

The Beaufort Legitimation

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The Beaufort legitimation was an anomaly among English laws. I should perhaps begin by defining what I mean by the precise term ‘legitimation’ as applied to an illegitimate person. It is the retrospective conferring of legitimacy by a legal instrument. Legitimation, in the sense of ‘de-bastardizing’ a person *known to be unequivocally illegitimate*, had never before been enacted within what was understood by the English legal system. It did not sit within existing legal precepts.

Therefore when Richard II enacted his unique charter of civil legitimation for the Beaufort offspring of John of Gaunt in 1397, there existed no precedent for it. It was an edict enacted by the king’s prerogative. So it was imperative that the charter had to set out in writing exactly what was intended and what rights it conferred.

I do not refer, by the way, to ‘legitimizing’ or ‘legitimizing’ or ‘re-legitimizing’ because I don’t know precisely what these words mean: for all I know they may be defined in a variety of ways. So I invite us all to agree, at least, that we know what *legitimation* means when referring to Richard II’s Act of Tuesday 6 February 1397 (Julian calendar).

In mediaeval times the Church was very keen for couples to marry and procreate within the Christian fold, so Church doctrine allowed – upon application, and in certain circumstances – that children might be made legitimate retrospectively under canon law, i.e. their bastardy was removed in the eyes of the Church. If so, their bastardy might no longer disqualify them from rights of inheritance (again, *in the eyes of the Church*). Some countries brought that entire canon law concept over into their civil law. English common law did not.

It was long maintained in English common law, and recognized explicitly by Rome from the late 12th century, that Church laws (canon law) did not trump secular laws when it came to a bastard’s inability to inherit. It was English common law, not canon law, that decided on cases of inheritance. To quote the legal maxim, ‘The pope cannot make bastards capable of any succession or heritage.’

In England, under mediaeval common law (I’m generalizing here), a child born out of recognized wedlock was a bastard, and bastards did not have the right to inherit or succeed to hereditary lands or titles. In the common law courts, if there was a question over a person’s legitimacy, the case would typically be adjourned while referral was made for adjudication under canon law. On receiving a judgment, proceedings were then resumed under common law and questions of inheritance were there decided independently. In this the Church had no jurisdiction.

The Beaufort legitimation of 1397 was a unique piece of clever footwork by King Richard II, in a case where the Beaufort children had *not* qualified to have their bastardy set aside: neither under common law nor in the eyes of the Church [*sic*]. The Beauforts were prominent and incontrovertible bastards who were members of the nobility, being the offspring by adultery of the king’s larger-than-life uncle John of Gaunt, Duke of Lancaster.

Lancaster – fabulously wealthy, autocratic and self-aggrandizing – had long been spreading his seed around. Having acquired the duchy of Lancaster and several children from his first wife, he gained more children and styled himself King of Castile via his second wife, Constance, to whom he paid the compliment of being anything but constant. While married to her he fathered no fewer than four bastards (three boys and a girl) by adultery with Katherine de Roët, the governess of his other children.[1] His marriage to the princess Constance took place in September 1371, and Katherine’s husband died a few months later. The date of birth of the eldest Beaufort, John (ancestor of Henry VII) is not known, and some held he was born of double adultery, i.e. adultery by Katherine as well as by the duke.

Constance lived for 23 years with this going on, until she died aged about 39 in 1394. After her death the duke astonished the world and shocked his family by deciding to marry Katherine. They duly applied to Pope Boniface IX, confessing one impediment existing

between them, that of spiritual kinship or compaternity in the first degree. This was caused by Duke John having served as godfather to one of Katherine's children by her first marriage.

I will here digress a little, but the relevance of what I say is germane to the subject in hand, so bear with me. The Church had far-reaching rules governing those it considered, under canon law, to be too closely (i.e. incestuously) related to be free to marry, though papal dispensation could be obtained in many cases, especially for the high aristocracy. Among the list of interdicted pre-existing relationships was the spiritual incest acquired by compaternity, having been a godparent to the partner's child. In Lancaster's case the compaternity was presented as having been 'occult' (private) rather than publicly known, and they received only an oral dispensation although it was confirmed in writing in a Letter of Credence. On the strength of this they married in January 1396.

Their adultery had been confessed to the pope, and no doubt they were given penances to serve, but it seems no specific attention was drawn to the incestuous compaternity having persisted throughout their 20-odd years of scarcely concealed adultery. Though we may take little account of such religious concerns nowadays – and indeed there is no shortage of modern writers who romanticize their relationship – nevertheless such matters were sinful in the eyes of God and disreputable in the eyes of men, not to mention humiliating to the duke's slighted wife. Given that the couple's *mésalliance* was already the subject of much scandal and gossip, their years of spiritual incest were evidently well and truly aired in the picking-over of their subsequent marriage. A royal duke serving at a christening could hardly have been as 'occult' as it was made out to be.

Things must have grown uncomfortable for the pair because they soon felt it necessary to petition Pope Boniface again, fearing their marriage might be impugned, and asking him to ratify and confirm his approval of it in an Apostolic Letter this time. The pope did so in his letter of 1 September 1396 (see Appendix 1 below). Probably, owing to the notoriety of the marriage and the couple's four publicly recognized bastard children, His Holiness by now had become acquainted with more facts than he had been apprised of originally. At any rate, when it came to their existing Beaufort offspring, he chose not to render them legitimate in the eyes of the Church. His letter declared legitimate all offspring ***begotten from the marriage***, both past and future (they had been married for eight months by this time). ***But in no sense*** did the pope, as is widely assumed, provide any legitimate status to the Beaufort offspring of their ***pre-marital*** incestuous adultery.

