since his claims to the French throne were based on his descent through his mother. It is also important to note that at this point in English history, no specific rules excluded women from inheriting the throne. There was even previous example of a woman inheriting the crown, namely, Empress Matilda, daughter of Henry I (1100-1135), who became heir to the throne after the death of his brother after the White Ship incident. She, however, never managed to effectively rule. Due to the political and societal characteristics of that time, her cousin, Stephen of Blois ended up securing the throne. Their conflict caused a long period of anarchy and civil war. It ended with the rule of the Plantagenet-dynasty, beginning with Henry II (1154-1189). Henry inherited his claim through his mother, Matilda herself. It is perhaps also interesting to note that Stephen himself based his hereditary right on the descent through his mother, Adela of Normandy, the Conqueror's daughter.

Another interesting thing to be noted in Edward III's entail is the emergence of the principle of representation. This is one of the principles of intestate succession. It means that at the time of the death of an older brother, his sons would have inherited first, over a younger brother, so before the uncle, and the sons of that younger brother, so before the cousins. This principle became commonly accepted in England around

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<sup>5</sup> BENNETT, *op. cit.*, p. 591.

<sup>6</sup> MCFARLANE, K. B.: *The Nobility of Later Medieval England*. Oxford. 1973, Clarendon Press, pp. 272–273.



this time, i.e., in the 1300s.<sup>7</sup> It based on this principle that after the death of Edward III, Richard of Bordeaux was next in line, ruling as Richard II from 1377 until his dethronement in 1399, when the first monarch, Henry IV from the house of Lancaster seized power.

How successful was Edward III in ensuring the line of succession based on his will? This period in history can overall be characterised by the relative weakness of the king's will. It could only prevail if the nobles agreed to it, or at least if they did not directly oppose it. Edward III was one of the most successful rulers of his time, at least for a period in his rule, which can be attributed to his military successes in the Hundred Years War (1337-1453) in France. It is important to note, however, that in order to be successful in his military ventures, he needed the financial aid provided by the nobility, which lead to the fact that it gained unprecedented influence in the governing of the land. This meant that the success of the king in his country was tied to the military successes in foreign countries, therefore the strength of kings varied by the twists and turns of the Hundred Years War.<sup>8</sup> These issues were out of the range of law, and yet played a key role in the succession to the throne. This illustrates one of the main takeaways of this paper. In late medieval England, even with the existence of rules concerning the succession of the crown, this question was often decided upon factors out of the spectre of the law. Another important remark is that even in the uncertain and politically unstable century following the death of Edward III, his entail was not mentioned as a relevant precedent, moreover, the emergence of the house of York to the throne was in direct opposition to it.<sup>9</sup>

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<sup>7</sup> KISTELEKI, Károly – LÖVÉTEI, István, – NAGYNÉ SZEGVÁRI, Katalin, – RÁCZ, Lajos, – SCHWEITZER, Gábor, - TÓTH, Ádám (ed.: RÁCZ, Lajos): *Egyetemes állam- és jogtörténet, Ókor-feudális kor [Universal Legal History, Ancient and Feudal era]*. Budapest, 1998, HVG-ORAC Lap- és Könyvkiadó Kft., p. 249.

<sup>8</sup> MYERS, A. R.: *England in the Late Middle Ages*. Harmondsworth, 1971, Penguin Books, p. 27.

<sup>9</sup> BENNETT, *op. cit.*, p. 599.

### 3. The Rise of the Lancaster – The Reign and Dethronement of Richard II

Richard II's rise to the throne was relatively problem-free, especially considering the turbulent events of the following century. Edward III's entail named him as the lawful successor to the throne. It is important that by this time, the principle of representation was accepted in England. Thus, he was invested as Prince of Wales in 1376, and was declared heir apparent before the Parliament.<sup>10</sup> His rule (1377-1399), however, was far from problem-free. The king was only ten years old when he assumed the throne, therefore in the first few years of his reign, a council of nobles ruled in his name. The turning point occurred in 1385, since Richard reached the age of maturity, and secured his first military successes in Scotland. Thus with the great ambition of the youth, he started to reign without the influence of his councillors. At this point, an important decision was made, i.e., the naming of his successor. In case of his death without any heirs left behind, the next in line to the throne was his cousin, Roger Mortimer. This was widely accepted at the time, for example the monks of Westminster referred to the crown passing to the Mortimers by hereditary right as a matter of fact.<sup>11</sup> Richard II's intentions regarding Roger Mortimer's succession are however unclear. Later on, Richard didn't show any signs of special interest to the Mortimers.<sup>12</sup> Nevertheless, Mortimer's succession was not the probe of the circumstances, since his death in 1398 prevented the actualisation of the Mortimer claim.

The year 1399 was another great turning point for Richard's reign. By this point, the problems of the time became too great to be ignored. The war with the French dragged on, the military ventures were unsuccessful in Ireland let alone the growing threat on the Scottish border. The king needed money to finance his foreign policy, and he fulfilled this need by levying taxes. The Parliament – growing in power at the time – opposed these taxes. Throughout the 1300s, the role of the Parliament had been

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<sup>10</sup> ORMROD, W. Mark: The DNA of Richard III: False Paternity and the Royal Succession in Later Medieval England. *Nottingham Medieval Studies*, 2016/60, p. 197., <https://doi.org/10.1484/J.NMS.5.111283>

<sup>11</sup> HECTOR, L.C. – HARVEY, B.F. (eds.): *The Westminster Chronicle, 1381–1394*. Oxford, 1982, Clarendon Press; pp. 192–195.

