DAVID LOADES

Power in Tudor England

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Glossary

advowson The right to present to an ecclesiastical living or benefice.

apange Literally 'privilege'; used of substantial jurisdictional franchises or peculiars, normally accompanying grants of large estates.

bouge of court The right to be fed at the king's table; a privilege of those who held Chamber or Household office.

certiorari A writ, issued out of Chancery or King's Bench, enabling proceedings made by any court of record, or by provincial officials, to be removed and certified before the superior courts at Westminster.

first fruits and tenths Dues from bishoprics and other major ecclesiastical preferments, originally paid to the pope, but transferred to the Crown by a statute of 1534. First fruits were in theory a full year's revenue of the benefice. Tenths were a regular annual tax, in theory 10 per cent of the value.

General Eyre Visitation by the royal justices, similar to the later assizes. Henry II divided England into six circuits, and sent out itinerant justices in groups of three. They were empowered to hear all pleas of the Crown.

nisi prius A writ so called because it ordered the sheriff to cause jurors, summoned to be present at actions put down for trial in the central courts, to appear at Westminster before a specified day 'unless before' the circuit judges should visit his county.

mignon A favourite; used specifically of the king's favourites, especially the 'gentilshommes de la chambre'.

oyer and terminer A judicial commission issued by the Crown to a group of named individuals, conferring upon them the power to 'hear and determine' certain cases. Such commissions might be limited by time, or area, or confined to a single case.

Provisors and Praemunire A group of statutes passed between 1363 and 1393, restricting papal rights to appoint to benefices in England, and prohibiting the exercise of ecclesiastical jurisdiction without the king's consent.

socage A traditional tenure by non-military service.

supersedeas A writ issued to cancel or annul any normal judicial process.

terminari A writ used to move an indictment into the central courts when a defendant wished to plead error of process.

Preamble: A Personal Monarchy

Late medieval England was the most centralised and unified monarchy in Europe. This was partly the result of accident, and partly of design. It had been the accident of conquest in 1066 which had enabled William I to create a feudal structure in England which had largely avoided the problems of seigneurial jurisdictions. Similarly it was accident, or at least impersonal circumstances, which dictated that there should be only one great urban centre. On the other hand it was the design of Henry II and his successors which created the great unifying force of common law, and which harnessed it to the king's purposes. The basic jurisdictional units of shire and hundred were already old when William secured the throne, and that enabled him to avoid basing his government upon the tenants-in-chief. At the same time, since England was relatively small and free from impassable wildernesses, internal communications were easy, and swift by comparison with France or the Holy Roman Empire. For all these and other reasons, Edward III and Henry V had been able to mobilise their comparatively modest resources with a speed and completeness which had made them more than a match for the much larger and more populous kingdom of France, and to hold large parts of that country in subjection for generations. As early as the twelfth century, several of the major institutions of government had gone 'out of court'. The Exchequer, the Chancery, and the principal common law courts of King's Bench and Common Pleas became permanently located at Westminster, within a stone's throw of the great city of London. The Church had apparently defeated attempts at enhanced royal control in the reigns of Henry II and John, but in the last decade of the fourteenth century, while the papacy had been weakened by the Great Schism, the English parliament had enacted the statutes of Provisors and Praemunire.[1] Although it would be an exaggeration to say that these Acts prefigured the royal supremacy, they did indicate that the king of England regarded the *Ecclesia Anglicana* as his own territory, upon which no one intruded without permission. Moreover, by the late fifteenth century the chances of inheritance

had enhanced the process of unification still further. The Duchy of Lancaster, the Duchy of Cornwall, the Earldom of Chester and the Earldom of March had all fallen to the Crown. These great secular franchises had been established in the early Middle Ages, in contrast to normal royal policy, to facilitate the control of remote and lawless parts of the kingdom. Had they continued in the hands of great noble families, neither the Yorkists nor the Tudors would have been able to govern as they did, but the last of them came into the king's hands in 1461, leaving only the ecclesiastical franchise of Durham outside direct control. The fact that the king's writ ran in the name of the Duke of Cornwall or the Earl of Chester affected the form rather than the substance of royal control. The principality of Wales was similar, except that it had always been intended as an acceptable front for direct rule. Sometimes there was a Prince of Wales, and sometimes there was not,[2] but in either case the principality was governed by officials appointed by the king. Except for the bishopric of Durham, where the bishop was virtually a royal servant, and a few minor lordships in the marches of Wales, the king's writ ran, under one guise or another, throughout his realm. No other monarch in Europe could boast as much.