The Vatican Letter problem

There has been so much misreading of the Apostolic Letter of Pope Boniface IX that I need to give it some detailed attention here. Let me start by quoting its summary in English, as written misleadingly by Bliss and Twemlow in their Calendar of the Lateran Register:[2]

Ratification and confirmation of the marriage contracted by John, duke of Lancaster, and Catherine de Swynforde, damsel, of the diocese of Lincoln, with dispensation to remain therein, offspring past and future being declared legitimate. Their petition contained that formerly, after the death of his wife Constance, duke John and Catherine contracted and consummated marriage (not being ignorant that John had been godfather to a daughter of Catherine by another husband, and that afterwards, while Constance was still alive, he had committed adultery with the said Catherine, and [*sic*] unmarried woman, and had offspring by her); and that they considered such marriage to be lawful, inasmuch as, the said impediment of compaternity not being notorious but private (*occulto*), their orator to the apostolic see had taken back to them from the pope a letter of credence (*quoddam breve credentiale*) marked (*signatum*) by the pope's hand, and related to them that, as was also contained in the letter itself, the pope had given his (*viva voce*) consent. They now doubt lest, the said impediment having been afterwards divulged and apostolic letters on the subject of such consent not being forthcoming, their marriage may not be impugned, divorce follow, and grave scandals arise. (*De mandato.*)

The misleading phrase by the editors is ‘offspring past and future being declared legitimate’, a shorthand version of the actual phrase in the Apostolic Letter which stated *prolem ex hujusmodi matrimonio susceptam et suscipiendam legitimam nunciando*, ‘**declaring legitimate offspring received and to be received from this marriage**’.

I have here adopted the translation of Dr H. Ansgar Kelly who procured the copy of the original letter and translated it, through whose kindness I was in turn able to access it. For my own translation I would be inclined to adopt the same order of words as the Latin, and prefer the word ‘begotten’, being a widely recognized term in such contexts: ‘**declaring legitimate offspring from such marriage begotten and to be begotten**’. There is no ambiguity at all about Pope Boniface’s words in Latin. The only offspring declared legitimate are those putatively arriving during the marriage itself, not produced from the previous adulterous relationship. The summary in the Calendar, useful though it may be for anyone unfamiliar with the original letter, has misled legions of commentators because it failed to state the crucial words ‘offspring of their marriage’.

Should there be any doubt, the Apostolic Letter makes it clear that the pope is very well aware of the existence of previous children: *non ignorantes quod ... idem Johannes dictam Catherinam ... adulterando cognoverat et prolem ex ea genuerat* (‘being not unaware that ... the same Duke John adulterously knew the same Catherine ... and begot offspring of her’).

I hope the foregoing is clear enough to confirm the condition of the four Beaufort siblings before Richard II placed his Act of Legitimation before Parliament: they had not in any way qualified to be considered legitimate. It was beyond the scope of the common law to rescind their condition, nor had it been rescinded by the pope. And *even if the pope had done so*, they would not have enjoyed rights of inheritance under English law.

The inheritance question – historical context

Having achieved no assistance from the pope for the Beauforts, Lancaster decided to take an unprecedented step. He was determined to get them legitimated, and he asked Richard II to do it. Whether he asked for them to be given rights of heredity is not known, though it is unlikely. He certainly could not have expected Parliament to pass a statute effecting such an outcome, as this would have created a precedent under mediaeval law. And when the king set a precedent (especially where Land Rights and inheritance were concerned) the law courts had to take account of any such royal precedent in all subsequent legal cases. For the record, we know that no precedent was set by the Beaufort legitimation.

It is always helpful to set actions within their historical context. At the end of 1396 King Richard was childless and his new wife was aged just seven. He habitually called into question the expectations of succession among his various uncles and their multiple offspring. The Duke of Lancaster was at this time around 5th in line by male primogeniture, and the 3rd adult in line at a time of high child mortality. He was an overtly ambitious man, and had one legitimate son to succeed him: Henry of Bolingbroke, now aged nearly 30, whose sons were aged between six and ten. Had Richard II given Duke John’s bastards any hereditary rights, they would have been catapulted very closely indeed into line for the crown.

Moreover it seems Lancaster had already floated two if not three schemes to change the royal succession in favour of himself and Henry,[3] of which the most recent attempt questioned the entitlement of Richard II himself.[4]

Let there be no doubt that King Richard was fully aware of their covetousness. Would he have wanted to make yet more rods for his own back, in addition to this father and son who already had eyes on the crown, if he were to grant the duke’s bastards inheritance rights as well?

Even more importantly, King Richard already harboured a deep grudge against Henry of Bolingbroke as one of the hated Appellants who had brutally curtailed his power earlier in his reign and procured the execution of his valued friends. Soon he would take awful revenge

on them all, acting out long-nurtured plans which must have been festering in his mind long before 1397. The king's vengeance must never be forgotten, nor the fact that, although we know it would lead to his downfall quite soon, yet in terms of Richard's own stratagems in the 1390s he had every expectation of three or more happy decades remaining on the throne.

His move against Henry of Bolingbroke would take place just over 18 months later, in September 1398, when the king would suddenly shunt him aside by means of a ten-year-long exile (commuted to six). But he had merely been biding his time until John of Gaunt died, which he did the following year, whereupon Richard II's vengeance reached fruition: he imperiously confiscated Henry's entire Lancaster inheritance.