<sup>12</sup> BENNETT, *op. cit.*, p. 598.

transforming. It became a central figure in the governing of England, separately from the King and his Council, an entity that started to reduce the extent of the execution of the King's will significantly. It started to represent the will of the "nation" by offering support only to those monarchs, who respected the parliament's authority as well as ruled effectively.<sup>13</sup> With these circumstances in mind, the downfall of Richard II becomes painfully clear. His unsuccessful foreign policy led to domestic turmoil, which then in turn gave a chance for his opposition to gain traction. The leader of his opposition was his cousin, Henry Bolingbroke, who led his armies to victory against Richard's in 1399 and deposed him from the throne.

Henry Bolingbroke, or Henry IV (1399-1413) used several arguments to make his claim to the throne. First, since he defeated the king's armies, securing the throne with force, he invoked to the right of conquest. Second, he cited Richard's unsuccessful rule, and in turn his own capability of being an effective monarch. He also referenced his hereditary right to the throne. However, it is important to emphasize, that he did not invoke Edward III's entail, instead, he opted to allude generally to his royal descent.<sup>14</sup> The Parliament also played an important role, by making his rule legitimate. After Henry's military victory, Richard II's abdication, which was made in captivity, meaning that his free will was questionable at the least, was read in front of the Parliament, just as Henry's claim and titles to the throne. Finally, the Parliament accepted Henry IV as the King of England, making the starting point for the reign of the Lancaster-dynasty.<sup>15</sup>

This was another instance in the history of late medieval England when the fate of the throne was decided mainly on factors out of the law. Richard II lost his throne due to the opposition he faced from the nobility, much like his ancestor, Edward II (1307-1327), Edward III's father. From this angle, there is a glaring similarity between Edward III and Henry IV. They both secured their thrones by the power of the nobility

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<sup>13</sup> HOLDSWORTH, William Searle: *A History of English Law Vol. 2*. London, 1903, Methuen & Co Ltd., p. 442.

<sup>14</sup> BENNETT, *op. cit.*, p. 599.

<sup>15</sup> MYERS, *op. cit.*, pp. 34–35.

after the partly voluntary abdication of their predecessor by citing their hereditary right.<sup>16</sup>

#### **4. The Reign of the Lancaster**

After Henry IV's rise to power, the rule of the Lancaster seemed secure. The reason for this lied in two main factors, namely in the fact that both Henry IV and his successor, Henry V (1413-1421) had sons, and in their military successes. The second factor was especially relevant in the case of Henry V, whose rule was one of the highest points of the Hundred Years War for the English.<sup>17</sup> This meant that for these two kings the incentive for delineating the line of succession was rather weak.<sup>18</sup> In spite of this tranquil situation, the question of the succession was not far from Henry IV's mind. In 1404, the Parliament recognised his son as heir apparent to the throne and recognised too the younger children's title including the male and female line on the rules of primogeniture. Due to the changing political circumstances, like Richard II's death, rebellions supporting the Mortimer claim, it once again became important to create an entail solely for the male line to the throne of England. In 1406, this entail was created and accepted by the Parliament. It is important to note, however, that this only excluded Henry IV's own daughters from succeeding to the throne. Indeed, hypothetically any other woman could still become the queen of England.<sup>19</sup> Yet, for reasons that are still unclear to this day, the regulation was revoked in short time after. The conflict with the French could perhaps offer a feasible explanation for the revocation. Since, the entailing the throne in the male line came too close to the Lex Salica, the rules governing the inheritance in France, which prohibited women from inheriting land.<sup>20</sup> This also goes to show that the order of succession was not simply a

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<sup>16</sup> *Ibid.*, p. 38.

<sup>17</sup> *Ibid.*, p. 122.

<sup>18</sup> BENNETT, *op. cit.*, p. 601.

<sup>19</sup> ORMROD, *op. cit.*, p. 211.

<sup>20</sup> CORCOS, Christine: From Agnatic Succession to Absolute Primogeniture: The Shift to Equal Rights of Succession to Thrones and Titles in the Modern European Constitutional Monarchy. *Michigan State Law Review*, 2012/1587, p. 1602.

question of law, though it was heavily influenced by the leading political views and goals of the time.

The fact that the question of succession was relatively precisely decided during the reign of the first two Lancastrian kings did not mean that their rule came without their own problems. This period came with the weakening of the king's executive powers. The Lancaster-dynasty, that rose to power with the help of the nobility, was acutely aware of how easily this same power could cost them the throne. This meant that the seizing of power on the side of the nobility, resulted in losing the authority on the side of the kings proportionally. This situation, coupled with the costly military expeditions in France and elsewhere, was one of the leading causes of the beginning of the Wars of the Roses, which started during the reign of the third Lancastrian king, Henry VI (1422-1461 and 1470-71).<sup>21</sup>