However, anyone witnessing the lively aristocratic feuding of the 1450s, and the creeping paralysis which had afflicted the government of Henry VI, could have been forgiven for not noticing this constitutional strength. When nobles or powerful gentry could capture or intimidate the institutions through which the king ruled, the situation actually became worse than if they had possessed their own proper jurisdiction, because an element of irresponsibility was added to their power. By 1455 it looked as though the discontinuance of the General Eyre, which had concentrated the attention of the royal justices on specific areas for long periods, had been a gesture of overconfidence. The General Eyre had disappeared by the end of the thirteenth century, and although its effectiveness had been limited, it had not been adequately replaced. The justices of assize were helpless in the face of powerful and recalcitrant retinues, while the offices of sheriff and justice of the peace were vigorously exploited for individual or partisan ends. As John Heydon observed, he would sooner forfeit £1,000 than lose the office of Sheriff of Norfolk, so profitable had he been able to make it.[3] However, what the king's weakness had relinquished the king's strength could redeem. Before his death in 1483 Edward IV had recovered all the

ground which had been lost by his predecessor. Faced in 1461 with a system of government which appeared to be in total collapse, he had improvised his tactics along traditional lines. Uncertain for some time where he could repose his trust, he relied heavily on his household and on a select band of nobles and ecclesiastics. This was entirely justifiable, because otherwise it would have been impossible to stop the Yorkist affinity in the counties from behaving like a victorious faction and perpetuating the feuds which he urgently needed to reconcile and end. It would not have helped the cause of justice, for example, to have replaced Sir John Heydon with Sir John Paston as Sheriff of Norfolk and in November 1461 Edward sent down a trusted household knight, Sir Thomas Montgomery, 'to set a rule in the county'. Nevertheless the rise of household government, which included using the Treasury of the Chamber as the king's main revenue department, had some serious drawbacks. Most particularly, it depended far too heavily upon the monarch's personal involvement and control.

Edward delegated great powers to his brother, the Duke of Gloucester, to his brother-in-law Earl Rivers, and to his Chamberlain, Lord Hastings. A small number of other peers were similarly favoured, notably the Duke of Buckingham and the Earl of Northumberland. They were all men of great power in their 'countries', and therein lay their usefulness to the king, but in spite of their personal loyalty to him, he never succeeded in welding them into a team.[4] He probably never tried, because the concept would have been alien to him, but as a result his government fell apart on his death, and within five years the Yorkist affinity had destroyed itself. The danger with household government was that, like the spoils system in nineteenth-century America, it made continuity from one reign to the next very difficult. It also emphasised personal loyalty to the king at the expense of impersonal loyalty to the Crown, a distinction which fifteenth-century lawyers and royal servants were perfectly capable of making. Consequently the success of the Tudors after 1485 arose from the fact that Henry VII perceived the complexity of the challenge which confronted him. It was not only necessary to restore the authority of a Crown shaken for the second time in a generation by usurpation and brief civil war; it was also necessary to restore it in such a way that it rested upon the underlying strength of the institution rather than the personalities of the incumbent and his immediate servants. Henry, with his

background of exile and poverty, and his miscellaneous assortment of supporters, was in some ways ideally placed to do that. Necessity drove him in the direction which acute political intelligence might have suggested. Pathologically insecure for most of his reign, he did not even trust his uncle, the Duke of Bedford, as Edward had trusted Richard of Gloucester. Because of this his style of government became distributive. 'Study to serve me, and I will study to enrich you', he is alleged to have said to Sir Henry Wyatt. Many men of all ranks, including nobles, were trusted up to a point, and moderately rewarded when that trust was justified. It was in some ways parsimonious method, and it was not very popular, but it worked. Moreover it set precedents which his son and grandchildren were to follow for almost a century after his death – a century which was to transform the political structure of England.

In order to understand the realities of power in the sixteenth century, it is not sufficient to grasp the constitutional structure. The importance of great private households, so conspicuous in the fifteenth century, steadily ebbed away under the pressures of royal policy. In their place appeared a much broader ruling class, the 'political nation', linked to the Crown directly by a network of offices and preferments. It was this network, and the way in which it was used which created the 'increase of governance', noted by contemporaries, and examined by generations of historians. By the end of Elizabeth's reign England was highly unified, but not particularly centralised. The queen's writ ran uniformly from Ramsgate to Holyhead, and from Bodmin to Berwick, but the professional bureaucracy numbered only a fraction of that of France or Castile. Elizabeth knew perfectly well that her power was restricted, although she would never have admitted the fact. It was restricted by those same men who upheld it, and the limitation was the price of their support. The queen could not tax at will, and she could not make law without the consent of parliament. Nor could she enforce law without the cooperation of her more substantial subjects. Just as a feudal monarchy had rested upon the contract of homage between the king and his tenants-in-chief, Tudor monarchy rested upon an unwritten understanding between the monarch and the 'political nation'. It was a relationship of mutual advantage. In return for their services in office, men received not salaries, or even fees necessarily, but prestige, patronage and opportunities for profit. In Elizabethan Norfolk gentlemen

intrigued and competed fiercely, not merely to secure a place upon the commission of the peace, but to secure a higher place the next time the commission was issued.[5] Yet the duties of a justice of the peace could be onerous, and the tangible rewards uncertain.