Knowing his own intention to cast out and disinherit Henry as soon as he found the opportunity, did Richard really want his Act of Parliament to give Lancaster's three male bastards the prospect of legally bidding for a share of their father's fabulously opulent fortune, most of which the king intended to enjoy at his personal disposal? Remember, his revenge was concentrated on Lancaster's heir, Henry of Bolingbroke, as a former Appellant: he had no quarrel with the Beauforts to justify resisting their claims. It would be a swift, clean strike to disinherit Henry, but it would have produced a very tangled web had he created patrimony for a gaggle of legitimated half-brothers. (And why wouldn't they pursue a claim? The Duke of Lancaster has been described as one of the richest men in history.)

And what were Duke John's personal expectations in 1396/7? Having contracted a marriage that was already widely condemned as unworthy in one of royal blood – and considering his family's remarkably shaky relationship with Richard II – he was already pushing his luck to seek a unique gesture of munificence for his Beaufort offspring. Would he have been so crass as to expect the king to give them rights of heritage and succession as well? Especially when he knew that even the Church had declined to do the same?

In short, did Lancaster dare to inveigle Richard II into ...

- (1) not only creating an anomaly by legitimating bastards, for which there was no precedent; **but also**
- (2) risking the creation of a precedent for the secular courts by granting *rights of inheritance* in a way the English common law prohibited; **and also**
- (3) raising a clutch of bastards to the direct line of succession?

Implications and fall-out from the Act

The king, playing his accustomed game of biding his time, agreed to the duke's request and the Beauforts were civilly legitimated on 6 February 1397. The instrument of legitimation took the form of Letters Patent being issued and read into the parliamentary record, referred to as the 'charter'.

This was a very public enactment in Parliament and (in principle) might have created untold consequences had it been seen as a precedent for legitimated bastards claiming rights of heredity. Although I am no expert in law, I would again draw attention to its lack of subsequent impact on how rights of patrimony were adjudicated in the secular courts. Of course Richard II's legal advisers would have been very careful to spell out exactly what was granted when drawing up the Letters Patent so as to avoid unwanted implications. Obviously this is why no words like 'inherit' / 'inheritance' appear in the charter.

Whereas no one would quibble with the fact that the Beauforts were certainly rendered legitimate by the king, it is the claim that the Act implied hereditary rights that has long been the main bone of contention. I have been tempted to set out my opinion here because some writers of history have taken the emphatic view that it was Richard II's intention, and the Act's effect, to give them rights of (royal) inheritance. This is particularly the view of those who adopt the Tudor interpretation, as expressed by Henry Tudor himself in letters in 1484 signed with the 'royal cipher' and asserting 'my rightful claim, due and lineal inheritance of [England's] crown'.^[5] The inheritance he claimed was through his mother,

granddaughter of John Beaufort, eldest of that Beaufort clan whose illegitimacy we are discussing.

I feel sure the Tudor view is a misinterpretation, and (though I don't claim to have a monopoly on the truth) I will venture to describe it as such in this essay. Admittedly, the title 'Beaufort legitimization' is almost begging to be misinterpreted under modern ideas about fair play. And for present-day defenders of the Tudor claim, the waters have been well and truly muddied by their reliance on that misleading English-language summary in the Lateran Register Calendar, rather than consulting the pope's original Apostolic Letter.

In the mindset of the 14th century, the concept of fair play as regards bastardy was very far from mediaeval sensibilities. I cannot imagine that the duke and his new wife would *not* have asked their representative in Rome to put forward a request for retrospective legitimization since it meant so much to them, but evidently to no avail. Nevertheless the situation has been misrepresented for untold years, and I will shortly examine a further reason for this.

The misinterpretation we are investigating in this section derives from the conflation of 'legitimate' with 'capable of hereditary succession'. We have noted that secular mediaeval lawyers were quite happy to think of these two concepts as entirely separate; concepts, indeed, that were individually disputable on behalf of their clients, and could be mutually exclusive. The law recognized the possibility of being adjudged *legitimate in certain circumstances* (too technical to discuss here),^[6] but the point is that there *were* qualifying circumstances, and the Beauforts failed to satisfy them. They failed to qualify in common law and failed to qualify in canon law. Hence the need for a special Act which had the purpose of stating exactly what they *did* qualify for at the hands of the king. And the Act did not mention inheritance.

It seems Henry of Bolingbroke, as Henry IV, was in no doubt that the terms of the Act precluded hereditary succession. He was only too well aware of the dangers of the misinterpretation I have described, i.e. one that might view his half-siblings as having been created royal heirs. Consequently he made the true position absolutely clear in writing ten years later.

To recap briefly, in 1407 Henry as king was approached by John Beaufort (Henry Tudor's ancestor) requesting a copy of the Letters Patent, in other words the charter, that confirmed his legitimization in 1397. In providing this copy (exemplification) Henry IV added an interlineation to the text with the words *excepta dignitate regali*: except to the royal dignity. I will indicate, in double-brackets below, exactly where in the text these words were inserted.

This annotated statement, handed to John Beaufort by his half-brother, could not have made it more plain that the Act of 1397 did not give the Beauforts hereditary rights. It is perhaps worth wondering why John Beaufort asked for the copy in the first place, since he and his siblings had been showered with titles, honours and offices and could have been in no doubt that the world regarded them as legitimated.^[7] Whatever was in his half-brother's mind, it seems to me Henry IV wanted to send him a clear message that he would be wise to curb any ambitions lurking in the direction of the crown.