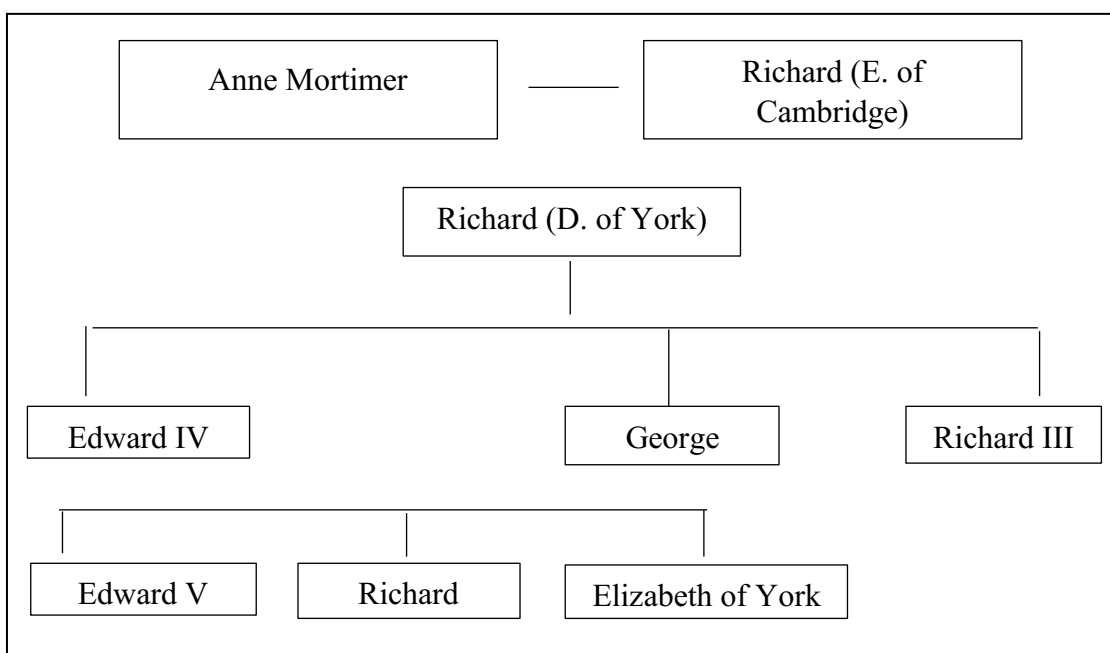
When Henry V died, he left his 9-month-old son as his heir. This meant that England's king would not be of age for a long while, leaving the country in the hands of a council of the strongest noblemen of the land. This situation led to the nobles securing even more wealth, power, and influence. Perhaps the damage could have been reversed, had Henry VI grown up to be an energetic and strong-willed ruler, but it was not to be, as the nobility continued to assert their dominance over the king. At the same time, the tide changed in the course of the Hundred Years War. The English had less and less military success, and the costs of war placed too much burden to the society. The calls for peace became more frequent. Even though Henry VI only governed in name, i.e., the real power was in the hands of the nobility, the responsibility, thus the title was still his, as being the king.<sup>22</sup> This created circumstances comparable to those around the time of Richard II's deposition. However, there is one important difference between the two kings. In the case of Richard II, his absolutistic tendencies caused his downfall, whereas for Henry VI his weakness caused the biggest problems. Still, the centre of the problem remained the same. Namely, whether or not

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<sup>21</sup> MYERS, *op. cit.*, pp. 115–118.

<sup>22</sup> *Ibid.*, p. 125.

the king was capable of ruling effectively. There is a sort of irony in the situation, seeing as both the rise and downfall of the Lancaster had to do with the ability (or the lack thereof) of effective ruling.



*Figure 2. The House of York*

## **5. The Wars of the Roses – The House of York**

Richard, Duke of York, one of the richest and most influential noblemen of his time, began his rise to political importance during the reign of Henry VI. He could trace his lineage back to Edward III on both his maternal and paternal side. He first started to advocate for reform in the 1450's. Namely, he wanted a more efficient government, and, perhaps more importantly, wanted to weaken his political adversaries, most

notably Edmund Beaufort, Duke of Somerset, one of the chief advisors of the king.<sup>23</sup> After 10 years in opposition to the king and his government, he had waited enough, since his calls for reform were not answered, he committed a surprising and controversial step. He claimed the throne for himself, both with military and political force. After his military success, he arrived in London, and placed his hand on the empty throne. Afterwards, he called on the Parliament to make his claim legitimate through his descent from his mother, Anne Mortimer.

This raised several questions. At first, was the house of York the more senior line compared to the house of Lancaster? After all, they based their claim on arguments in favour of the Mortimer line, meaning on their descent from Edward III's second son, Lionel, while the Lancaster derived their title from Edward's third son, John of Gaunt. Secondly and parallel to the first question, could a woman even pass on the right to rule? At that time, the question wasn't really whether a woman could rule in her own name, rather whether it was possible to inherit the crown through her title at all. The task of deciding these questions then fell to the Parliament. If it decided to accept Richard's claim, it would implicitly answer yes to the questions above; if not, then the answer would have been a no. The Parliament however could not make this decision. They reasoned, that even though the Yorkist claim based on the rules of inheritance in common law was stronger, the Lancaster have been on the throne for the past 60 years with their rule unquestioned and essentially gained prescriptive right to the throne of England.<sup>24</sup> The two parties had to come to a political compromise in this stalemate situation. According to the Act of Accord of 1460, Henry VI could keep his crown until his death, but upon his death, Richard, Duke of York would succeed him. The Parliament therefore based its decision both on the realities of the time, namely, the prescriptive right of the House of Lancaster, and the legal principles concerning inheritance, namely, House of York's stronger claim to the throne. However, in effect, the Act of Accord

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<sup>23</sup> JONES, Michael K.: Somerset, York and the Wars of the Roses. *The English Historical Review*, 1989, Vol. 104, No. 411, pp. 285–307., <https://doi.org/10.1093/ehr/CIV.CCCCXI.285>

<sup>24</sup> BENNETT, *op. cit.*, pp. 580–581.

primarily favoured the legal argument of York, rather than House Lancaster's argument rooted in practice, since after the death of Henry VI, it would be Richard, and his successors, who could claim the throne. This agreement was not without problems, for example, it proved to be unacceptable for Margaret of Anjou, Henry VI's wife, since her son from Henry was now excluded from the line of succession.<sup>25</sup> This meant that war broke out yet again, during which Richard himself lost his life. His cause was not forgotten however, rather it was continued by his son, Edward, who proved to be a successful military leader, eventually rising to the throne of England in 1461 as Edward IV.