The English nobility had never monopolised the 'political nation', although they had controlled it briefly during the troubles of the fifteenth century. During the sixteenth century they continued to form an important part of it, but gradually lost power to the gentry, less wealthy individually, but far more numerous. Moreover the 'political nation' extended beyond the aristocracy to include those numerous local officers of yeoman rank whose services were almost as crucial to social stability as those of their betters. Parish constables and church wardens might be looked down upon, and even mocked by courtly wits, but if they had ever become seriously disaffected law enforcement would have broken down at the point of contact. The towns had by long tradition their own governing elites, who were equally part of the 'political nation', but in England, unlike some parts of Europe, they were not particularly powerful. Only London could command serious political attention, although second-rank cities such as Norwich or York were not without weight in issues which directly concerned them. The 'political nation' was not articulated in any sophisticated theory but depended partly upon pragmatism and partly upon the ancient and respectable principle of consent. The common law was in one sense the king's law, but more importantly it was the law of the whole community, evolved over many centuries to meet a collective need. It was therefore 'owned' by everyone with a stake in the realm, even a small one. Up to a point the monarchy was seen in the same way – it was ordained by God to protect and lead the community of the realm. Obedience was therefore not only a duty to God but an action of self-interest, and participation in the processes of government a natural and expected responsibility. This was not democracy in the modern sense, because it was proportionately linked to wealth and status, but it did lead to a far more broadly based government than most continental observers were used to. 'Ce royaulme est populaire' ('this kingdom is controlled by the people'), wrote Simon Reynard to Charles V in 1553 when he was endeavouring to explain how the apparently invincible force deployed by the Duke of Northumberland had simply melted away during the succession crisis of July. In so far as

this diffuse sense of ownership was articulated into an institution, it was the parliament, and particularly the House of Commons.

> For every Englishman is intended to be there present either in person or by procuration and attorneys, of what preeminence, state, dignity or quality soever he be, from the prince (be he king or queen) to the lowest person in England. And the consent of the parliament is taken to be every man's consent.[6]

When the gentlemen of middle England decided that the king was a better lord than the Earl of Derby or the Duke of Buckingham, they were creating a new system of priorities, the implications of which extended far beyond personal loyalties.

Parliament was one of the three 'points of contact' between the Tudors and their subjects, identified by Geoffrey Elton in his presidential addresses to the Royal Historical Society twenty years ago.[7] The others were the court and the Council. The court had always been a principal theatre of monarchy – the place where the king displayed his magnificence, and to which he attracted service. Like their predecessors, the Tudors employed a hard core of professional courtiers and servants, but they spread the net of part-time service far more widely. Gentlemen ushers and other Chamber servants worked three-month shifts, quadrupling the number of those who could claim court office without greatly increasing the cost. Virtually every county in England, and many in Wales, were represented among the king's gentlemen at the end of Henry's reign, spreading the tentacles of the royal affinity widely among the local elites. By contrast the Council had long since lost any representative function which it might once have possessed. Even the diffuse Council of Henry VII consisted of royal advisers and officials, whilst the more tightly organised Privy Council from 1535 onwards was a working executive with a heavy burden of routine. On the other hand it was the Council to which local officers of all kinds were ultimately responsible. Receivers were responsible in the first instance to the appropriate revenue department, and sheriffs accounted to the Exchequer but if any complaint of abuse or malfeasance were upheld against them, it was to the Council that they were summoned. The Council sent out regular letters of instruction and admonition to the commissions of the peace, and guided the justices' work, particularly in matters of police and

administration. After 1535 the Council also busied itself constantly with the royal ecclesiastical jurisdiction. Clergy were summoned to answer for unsatisfactory sermons, and bishops were occasionally imprisoned for recalcitrance. The Council, usually guided and serviced by the royal secretaries, was the workhorse of central government. Its network of informants and the close personal contacts between its members and the county elites kept it in constant touch with local politics, both secular and ecclesiastical.