There is a view that Henry's words had no standing because he had attempted to amend an instrument whose original wording had been adopted by Parliament, ergo it could not be informally amended later. Though I do not argue with this entirely proper statement of procedure, my view is that his words were not an amendment at all. They were a clarification of the existing words and intent of the Act.

Henry IV had legal advisers too, and when he added those words it happened to be at a time in his reign when he'd been busying himself with provisions for who should be eligible to succeed him. He was well aware that the 1397 Act conferred no rights of succession or inheritance, and this was an opportunity to advise his Beaufort half-siblings to be in no doubt. This was not prompted by fear that the Beauforts might ever succeed him: in 1407 all four of his sons had reached their majority, so it was not an action to defend against a

threat to his heirs. His words were purely a clarifying addition emphasizing the intention of the Act, in accordance with the assurances he would have received from his advisers and lawyers.

Richard II's Act of 1397 – (1) the preamble

Obviously the best way to understand Richard II's intention is to look at what the parliamentary wording actually says. It is written into the Rolls of Parliament in two parts, of which the second is the legislative part, comprising the Letters Patent given to the Beauforts: this is the 'charter' which constitutes the enactment.

But we must first address the brief preamble that precedes it, introducing to Parliament the charter and its purpose, spoken by the Chancellor, Edmund Stafford, Bishop of Exeter. His words are recorded in Law French, and they are extraordinary: he states that the pope has *habliez et legitimez* the Beauforts, translated in PROME as 'enabled and legitimized'. [8]

Since we have all now seen exactly what the Apostolic Letter did say, we are left dumbfounded by this blatant untruth. Someone was responsible for giving the bishop (and, presumably, the king) information that misrepresented Pope Boniface's decision.

Richard II probably took it on trust that his Lord Chancellor had been presented with the evidence, as the bishop was a natural conduit to the king when Church business needed his attention. Nor can I imagine that any other party, e.g. the Archbishop of Canterbury, had any reason to have seen the Apostolic Letter which was a direct communication from the pope to the duke. So when Lancaster presented his request to the king, Lancaster would have been sole custodian of the letter. It would have been simple enough to make representations of its contents while brandishing the unmistakable papal missive with its heavy lead seal, with scant expectation that King Richard would ask to read it for himself.

The chicanery here points ineluctably to Duke John of Lancaster, who could well have ordered one of the less principled of his legions of servants to make a copy to hand to the Chancellor, but leaving out three critical words: *ex hujusmodi matrimonio* ['from this marriage'] ... assuming the Chancellor was given something in writing at all, which is by no means clear. The Duke of Lancaster, after 23 or more years of flouting the seventh commandment, together with the procreation of multiple bastard children, self-evidently had little respect for the Church and its laws. I have no space to enumerate other aspects of his character which readers can investigate for themselves, but he certainly displayed an arrogance towards leading ecclesiastics in England, quarrelling with them openly and violently, and indeed, in 1377 his physical altercation with the Bishop of London led to rioting by Londoners from which he barely escaped with his life.

To have gone through two lengthy rigmaroles seeking approval for his marriage from the pope, and then to receive no declaration of legitimacy for his Beaufort children, was undoubtedly a stinging rebuff to this man's self-regard – as is evidenced from his pursuit of their legitimacy as far as importuning the king himself. In England, kings did not even legitimate their own bastards!

That Lancaster made up the story recited by Bishop Stafford is the only solution I find credible in the circumstances.

We are on safer ground where the Chancellor moves on to King Richard's intentions for the Beauforts, where he states that

... the king, as entire emperor of his realm ... wills and has of his full royal power enabled and made them *mulier* [...] of his own proper authority. And has also pronounced and published their enablement and legitimation according to the form of the charter made by the king ... the tenor of which charter follows.

... le roy, come entier emperour de son roialme ... voet, et ad de sa plenir roial poiar hablie, et fait muliere, [...] de sa propre auctorite ... Et aussi pronuncia et puplist l'abilite et legitimacioun, solonc la fourme de la chartre du roy ent faite ... le tenour de quele chartre s'ensuit.

Leaving aside the untruth about the pope, the Chancellor says the king has himself made them *muliere* of his own prerogative as king-emperor. I will not attempt to delve into the legal term *mulier*, especially as the insertion of '[...]' in the text afterwards would indicate that there is a fault in the MS and/or words obliterated – the size of the lacuna not being indicated. The Latin term *mulier* may be encountered in two entirely different contexts, one referring to a woman, and the other referring to whether a (usually male) child is bastard or legitimate or *rendered* legitimate. Readers interested in following this up are again recommended to consult the thesis by Helen Matthews mentioned in footnote 6 above. Suffice it to say that the preamble declares the Beauforts' legitimation is to be understood *in accordance with the form of the king's charter*, so we can safely look to the words of the charter for King Richard's statements of meaning and intent (see original in Appendix 2).