The rise of the House of York to the throne was yet again a political and military affair, rather than one based solely on legal principles. Still, the question of the legality of the York rule was not forgotten. It was raised time and time again, mainly by the supporters of the Lancastrian side of the conflict. One very notable example of this is John Fortescue, one of the most prominent jurists of English legal history, who reasoned that the Yorkist kings could not be the rightful rulers of England. His argument was based on the rumours at Edward III's court. He claimed that Edward III's daughters denounced their right to the throne before the Parliament, therefore their descendants also could not have right to the throne. It is important to note however, that there exists no other source to support this statement, making its validity questionable the least.<sup>26</sup> One other interesting fact is that Fortescue did not even allude to Edward III's entail, which would have been a relevant precedent,<sup>27</sup> instead he chose to question Edward IV's claim based on the aforementioned reason and on another dubious argument, namely, that Lionel's daughter, Philippa, was actually not his daughter, making the whole York family illegitimate, therefore unable to inherit the

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<sup>25</sup> LYON, Ann: The Place of Women in European Royal Succession in the Middle Ages. *Liverpool Law Review*, 2006/27, p. 388., <https://doi.org/10.1007/s10991-006-9007-9>

<sup>26</sup> ORMROD, *op. cit.*, p. 211.

<sup>27</sup> BENNETT, *op. cit.*, p. 603.



throne. This allegation had no evidence at all to support Fortescue's side in the dispute.<sup>28</sup>

Even though Edward IV gained the throne by force, and his rule could not be called problem-free, from 1471 onward, his rule became solid enough to become one of the most successful monarchs of his time. The reason behind this was, once again, out of the legal spectre. He strengthened his rule through acquiring the lands of the nobles revolting against him, with the help of his own lands as head of the House of York, and the fact that a good fraction of the nobility lost their lives during the armed conflict leading up to his gaining the throne. He also managed to resolve, at least for a time, the turbulent relationship between the English and the French. Through these means, he managed to raise the income of the Crown, making him the first solvent king in generations.<sup>29</sup> His situation seemed so stable, that had his heirs been adult at the time of his death, English history could have taken a completely different turn, perhaps beginning a transformation into the continental type of an absolute monarchy.<sup>30</sup> However, it was not the case, when Edward IV died, his older son, Edward V was only 12 years old, which once again led to a weaker monarchy turning the course of events again to another succession crisis.

Thus began one of the most turbulent few years in the history of the English monarchy with the events of Richard III's controversial rule, the boys disappearing in the Tower and finally the rise of Tudor. Edward V's uncle, Edward IV's younger brother, Richard, then Duke of Gloucester, became Lord Protector on the young king's side, then shortly after Edward IV's death, Richard managed to become the King of England. The basis of his coming to power was in the validity, or rather, the alleged invalidity, of Edward IV's marriage to Elizabeth Woodville. Therefore, the legitimacy of the children born in that union. These claims were validated by the Parliament with the passing of the *Titulus Regius* statute in 1484, which paved the road to kingship for Richard. This

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<sup>28</sup> ORMROD, *op. cit.*, pp. 211–212.

<sup>29</sup> MYERS, *op. cit.*, p. 199.

<sup>30</sup> *Ibid.*, p. 201.

statute is important for two reasons. On the one hand, its content defines the basis of Richard III's claim to the throne, while on the other, it illustrates just how important a role the Parliament started to play in the question of succession.

So, what exactly was the often-contested basis of Richard's rule? The argument was based on the marriage between Edward IV and Elizabeth Woodville, his queen. *Titulus Regius* itself stated, that the marriage was invalid on the grounds of bigamy, since Edward had been precontracted to marry another woman, Lady Eleanor Talbot.<sup>31</sup> This would have meant that the children born of Edward IV's and Elizabeth Woodville's union were illegitimate, therefore unable to inherit the throne. *Titulus Regius* even went as far as to allude to the gossip surrounding the legitimacy of Edward IV himself, and as a consequence, invalidated Edward's children.<sup>32</sup> An interesting note is whether the invalidity of Edward's and Elizabeth's marriage even determined the legitimacy of his male heirs. The two boys were born in 1470 and 1472 respectively, by which time Eleanor Talbot had died, which effectively terminated the marital contract, while Edward and Elizabeth lived together openly as a married couple. Moreover, this fact was accepted by both the Church and the nation.<sup>33</sup> One person whose legitimacy could be questioned based on these grounds, however, is Elizabeth of York, Edward IV's oldest child, born in 1465, before the death of Eleanor Talbot. The reason why this could possibly be important is that the Tudor-dynasty itself based a good portion of their legitimacy on Elizabeth of York being a princess of the blood.<sup>34</sup> However interesting this question is, it never played a long-term role in the succession to the throne. After Henry VII had acceded to the throne, he repealed *Titulus Regius*, and thus making the argument irrelevant.