All of these institutions were important for the give and take of effective government, but the real secret of Tudor success lay in the use of the royal commissions. A commission was a legal instrument whereby the monarch conferred upon a group of named individuals the authority to perform certain specified tasks on his behalf. Some commissions were *ad hoc*, such as those for the conduct of musters or collection of a subsidy; others, notably the commission of the peace, were standing. Some authorised the conduct of an investigation, others the exercise of judicial power; others again were purely administrative. The commission was a highly flexible instrument, and it worked because all parties stood to gain. The king recruited the cooperation and knowledge of local community leaders, harnessing their authority to his purposes. The nobility, gentry and lawyers who served gained a visible and honourable display of royal confidence, which enhanced their prestige and gave them access to superior opportunities of patronage. Nor was it always clear to their inferiors and dependants when they were speaking in the king's name, and when in their own. This was an immense advantage when it came, for example, to fixing wage rates in the Elizabethan period. The commission was the essential 'transmission system' which communicated the directing will of the monarch into the power structures of counties, towns and villages.

> There never was in any common wealth devised a more wise, a more dulce and gentle, nor more certain way to rule the people, whereby they are kept always as it were in a bridle of good order, and sooner looked unto that they should not offend than punished when they have offended.[8]

Smith was not free from the weakness of complacency, but without the system of commissions, the underfunded government of Tudor

England could not have worked at all. Unable to tax at will, the Tudors could never have afforded a network of paid officials. The normal European alternative, dependence upon noble affinities, had created more problems than it had solved in the fifteenth century and the Tudors were forced to improvise. The result struck such a good balance between central control and local autonomy that it endured for more than four hundred years.

The most comprehensive study of this subtle blend of unity and diversity is Penry William's *The Tudor Regime*, first published in 1979. Since then a number of local studies have appeared, of which the best is probably Diarmaid MacCulloch's *Suffolk and the Tudors* (1986). There have been good studies of individual noblemen, such as Stephen Gunn's *Charles Brandon, Duke of Suffolk*, and of the nobility collectively, notably Helen Miller's *Henry VIII and the English Nobility* (1986), and George Bernard's *The Tudor Nobility* (1992). However, there has been, as far as I am aware, no attempt within a brief compass to examine the whole structure of the body politic, in terms of its bones and sinews. What follows is not a constitutional history, nor a social history. I am not much interested in the evolution of statute law, nor in the creation of wealth, much less the role of women or the rise of Protestant theology. My concern is to analyse, in as succinct and comprehensible a manner as possible, the interaction between the central machinery of government – Crown, Council, court, Chancery, Exchequer, Common Benches and parliament – and the local and provincial elites who, by virtue of their wealth or ancestry 'bore rule' within their own communities. In the aftermath of the Pilgrimage of Grace Henry VIII had declared: 'we will not be bound of a necessity to be served with Lords. But we will be served with such men of what degree soever as we shall appoint to the same'.[9] It was a somewhat premature boast as far as the north of England was concerned, but Elizabeth achieved it after 1569. Neither Henry nor Elizabeth was aiming to install the equivalent of a French intendant, and the gentlemen who eventually ruled the north in their monarch's name, like those who ruled most of England, were the grandsons and greatgrandsons of those who had served in the affinities of Percy or Mowbray or Stafford.

Sixteenth-century England was a personal monarchy, but it was no longer the monarch's private lordship. In one sense the Tudors were perceived, and perceived themselves, as agents of God. They

did not own England, and they acknowledged responsibilities towards their subjects. At the same time they were more than chief executives. Unlike an elected president, a monarch could not legitimately be removed for misgovernment. The only ground upon which a subject's allegiance could be annulled was that the *de facto* ruler was not, in fact, the lawful king or queen. Because the monarchy was personal, the characters and abilities of the incumbents were of critical importance, as were their illnesses, marriages, fertility and death. The monarch was the keystone in the arch of government: the shaper of policy and the maker of decisions. What follows is not a history of the Tudor monarchy, but an analysis of power structures to which the monarchy is at all times central and essential. Even in Tudor England not all authority was exercised in the king's name, but it is appropriate that the period from 1485 to 1603 should be identified in English history by the name of the ruling dynasty.