Richard II's Act of 1397 – (2) the charter

The few statements of intent in the charter (usually distinguishable because they contain verbs) are fairly straightforward when stripped of the formalities and lists of entitlements. Passing by the opening blandishments relating to everyone's degree of virtue and royal blood and divine gifts, I have picked out the key phrases in bold italics. Addressed directly to the Beauforts from the king, this is what it says in précis:

The following is granted to you by royal prerogative. It is asserted that ***you suffer from defect of birth*** [*defectum natalium patimini*], which defect is herein fully expressed [i.e. we have been told and are fully aware that you were not born legitimately]. ***Nevertheless we grant*** to you that ***you may be preferred, promoted, elected, taken up and admitted*** to all manner of honours, dignities / ((here is inserted Henry IV's exclusion)) / pre-eminencies, estates, degrees and public/private offices, both perpetual/temporal, and feudal/noble rights ... such as duchies, lordships, earldoms, baronies or whatsoever other fiefs ... be they dependent upon/held of us mediately (etc.), and we grant that ***they may be received, retained, performed and exercised*** by you ... ***as if you were born in wedlock***, notwithstanding any contrary statutes/customs, [and from these, by our royal power and by parliament] ***we give you dispensation*** [*dispensamus*]. ***We restore each and every one of you to legitimacy***. [*Vosque et vestrum quemlibet natalibus restituimus et legitimamus*].

In a nutshell, the sequence of statements begins with an acknowledgement of their bastardy. In spite of this, the king grants them the ability to be raised to the dignities, estates, offices and ranks as described. These may be received, retained and enjoyed 'as if' they had been born in wedlock, despite any laws/customs to the contrary, from which obstructions the king gives them dispensation. Finally he states that he 'restores' them to legitimacy.

I don't pretend to be a Latin scholar, still less a scholar of mediaeval Latin, but there are two interesting usages of verbs worthy of comment – *dispensamus* and *restituimus* – which I believe have contributed to the prevailing misinterpretations.

Those translations of the charter that I have seen have isolated *dispensamus* from its preceding clauses so as to make it seem that King Richard arrogated to himself the papal right of dispensation, a reading I find scarcely credible. Latin is a language in which you expect to find the verb (*dispensamus*) at the end of what it refers to. As I read it, this term is being used in its legal context, where to grant dispensation means granting a relaxation of the law despite something being illegal or irregular, therefore it surely refers back to allowing the Beauforts to benefit despite 'any contrary statutes/customs', from which the king now grants them dispensation.

The other oddity, *restituimus*, seems to me incongruous with its meaning of 'restore' or return to [a person's or thing's] previous state, since the Beauforts' previous state was bastardy. There existed phraseology in law using *restituo* indicating to 'reverse' or 'make restitution', which may have been the sense intended. As we know, it was thought the pope had already waved the papal wand and made them legitimate in the eyes of God, so this may have been intended as the nearest parallel action available to the king.

Returning to the heritability argument, to understand whether the text of the charter conferred this we need to revisit the vocabulary. In Latin we have a variety of terms we should look for – there are probably more, but here is a selection: *hereditate accipio* (inherit), *excipio* (succeed), *hereditarius* (hereditary, heritable), *hereditas*, *patrimonium* (inheritance, heritage), *ius ex genere ortum* (birthright), *successio* (succession), *successor* (successor) and *heres* (heir). There are three items of royal beneficence in the Act, as follows:

[1] First is stated the *affirmation of their defect of birth*, which henceforth will stand as no impediment to their being *preferred, promoted and admitted* to honours, dignities etc. Given their lack of birthright as established at the outset, being promoted or admitted is clearly not the same as inheriting; so we can set that aside.

[2] They are able to *receive and exercise* these honours, dignities etc. *as if born in wedlock*. Again, to receive and exercise is not to inherit (remember the Latin words listed above). On the contrary, to receive is to be given something. And the qualifying term ‘as if’ serves to re-establish and acknowledge their condition at birth, *despite* which condition the king is granting them the ability to receive high office and other favours. Note that the listed honours, dignities and so on are nearly all receivable from the king (with the exception of minor positions such as ‘private offices’). Where do we find mention of royal interest or right/title to the throne? Nothing here relates to the succession, nor even the inheritance of patrimony from their father.

[3] *We restore you to legitimacy*: this, as suggested above, simply indicates that the king is following where he believes the pope has led, and is echoing it by granting civil legitimation. This final sentence would have been the place to insert closing words such as ‘... and grant rights of patrimony, inheritance and royal succession to you and the heirs of your body’. Yet nothing of this sort appears anywhere.

That, then, is the full extent of the charter. Anyone familiar with mediaeval legal documents may be surprised. We all know they were habitually full of repetitions and synonyms and endless elucidations for the removal of doubt, so that absolutely no eventuality was omitted and every possible outcome anticipated.

Yet search though you may, there is *no word* to be found even *relating* to inheritance, let alone granting any. The words deal only with the practicalities of how the Beauforts’ status shall be named and regarded, and what honours, dignities, etc., they may be given. It cannot be emphasized too strongly that this was a unique and anomalous Act, granting something never before granted by a king. If in his charter he had intended to *override* any of England’s jealously guarded laws and customs on heritability and Land Rights, he would have needed to state precisely in what way and to what extent. That he failed to do so indicates that the king was staying well clear of provisions in that direction.

What was involved in inheritance rights?

If Richard II had wished to grant rights of inheritance, these were so questionable in the case of the Beauforts that his charter would have needed another several hundred words listing exactly what and how they were empowered to inherit. The first thing it would need to state was from whom: being born out of wedlock, their parents and patrimony would need to be definitively identified.[9]

If we imagine he was granting them heritage, presumably by prior arrangement with Duke John, it would then need to set out and provide the inheritances of the duke’s several *legitimate* offspring (and their descendants) begotten by his preceding two wives, who until now had enjoyed exclusive rights. The unimaginably wealthy John of Gaunt was Duke of Aquitaine, Duke of Lancaster, and styled King of Castile and León. At various times he had held the earldoms of Richmond, Lincoln, Leicester and Derby, plus all the usual cascades of baronies and so forth. So which (in this imaginary scenario) were the Beauforts in line to inherit? And who was superior in that line – the elder legitimate females or these newly

legitimated males? Under prevailing conditions, inheritance law dictated that, should Henry of Bolingbroke's line be extinguished, their father's inheritance would go to the direct-line females (Henry's sisters). But males of the half-blood, if granted inheritance, outranked any such females.