One noticeable trend is that questioning the legitimacy of royal offspring became more prominent in 15<sup>th</sup> century England. This was not because any change

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<sup>31</sup> LEVINE, Mortimer: Richard III – Usurper or Lawful King? *Speculum*, 1959, Vol. 34, No. 3, p. 391., <https://doi.org/10.2307/2850815>

<sup>32</sup> *Ibid.*, p. 397.

<sup>33</sup> *Ibid.*, p. 391

<sup>34</sup> *Ibid.*, p. 392.

occurred in the field of family law, rather because of the dynastic problems of the reigning families themselves.<sup>35</sup> These were mainly questions for the public to ponder and speculate, yet not used as actual reasons to dethrone any ruler. The illegitimacy of a child was used, for example, to explain why a king was incapable to rule, seeing as if he was not descended from the right family, he could not have inherited the required abilities needed to effectively rule a country. Proving the illegitimacy of a child was near impossible, since very little factual evidence could be collected at this point in history. It could only happen if the husband himself stated that the child was not his. Both canon law and common law required this affirmation.<sup>36</sup> This explains why this argument was not explicitly used during the turbulent times of England in the 15<sup>th</sup> century.<sup>37</sup> The only time the illegitimacy of the children was referred to in the question of succession was Titulus Regius itself, but as elaborated above, its argument was not based on the false paternity, or on concubine relationship, much more rather on an invalid marriage. It is also important to remark, that Titulus Regius was a statute passed by Parliament, a political body, and not by a court of canon law, which had the jurisdiction to pass judgment on cases such as marriage. This means that Titulus Regius reads more as a political document, not so much as a legal one concerning the law of marriages at the time.<sup>38</sup>

Richard III's downfall was in part brought about by his quest to strengthen his rule. By putting Edward's sons in the Tower in custody, and after that their consequent disappearance, while finally public opinion started to turn against him. Even though it is unclear to this very day why the Princes in the Tower lost their lives, public outrage was still directed against Richard. These circumstances presented a great opportunity

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<sup>35</sup> ORMROD, *op. cit.*, p. 215.

<sup>36</sup> WOOD, Charles T.: *Joan of Arc and Richard III: Sex, Saints and Government in the Middle Ages*. New York, 1988, Oxford University Press, pp. 12–28.

<sup>37</sup> ORMROD, *op. cit.*, p. 189.

<sup>38</sup> LEVINE, *op. cit.*, pp. 396–397.

for the Lancaster cause. Their supporters rallied, and with the military power at the Battle of Bosworth in 1485, Henry Tudor managed to seize the crown.<sup>39</sup>

## 6. The Rise of the House of Tudor

When Henry VII (1485-1509) secured the throne for himself and his descendants, it proved to be a great turning point in the history of England. Not only did his reign end the Wars of the Roses, the reign of the Tudor-dynasty is generally considered to be the end of medieval England, and the beginning of (early)modernity. Henry VII himself was not necessarily a modern or even early modern monarch, but some important changes began during his years on the throne. He continued and completed the natural course of medieval traditions.<sup>40</sup> At the same time, the old and new structures and phenomena lived in a symbiosis. This was the first time that the most important political and legal questions and problems typical of the modern era started to come to the surface in England.<sup>41</sup>

So, where did this extraordinary dynasty come from? Henry VII himself based his claim to the throne on various reasons, hereditary right, the right of conquest and the ability to rule effectively. His descendants also had the advantage of their mother, i.e., Henry VII's wife. She was Elizabeth of York, the oldest daughter of Edward IV, who, at the time, had the political circumstances been in favour for her, or had she pursued it, had the strongest link to the throne. This marriage obviously also helped Henry VII himself in stabilising his position.<sup>42</sup>

Henry traced his lineage back to John of Gaunt through his mother, Margaret Beaufort, therefore was on part of the Lancastrian side of the conflict in the Wars of the Roses. This meant that he was a member of the powerful Beaufort family. They were

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<sup>39</sup> MYERS, *op. cit.*, pp. 202–203.

<sup>40</sup> *Ibid.*, pp. 202–203.

<sup>41</sup> GUNN, Steven: Henry VII in Context: Problems and Possibilities. *History*, 2007, Vol. 92, No. 3, pp. 301–317., <https://doi.org/10.1111/j.1468-229X.2007.00397.x>

<sup>42</sup> MYERS, *op. cit.*, p. 203.

the descendants of the union between John of Gaunt and Katherine Swynford, first illegitimate, then, after their marriage, legitimised. Richard II, who was the king at the time, affirmed their legitimacy, stressing that they could inherit land and titles as if they had been born in the bonds of matrimony.<sup>43</sup> During the rule of the Lancaster-dynasty, the family became more prominent, with members including Edmund Beaufort, one of the chief advisors of Henry VI, whose conflict with Richard, Duke of York was one of the key factors behind the Wars of the Roses.<sup>44</sup> Once Edward IV became king, however, they were forced to retire from the political ground, only re-gaining importance with the help of Margaret Beaufort, who played an undeniably key role in Henry VII's accession to the throne.<sup>45</sup>