Notes

1. There were four such Acts against papal provisions between 1351 and 1389, and three statutes of praemunire in 1353, 1365 and 1393. The last was the so-called 'Great Statute', which was a protest against threats by Pope Boniface IX to excommunicate English bishops who obeyed the decisions of the king's courts concerning advowsons. It was the 'Great Statute' which was used by Henry VIII against the clergy in 1532.
2. There was a Prince of Wales almost continuously from 1284 to 1413; and then from 1454 to 1484, from 1489 to 1502, and from 1504 to 1509. The title was not used again during the Tudor period. See J. G. Edwards, *The Principality of Wales, 1267–1969* (1969); J. Davies, *Hanes Cymru [History of Wales]* (1990).
3. James Gresham to John Paston, *Paston Letters*, vol. I, ed. J. Gairdner (1910) p. 157.
4. C. Ross, *Edward IV* (1974) pp. 331–41.
5. A. Hassell Smith, *Country and Court: Government and Politics in Norfolk, 1558–1603* (1974) pp. 51–86.
6. Sir Thomas Smith, *De Republica Anglorum*, ed. M. Dewar (1982) pp. 78–9.
7. G. R. Elton, *Studies in Tudor and Stuart Politics and Government*, vol. III (1983) pp. 3–21, reprinted from *Transactions of the Royal Historical Society* 24 (1974).
8. Smith, *De Republica Anglorum*, p. 106.
9. D. Loades, *Politics and the Nation, 1450–1660* (1992) p. 203.

1 The Nature of Authority

All authority derived ultimately from God. As Thomas Cranmer's *Homily on Obedience*, once of those pieces authorised to be read in churches in the absence of a sermon, put it in 1547:

> Almighty God hath created and appointed all things in heaven, earth and waters in most excellent and perfect order. In heaven he hath appointed distinct orders and states of archangels and angels. In the earth he has assigned kings, princes, with other governors under them, all in good and necessary order.[1]

Consequently obedience to established authority was a religious duty, but the order envisaged by the homilist was less perfect than he imagined. God worked perforce through human agents, and these were not necessarily arranged in neat hierarchies. There had for centuries been disputes between spiritual and temporal lords over priorities, and the demarkation between their respective jurisdictions. Although the Church had never publicly admitted it, by the end of the fifteenth century this long-drawn-out struggle had ended in compromise. Kings accepted the papal primacy in theory, but largely ignored it in practice. Popes acquiesced in this situation in order to retain the support and cooperation of the secular authorities in the preservation of ecclesiastical discipline. There was no universally accepted theory of the relationship between kings and popes, which tended to be settled by *ad hoc* concordats such as that between Francis I and Leo X in 1516. It was partly for that reason that Clement VII had not at first taken Henry VIII's threats of schism seriously. Nor did Henry or his subjects understand at first the full implications of what he had done. From 1534 onward, with the exception of the years 1554–8, it was treason to assert the papal primacy in England, but that enhanced rather than diminished the divine credentials of the English monarchy. To challenge the royal supremacy was to challenge the will of God as that became understood by the consensus of English opinion.

It might have been expected, therefore, that England would have been in the vanguard of those countries embracing the Divine

Right of Kings. However, that was not the case. English kings had toyed with absolutist pretensions in the past, and had been brutally disciplined by their recalcitrant subjects. John had survived at the price of surrender, and Richard II had not survived at all. In both cases the aristocracy had insisted upon the contractual nature of their feudal allegiance, but the principle which they invoked was corporate rather than personal. In practice it was the noble retinues which kept the king within bounds, but in theory it was the law. 'Debet rex esse sub lege' ('the king should rule under the law') had written the authoritative thirteenth-century commentator Henry de Bracton, and in so far as there was a recognised legislative body for the common law, it was the whole body of the realm. It was a basic precept of all medieval jurisprudence that positive law must be consistent with, and subordinate to, the laws of God and Nature. Great quantities of ink had been consumed in the learned definition of these concepts, but what they amounted to in practice was a code of conduct derived from the Bible, particularly the New Testament, reinforced with certain aspects of Greek philosophy derived mainly from Aristotle. That the common law did not transgress the boundaries thus identified was not a question of restraining a sovereign will, but of developing a judicial consensus. In that sense the law was the voice of both God and the people. 'Vox populi vox dei' ('the voice of the people is the voice of God') was a precept quoted by medieval jurists only when it suited them but the fact that it was a familiar tag should remind us that there was more than one theory about the transmission of divine authority. Kings might have been the Lord's Anointed, but it was not only the Church which denied them a monopoly of God's favour. England, wrote Sir John Fortescue in the late fifteenth century, was a *dominium politicum et regale*, that is to say a realm in which the royal authority was both supported and restrained by constitutional means, and of these the chief was the common law.[2]

To this balance the king's ecclesiastical supremacy posed an obvious threat. Common lawyers writing in the 1530s, such as Christopher St German, were insistent that Henry's newly recognised authority could no more override the temporal law than that of the pope which it replaced. Fortunately, whatever the theoretical framework, the king could not, by his own act, create new offences which touched the lives or property of his subjects. Treasons and felonies could only be created by Act of Parliament, and if Henry