The landed aristocracy were eternally preoccupied by dynastic heritability and land holdings and the parentelic system, about which legal battles sometimes raged on for generations. It seems clear to me that the king had no wish to get involved with matters that would generate nothing but resentment and unrest.

As regards inheritance of the crown, let us dispose of the canard that King Richard gave them (implicitly, because there is nothing explicit) *succession rights* to the throne of England. Having failed to establish what constituted their precise inheritance rights from their own father, Richard would have known this area would obviously brew up into a free-for-all within the duke's family. This could never have been countenanced where the crown was concerned (something extremely close to King Richard's concerns, since he was childless). Had he wished the Beauforts to enjoy a place in the succession, it would have been imperative to spell out exactly what that place would be.

Given the king's habit of playing politics with his own succession, these thoughts could hardly have eluded him and his advisers when drawing up the charter. He was well aware of the vaunting ambitions of the Duke of Lancaster for his line, and would scarcely have overlooked covering the possibility that, in the event of Bolingbroke's early death while his boys were still children, a (heritable) Beaufort might be tempted to make a play for the throne ... and before anyone dismisses the idea as fantasy, Lancaster's eldest son did exactly that two years later!

So where would the Beauforts be placed in relation to the offspring of Edward III's various other sons: Clarence, York and Gloucester? Clarence's offspring were already the subject of vexatious disputation. And if the Beauforts were slotted in among all these descendants, why do we hear nothing of any furious protestations within the wider royal family?

Imagine that the Beauforts *were* admitted to the royal succession. If Henry IV was concerned enough in 1407 to make sure they were excluded, when he had four adult sons, why had he not protested *at the time, ten years earlier*, at something that directly competed with his family's interests when his boys were *vulnerable young children*?

And finally, the matter of title and name: the Beauforts always remained uniquely surnamed Beaufort (from the duke's estate and castle of Beaufort in Champagne, France). They were never Plantagenet, and never regarded as scions of the house of Lancaster ... until Henry Tudor became king 88 years later and arranged for Pope Innocent VIII to address him by the title Duke of Lancaster.

I could say more of precedents and the drawing-up of legal documents, but I feel I have said enough to explain what I feel is the fundamental misinterpretation of this Act.

I will end by reflecting the words of Michael Jones and John Underwood, who point out that the language of the charter 'used no words of empire, majesty or sovereignty, such as *regnum*, *summa potestas*, *corona* or *maiestas* that would enable a man to be an heir of a kingdom.'

[10]

Appendix 1

Apostolic Letter of Boniface IX, 1 September 1396[11]
Vatican Archives, Lateran Register no. 43, fols. 230v-231v

Bonifacius ... etc. Ad futuram rei memoriam:

Romanus Pontifex, beati Petri celestis regni clavigeri successor, et vicarius Jhesu Christi, cuncta mundi climata omnique nationi in eis degentium qualitates paterna consideracione

discutit et examinat diligenter, ac, ex officii debito salutem et pacem querens et appetens singulorum superna fidens potestate, illa suadentibus rationabilibus causis perpensa deliberacione salubriter ordinat, et rigori canonum, presertim circa dignitatis atque prosapie prerogativa fulgentes, dum pro locorum et temporum qualitate id expediens fore conspicit, dispensatoria mansuetudine laudabiliter antepontit.

Sane oblate nobis pro parte dilecti filii Nobilis viri Johannis Ducis de Lancastrie et dilecte in Christo filie Nobilis mulieris Catherine de Swynford domicelle Lincolniensis diocesis petitionis series continebat quod olim, recolende memorie Constancia tunc ipsius Johannis uxore vita functa, ipsi Johannes Dux et Catherina, desiderantes invicem matrimonialiter copulari, non ignorantes quod ipse Johannes Dux quamdam filiam ipsius Catherine ex alio viro procreatam de sacra fonte levaverat et quod postmodum idem Johannes dictam Catherinam solutam, constante matrimonio inter ipsum Johannem Ducem et prefatam Constanciam, adulterando cognoverat et prolem ex ea genuerat; et arbitantes hoc ex eo eis licere quod, impedimenta compaternitatis predictae non existente notorio sed occulto, quidam orator eorum super hoc per ipsos ad sedem apostolicam destinatus quoddam breve, credentiale in ipsius oratoris persona, nostra manu signatum, eis ex parte nostra detulerat et retulerat, prout etiam in ipso brevi continebatur nos consensum nostrum eis super hoc per nostre vive vocis oraculum prebuisse, matrimonium inter se per verba de presenti publice contraxerunt illudque carnali copula consummarunt; quodque dubitant hujusmodi matrimonium sic inter eos ut prefertur contractum, predicto impedimenta postea divulgato et litteris apostolicis super concessione hujusmodi non apparentibus, impugnari et divorcium inter eos subsequi ac gravia exinde scandala posse verisimiliter exoriri. Quare pro parte ipsorum Johannis et Catherine nobis fuit humiliter supplicatum ut eis providere super premissis de benignitate apostolica dignaremur.