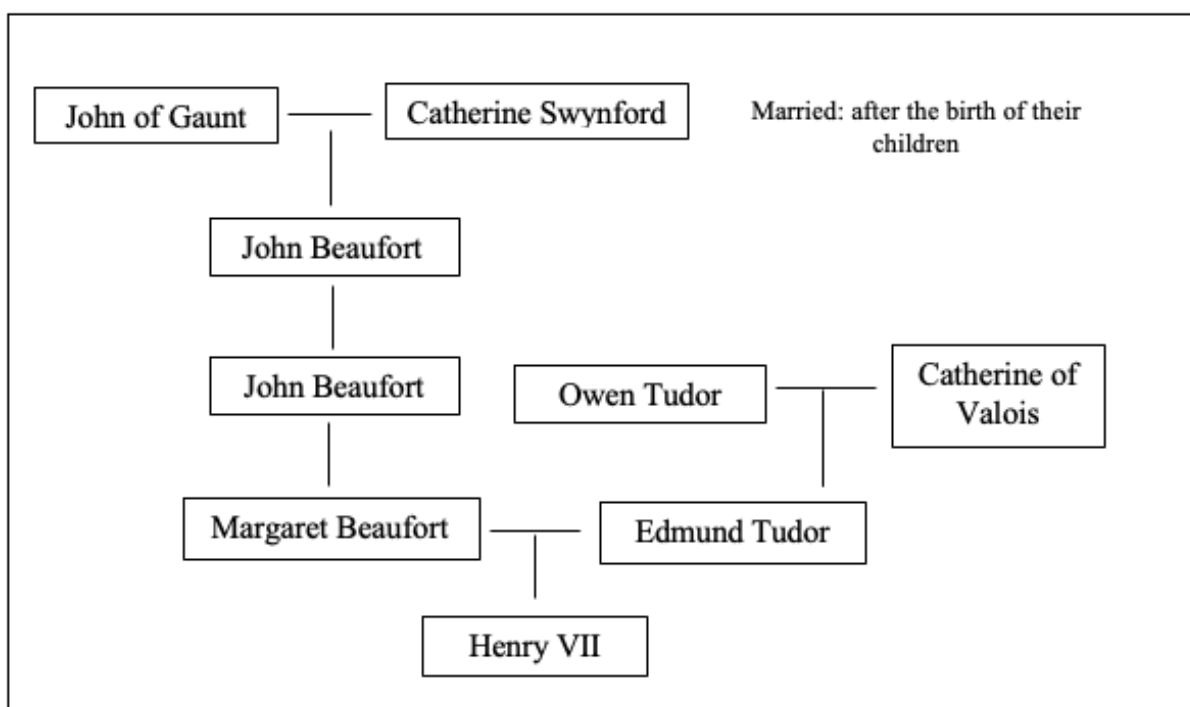


Figure 3. The descent of the Tudor-dynasty

<sup>43</sup> NATHEN, Amin: *The House of Beaufort: The Bastard Line that Captured the Crown*. Stroud, 2017, Amberley Publishing, p. 70.

<sup>44</sup> JONES, *op. cit.*, pp. 285–307.

<sup>45</sup> FISHER, Sally: „Margaret R”: Lady Margaret Beaufort's Self-Fashioning and Female Ambition, In: FLEINER, Carey – WOODACRE, Elena (eds.): *Virtuous or Villainess? The Image of the Royal Mother from the Early Medieval to the Early Modern Era*. New York, 2016, Palgrave Macmillan, pp. 151–166., [https://doi.org/10.1057/978-1-137-51315-1\\_8](https://doi.org/10.1057/978-1-137-51315-1_8)

Henry VII is often compared to William the Conqueror (1066-1087) based on the way they both gained the throne of England. Both were cases of a distant relative securing the throne with military force, and even though both had a claim to the throne, their right of conquest and their ability to hold onto to the throne were far more important in reality than any hereditary right or weak title. In the case of William I, he claimed that he was named the successor of Edward the Confessor, and Edward's subjects took an oath accepting and affirming this.<sup>46</sup> Henry VII claimed the throne based on his hereditary right through his mother, and the fact that there was no other possible male heir to the throne. The fact that they got the throne, did not mean in either case that everything was secure and problem-free. They both had their fair share of opposition and uprisings, conspiracies during their rule. For example, Henry VII's reign was not decisive enough in the first 15 years of his reign, it became undoubted around 1499, when the last possible York heirs to the throne were executed.<sup>47</sup>

## **7. Inheritance Law and Succession to the Throne**

After examining the events of 14<sup>th</sup> and 15<sup>th</sup> century in England, it is important to look at how these fit into the frame of inheritance law. After all, succession to the throne is a sort of, if not the most important type of, inheritance.

The rulers of the Plantagenet-dynasty were not bound by common law rules concerning inheritance.<sup>48</sup> The comparison between inheriting land and the throne is nevertheless important, seeing as there were no concrete rules guiding succession up until the beginning of the 17<sup>th</sup> century. Note the fact that we are looking at inheriting land and not other possessions. In medieval England, just as well as in whole Europe, land played a vital role in economics, politics and in society. It was the base of a king's

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<sup>46</sup> BAXTER, Stephen: Edward the Confessor and the Succession Question, In: MORTIMER, Richard (ed.): *Edward the Confessor, the Man and the Legend*. Suffolk, 2017, Boydell & Brewer, p. 87.

<sup>47</sup> MYERS, *op. cit.*, pp. 202–203.

<sup>48</sup> ORMROD, *op. cit.*, p. 190.

power, the key instrument in exercising his will. This crucial correlation between society and land is what highlights the reasons why there were such similar rules regarding the inheritance of land and succession to the throne. Without land, there would have been no medieval kingship, therefore it is a key factor to examine the law concerning the inheritance of land. One good example of this phenomenon is how after the Norman conquest, the rules of Norman inheritance law infiltrated into to the line of succession. Where equal partition between sons was not an option, for example in the case of the succession to the throne, the nomination of an heir was common practice, see the acts of William I, William II and Henry I, etc.<sup>49</sup> Yet, the partition of the land between the princes, as giving them both territorial authority and dominion was a practice until Henry II.

The rules of inheritance in common law started to take their final form around the 13<sup>th</sup> century, during Henry III's reign.<sup>50</sup> This meant the following basic rules: the first, and maybe most important one is that first the deceased's descendants inherited, the more distant relatives, collateral relatives, perhaps ancestors, could only come into inheritance if there were no direct descendants. The more distant relatives inherited upon the parentela system, where the order of inheritance was decided on the closeness of the relative to the decedent.<sup>51</sup> For example, if the decedent had no children of their own, their younger brother would inherit, in the event of the death of the younger brother, his children.<sup>52</sup> The order of inheritance amongst the descendants was based on five ground rules, such as a living descendant excluded their own descendants (1); a dead descendant was represented by their own descendants (2); male descendants preceded female descendants of equal degree (3); older male descendants preceded younger male descendants of equal degree (4); equal degree

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<sup>49</sup> BAKER, John H.: *An Introduction to English Legal History, Fifth Edition*. Oxford, 2019, Oxford University Press, p. 285.

<sup>50</sup> POLLOCK, Frederick – MAITLAND, Frederic William: *The History of English Law Before the Time of Edward I. vol. 2*. Cambridge, 1895, Cambridge University Press, p. 260.

<sup>51</sup> BAKER, *op. cit.*, p. 286.

<sup>52</sup> SPRING, Eileen: The Heiress-at-Law: English Real Property Law from a New Point of View. *Law and History Review*, 1990, Vol. 8, No. 2, p. 275., <https://doi.org/10.2307/743994>

female descendants inherited together (5).<sup>53</sup> The principle of representation [(2)] was contested for a long time, it only became widely accepted at the beginning of the 14<sup>th</sup> century. The principle of primogeniture [(4)] was also a defining feature of the common law inheritance system at the time, which also meant that land could not be divided, only in the rarest cases, since if there was a male descendant, there was always only a single heir.<sup>54</sup> It is also clear to see that women were not excluded from inheriting land, but the system was clearly patriarchal, seeing as women could only inherit if there were no living male descendants.

The place of women is important both from the perspective of inheriting land and succession to the throne. In the English legal system women could also receive feudal fees.<sup>55</sup> From the early 12<sup>th</sup> century, if there were no male heirs, female heirs all inherited equally.<sup>56</sup> Female inheritance, though often overshadowed by male inheritance, played an important role. Based on the rules of common law, around 25% of all land was to be inherited by women, and around 42% of women were heiresses by common law.<sup>57</sup> These numbers however were only hypothetically true, reality was much different. Only around 8% of all estates were inherited by women.<sup>58</sup> The difference was caused by legal instruments created at least in part to make sure women did not come into their inheritance. One notable example is the practice of the so-called strict settlement. This meant that at the marriage of a common law heiress, the estate was entailed in the male line, thus reducing the father to life tenancy, and limiting the inheritance of the heiress. Later, it became more and more common to limit the inheritance of land and title to male descendants by the letter patent creating the title in the first place.<sup>59</sup>

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<sup>53</sup> POLLOCK – MAITLAND, *op. cit.*, p. 260.

<sup>54</sup> KISTELEKI – LÖVÉTEI – NAGYNÉ SZEGVÁRI – RÁCZ – SCHWEITZER – TÓTH, *op. cit.*, p. 250.

<sup>55</sup> *Ibid.*, p. 149.

<sup>56</sup> BAKER, *op. cit.*, p. 287.

<sup>57</sup> SPRING, *op. cit.*, p. 276.

<sup>58</sup> *Ibid.*, p. 277.

<sup>59</sup> *Ibid.*, pp. 278–281.



How did the rules of inheritance affect the succession to the throne? First, it is important to note that women were not theoretically excluded from the line of succession, but it was the rarest of cases when a woman could inherit and keep the throne, and effectively rule England. This was because of the place of women in society at the time. The most common view was that only men could exercise proper military and political power.<sup>60</sup> This was closely bonded with the idea of suitability, (lat. idoneitas), accepted at the Fourth Council of Toledo, in 633. This meant that God, and in extension, the Church, only chose and anointed those people, who were suitable to take the throne.<sup>61</sup> Since the view at the time was that women were incapable of military leadership, which was an essential part of kingship, they, by definition, could not be suitable.

The place of women was more commonly in the background. Their knowledge and counsel were respected, even in certain cases in legal and political questions. One notable example is Empress Matilda. Even after she failed in securing the throne of England for herself, her views were respected, her counsel often sought out in questions concerning the customs and traditions of England, in short, the common law. This, however, was not common practice. The fact that Matilda herself was respected, because of her knowledge of languages, diplomacy and ruling, did not mean, that the capabilities of women were widely accepted and celebrated.<sup>62</sup>

Women's rule was not only contested based on their personal abilities or the lack thereof, but there were also dynastic and political reasons concerning female succession. Since daughters of monarchs often had dynastic marriages with foreign

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<sup>60</sup> CORCOS, *op. cit.*, p. 1599.

<sup>61</sup> FÖLDI, András – KELEMEN, Miklós – KISTELEKI, Károly – MÁRKUS, Eszter – RIGÓ, Balázs – SIKLÓSI, Iván (ed.: FÖLDI, András): *Összehasonlító jogtörténet [Comparative Legal History]*. Budapest, 2018, ELTE Eötvös Kiadó, p. 136.