Nos igitur, qui cunctorum Christi fidelium, presertim sublimi dignitate fulgencium, pacem et tranquillitatem ac animorum salutem libenter appetimus, cupientes hujusmodi scandalis quatenus cum Deo possumus obviare et alias super premissis salubriter providere volentes, hujusmodi supplicationibus inclinati, prefatum matrimonium inter predictos Johannem et Catherinam sic ut prefertur contractum auctoritate apostolica ratificamus, approbamus, ac etiam confirmamus et presentis scripti patrocinio communimus.

Et nichilominus cum eisdem Johanne et Catherina ut impedimenta et aliis premissis penitus non obstantibus in eodem matrimonio sic ut prefertur inter eos contracto libere et licite valeant remanere auctoritate predicta tenore presencium dispensamus, prolem ex hujusmodi matrimonio susceptam et suscipiendam legitimam nunciando.

Nulli ergo etc. [= omnino hominum liceat hanc paginam] nostre ratificacionis, approbacionis, confirmacionis, comunicacionis, dispensacionis, et voluntatis infringere etc. [= vel ei a usu temerario contrariari]. Siquis autem etc. [= hoc attemptare presumpserit, indignacionem omnipotentis Dei et beatorum Petri et Pauli apostolorum ejus se noverit incursurum].

Date Rome apud Sanctum Petrum. Kalendis Septembris. Anno Septimo.

Appendix 1 translation

Boniface, etc. For a future memorial:

The Roman Pontiff, Successor of Blessed Peter the Bearer of the Keys, and Vicar of Jesus Christ, with paternal consideration studies and diligently examines all the regions of the world and the qualities of those living in them (peculiar) to every nation; and, in seeking and desiring out of a due concern for his office the wellbeing and peace of everyone while relying on the supernal power, he salubriously ordains for those regions at the behest of persuasive reasons and after thorough deliberation, and laudably gives them preference over the rigour of the canons by way of dispensatory clemency, especially concerning those who are illustrious by reason of the prerogative of dignity and race, provided that he deem it expedient in view of the quality of places and times.

In this regard, the text of a petition presented to us on behalf of our beloved son the noble man John Duke of Lancaster and our beloved daughter in Christ the noble woman Catherine of Swynford, lady of the diocese of Lincoln, contained that, when some time ago Constance of blessed memory, then being the wife of the same John, had come to the end of her life, the same Duke John and Catherine, desiring to marry, being not unaware that the same Duke John had lifted from the sacred font a daughter of the same Catherine, begotten by another man, and that later the same Duke John adulterously knew the same Catherine, she being free of wedlock, but with marriage still existing between the same Duke John and the aforesaid Constance, and begot offspring of her; and believing that marriage between them was now allowable because, the impediment of the aforesaid compaternity not being notorious but rather occult, a petitioner whom they sent for this purpose to the Holy See had taken from us and delivered to them a certain brief, credentialed in the person of the same petitioner, signed by our own hand, and containing therein a declaration of our having given them our consent in this matter by word of mouth, they publicly contracted marriage through words of the present tense and consummated it with carnal copula; and that, because the above-noted impediment has since become publicly known and because they can produce no apostolic letters authorizing its dispensation, they are apprehensive that this marriage thus contracted as described above can very likely be impugned and an annulment follow and grave scandals arise therefrom. Therefore a humble supplication was made to us on behalf of the said John and Catherine that we deign out of our apostolic benignity to provide for them concerning the aforesaid.

We therefore, who freely seek the peace and tranquillity and health of mind of all Christ's faithful, especially of those who are illustrious because of sublime dignity, desiring to avoid such scandals to the extent that we can under God, and wishing salubriously to provide otherwise for the abovesaid circumstances, being inclined to such supplications, we ratify, approve, and confirm by apostolic authority the aforesaid marriage contracted in the manner described above between the same John and Catherine, and we reinforce it by the protection of the present document.

And nevertheless, so that the same John and Catherine may freely and licitly remain in the said marriage contracted between them in the aforesaid manner, the impediment and other matters described above completely notwithstanding, we dispense them through the same authority by the tenor of the present letters, declaring legitimate offspring received and to be received from this marriage.

Therefore to no one [whomsoever let it be lawful to] infringe [this page of] our ratification, approbation, confirmation, reinforcement, dispensation and will [or to counter it by any rash attempt]. If however anyone [should presume to make such an attempt, let him know that he will incur the indignation of almighty God and of his apostles blessed Peter and Paul].

Given at Rome at St Peter's on the Kalends of September in our seventh year. [1 September 1396]

Appendix 2

Act of Legitimation Parliament of xx Richard II, 6 February 1397
Transcription reproduced from PROME[12]

28. Fait a remembrer qe le maresdy, le quinzisme jour de parlement, le chaunceller, du comandement de roy, declara coment nostre seint pere le pape, al reverence de la tresexcellent persone du roy et de son honorable uncle le duc de Guyen et de Lancastr', et de son sank, ad habliez et legitimez mon seignoure Johan de Beauford, [editorial note: The final '-d' of 'Beauford' has been erased.] ses freres, et sa soer. Et purceo nostre seignour le roy, come entier emperour de son roialme d'Engleterre, pur honour de son sank, voet, et ad de sa

plenir roial poiar hablie, et fait muliere, [...] de sa propre auctorite, le dit Johan, ses ditz freres, et soer. Et aussi pronuncia et puplist l'abilite et legitimacioun, solonc la fourme de la chartre du roy ent faite.