<sup>62</sup> VAN HOUTS, Elisabeth: The Abbess, the Empress and the 'Constitutions of Clarendon'. In: IBBETSON, David – JONES, Neil – RAMSAY, Nigel (eds.): *English Legal History and its Sources – Essays in Honour of Sir John Baker*. New York, 2019, Cambridge University Press, <https://doi.org/10.1017/9781108672542.013>

monarchs, there was a wide-spread fear of foreign countries gaining and exercising power over England, thus diminishing their own freedom.<sup>63</sup>

Despite this, there were some examples of female line succession on the British Isles in the medieval era. The most notable perhaps, is the case of Empress Matilda. Matilda became heir presumptive to the throne of England after the death of his brother in the White Ship Disaster of 1120. Her father named her heir in January of 1127, strengthening her claim with the oath of the nobility. It is important to note, that at the time, even though Norman law did not explicitly bar women from inheriting fiefs, women's inheritance was placed under their husband's disposal. It was also unheard of for women to succeed to a crown or a duchy.<sup>64</sup>

It is not so surprising then, that after the death of Matilda's father, Henry I, her uncle, Stephen of Blois (1135-1154) stepped up and claimed the throne of England. He claimed that on his deathbed Henry I released the nobles from their oath, no longer requiring them to uphold Matilda's succession. This meant that his reasoning did not explicitly rest on women's inability to succeed the throne.<sup>65</sup> This conflict between Matilda and Stephen of Blois led to civil war and anarchy, then ended with a compromise. After Stephen's death, Matilda's son, the later Henry II (1154-1189) inherited the throne.

This represents us two things. One is that the contemporaries of Matilda and Stephen did not think it impossible for women to act as a conduit through which the right to the throne passed, more so just for a woman to sit on the throne, seeing as both Stephen of Blois and Henry II based their claim on their descent through their mother.<sup>66</sup> Two, is that compromise was reached not because the law had an unquestionable answer to the situation at hand, but because of the need for stability and peace in the country after almost two decades of waging a civil war, meaning that,

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<sup>63</sup> LYON, *op. cit.*, p. 365.

<sup>64</sup> *Ibid.*, p. 368.

<sup>65</sup> *Ibid.*, p. 369.

<sup>66</sup> *Ibid.*, p. 369.

once again, factors out of the terrain of law (extra-legal factors) also influenced the succession to the throne.<sup>67</sup>

The first instance of a woman being accepted as heir to the throne took place in 13<sup>th</sup> century Scotland.<sup>68</sup> In the 13<sup>th</sup> century in Scotland in the absence of a male heir, female succession could be permitted. This led to the acceptance of Margaret, the 'Maid of Norway' as the monarch of Scotland, without significant opposition. What makes this case so interesting is the lack of opposition from Scottish clans. This, however, can be explained by the lack of any other possible male heirs to the throne. Nevertheless, Margaret never became a proper ruler of Scotland. She died in 1290, on her way to Scotland, while still being a child.<sup>69</sup>

The 13<sup>th</sup> century was important for female succession in England as well. During Edward I's reign (1272-1307), after the death of his three oldest sons, he declared the rules concerning the succession. He stated that after his death his living son and his subsequent sons would inherit the throne, and in the event of his son's death, his daughters and subsequent daughters would be next in line. This meant that the rules of primogeniture would apply between both men and women. He also established, that the kingdom could only be ruled as one, it could not be divided like any other hereditary land would have been between the co-heiresses.<sup>70</sup>

In conclusion, female succession in medieval Europe was a rarity, which only happened under special circumstances. Even fewer and rare were the cases when women managed to stay on the throne and rule effectively. Much more commonly, their ascension was followed by civil war and uncertainty, or their husbands, sons or a council of nobles ruled the country in their place.<sup>71</sup> The reason for this was not necessarily a legal principle, which excluded women from the line of succession, more so the political and societal views on women at the time. Women's place in the line of

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<sup>67</sup> *Ibid.*, p. 370.

<sup>68</sup> *Ibid.*, p. 376.

<sup>69</sup> *Ibid.*, p. 378.

<sup>70</sup> BENNETT, *op. cit.*, p. 591.

<sup>71</sup> LYON, *op. cit.*, p. 393.

royal succession is mirrored in the inheritance of land, where women were also not explicitly excluded from inheriting land. Women's succession was a last resort – it could only happen if the alternative was ending the dynasty.

## **8. Conclusion**

In this article, I attempted to paint an overall picture of the succession question in late medieval England, with special attention on the place of women in the line of succession. Since at the time, there was no legal document governing the rules of succession to the throne, each and every king could only call upon the customs and traditions that came before them. Therefore, in the eventful centuries of late medieval England monarchs rested their claim to the throne on a wide array of reasons. The chief argument among them was the hereditary claim, though sometimes it only formed a background to the claim, rather than the main reason. An allusion to ineffective ruling was also frequent, as well as the use of force, or the alliance with an unhappy nobility.

This meant that all rulers of the time had a questionable claim to the throne. This was both due to and the reason for the wars and dynastic conflicts of the time. Overall, we can note that for the lack of a legal instrument governing succession, the fate of the throne was ultimately decided in the context of the circumstances, i.e., based on the events of real life.

The development of late medieval England, though rife with conflict, gave the basis for the rise of England during the early modern era. It was a period of great duality, thus new and old theories, legal practices, societal norms lived next to each other.<sup>72</sup> This is what gives this period its great significance, without it, we could not hope to understand the changes of early modern England.

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<sup>72</sup> HOLDSWORTH, *op. cit.*, p. 413