29. La quele chartre feust lue en pleine parlement et baillez a le dit duc, pere a dit Johan, et ses ditz freres et soer, le tenour de quele chartre s'ensuit:

Ricardus, Dei gracia, rex Anglie et Francie, et dominus Hibernie, carissimis consanguineis nostris nobilibus viris Johanni, militi, Henrico, clerico, Thome, domicello, ac dilecte nobis nobili mulieri Johanne Beauford, [editorial note: The final '-d' of 'Beauford' has been erased.] domicelle, germanis precarissimi avunculi nostri nobilis viri Johannis ducis Lancast' natis, ligeis nostris, salutem et benivolenciam nostre regie magestatis. Dum interna consideracione pensamus quot incessanter et quantis honoribus parentili et sincera dileccione prefati avunculi nostri, et sui maturitate consilii, undique decoramur, congruum arbitramur et dignum, ut meritorum suorum intuitu, ac graciaram contemplacione personarum, vos qui magne probitatis ingenio, vite ac morum honestate fulgetis, et ex regali estis prosapia propagati, pluribusque virtutibus, munere insigniti divino, specialis prerogative munimine favoris et gracie fecundemus. Hinc est, quod dicti avunculi nostri, genitoris vestri, precibus inclinati, vobiscum qui, ut asseritur, defectum natalium patimini, ut hujusmodi defectu, quem ejusque qualitates quascumque presentibus habere volumus pro sufficienter expressis, non obstante, [quod] quecumque honores, dignitates, pre-eminencias, status, gradus, et officia publica et privata, tam perpetua quam temporalia, atque feudalialia et nobilia, quibuscumque nominibus nuncupentur, eciam si ducatus, principatus, comitatus, baronie, vel alia feuda fuerint, eciam si mediate vel immediate a nobis dependeant seu teneantur, prefici, promoveri, eligi, assumi, et admitti, illaque recipere, retinere, gerere et excercere, provide, libere et licite, acsi de legitimo thoro nati existeretis, quibuscumque statutis seu consuetudinibus regni nostri Anglie in contrarium editis, seu observatis, que hic habemus pro totaliter expressis, nequaquam obstantibus; de plenitudine nostre regalis potestatis, et de assensu parlamenti nostri, tenore presencium dispensamus. Vosque et vestrum quemlibet natalibus restituimus et legitimamus.

[1] This article leaves aside other rumoured mistresses of his and other rumoured offspring by them, in order to concentrate on the Beauforts. See H. Ansgar Kelly, 'Shades of Incest and Cuckoldry: Pandarus and John of Gaunt', *Studies in the Age of Chaucer*, Vol. 13, 1991, pp. 121–140. With grateful appreciation to Professor Kelly for giving me access to his paper.

[2] *Calendar of Entries in the Papal Registers Relating to Great Britain and Ireland: Papal Letters*, vol. 4, A.D. 1362-1404, ed. W. H. Bliss and A. Twemlow (London, 1902; available at British History Online: Lateran Regesta 43: 1396-1397, pp. 542-546 <https://www.british-history.ac.uk/cal-papal-registers/brit-ie/vol4/pp542-546> [accessed 8 March 2024]).

[3] To read a neat summary of these attempts from a lawyer's perspective see David J. Seipp (Professor of Law, Boston University), 'How to Get Rid of a King: Lawyering the Revolution of 1399' in *Challenges to Authority and the Recognition of Rights*, ed. C. Macmillan and C. Smith (CUP, 2018), pp. 62–5.

[4] Henry IV would revive this last argument to lay claim to the throne in 1399 'by right line of the blood coming from the good lord King Henry III' (bypassing Richard II's line from Edward III); I have written about this at <https://annettecarson.com/archived-articles> in 'Henry IV's Claim to the Throne'.

[5] British Library Harleian MS 787, fol. 2. Parliament in 1485 did not, however, accept him as king by hereditary right but by right of battle.

[6] Readers wishing to delve deeper may wish to consult a thesis by Helen Matthews, *Illegitimacy and English Landed Society c.1285-c.1500*, <http://pure.rhul.ac.uk/portal/files/16948954/2013matthewshsphd.pdf>

[7] His younger brother, Henry Beaufort, might have needed proof in order to receive preferment by the Church, but Henry had already been consecrated bishop in 1398.

[8] PROME = *Parliament Rolls of Medieval England*, ed. Chris Given-Wilson *et al* (Woodbridge, 2005), *British History Online* <http://www.british-history.ac.uk/no-series/parliament-rolls-medieval/> Translations of the Act that follow are mine. N.B. The reference to this in the PROME Introduction follows the traditional line, accepting the pope's alleged 'legitimization' and the presumed heritability.

[9] With an illegitimate child there was always a question as to who its father was. Conventionally the husband in a married couple was regarded as father to his wife's children, so John Beaufort may have been thought to be a Swynford.

[10] Michael K. Jones and Malcolm G. Underwood, *The King's Mother: Lady Margaret Beaufort, Countess of Richmond and Derby* (Cambridge, 1992), p. 24. In their view Henry IV's interpolation was 'never intended to be a resumption of rights' but a refinement of the wording. My view is that it was a clarification.

[11] With grateful appreciation to Professor H. Ansgar Kelly, who kindly allowed me to access the original copy of this letter which he obtained, transcribed, translated and published as the Appendix to his paper 'Shades of Incest and Cuckoldry: Pandarus and John of Gaunt', *Studies in the Age of Chaucer*, Vol. 13, 1991, pp. 138–40. And special appreciation for his tolerance of my persistent questioning to ascertain that this is undoubtedly the original and authentic text. The Latin has been adopted here from the foregoing publication with some misprints corrected.

[12] See footnote 8 above.