

Diriment Impediments, Dispensations and Divorce: Richard III and Matrimony.

MARIE BARNFIELD

The purpose of this article is to address not the quality of Richard's relationship with his wife, but rather the debates and controversies surrounding his various matrimonial plans, alleged and actual. Central to this question is the claim by generations of historians that Richard married his cousin Anne Neville without a papal dispensation. For many years little enough was made of this accusation, and the attendant consequences were let lie. More recently, however, it has provided the springboard for a new attack on Richard's character and legitimacy as king. If Richard's own marriage was illegal, his denunciation of Edward IV's illegal marriage was hypocritical and Richard's son was no more his true heir than Edward V was the true heir of Edward IV. If Richard had already married a close relative without a valid dispensation, then the rumours that he intended to follow this by an indispensable marriage to his niece are surely credible.¹

There have always been always strong arguments against the denial of a dispensation. Members of the landed classes, and of the blood royal in particular, were well aware of the necessity of contracting marriages of unassailable validity, so that slip-ups were normally the result of marriages of passion, whether of the heart or of the loins. Richard, pursuing in the teeth of Clarence's opposition a suit vital to the material futures of himself and his intended, could not afford to be complacent in this regard. Also, to have obtained the throne by denouncing Edward IV's marriage whilst knowing his own to be invalid would have been not only shameless but politically dangerous. When, therefore, Peter D. Clarke published his discovery in the newly opened archives of the Papal Penitentiary of a dispensation for Richard's marriage, it appeared for a short time as though the validity of that marriage had finally been vindicated.² It was not long, however, before interested parties began to notice that the details of the dispensation did not address the expected impediment, that is: 'Richard, duke of Gloucester, layman of the diocese of Lincoln, and Anne Neville, woman of the diocese of York, wish to contract marriage between them, but as they are related in the third and fourth degrees of affinity, they request a dispensation from the same. Item, with a

¹ M.A. Hicks, *Anne Neville, Queen to Richard III*, Stroud 2006.

² P.D. Clarke, 'English royal marriages and the Papal Penitentiary in the fifteenth century', *English Historical Review*, vol. 120 (2006), pp. 1014-29.

[*littera*] *declaratoria* on third and fourth'.³ Affinity in the third and fourth degrees was the impediment that had arisen to Richard's marriage to Anne through her union with Edward of Lancaster. This is all that the dispensation addressed.⁴

Since a proper understanding of the canon law on marital impediments is essential to an interpretation of Richard's matrimonial affairs, before proceeding to discuss these the present article offers a summary of the relevant canonical rules. At the outset, it is important to understand that the Catholic Church's fundamental understanding of marriage is that it is a divine institution, 'monogamic and indissoluble'.⁵ Therefore a pope has no power to dissolve a valid marriage. 'Divorce' in medieval parlance referred either to annulment or an ecclesiastically sanctioned separation. There were, on the other hand, several impediments to contracting a marriage, and these fell into two broad categories: diriment (i.e. nullifying) impediments, and prohibitory impediments, which rendered a marriage illicit without actually invalidating it. Diriment impediments may themselves be divided into those a pope did have the power to dispense, and those he did not.

The most frequently encountered group of diriment impediments for the average fifteenth century noble were those concerning the intermarriage of kindred. Marriage was prohibited between persons sharing any common ancestor (or 'stock') up to the level of great-great-grandparent. A couple contemplating marriage had therefore to trace and compare all their ancestral lines over four generations, then count the number of generations (or 'degrees') down from each common stock to both the bride and the groom. Uncle and niece, for instance, would be related by consanguinity in the first and second degrees, the uncle being one generation down from the common stock, and the niece two.

In addition to these impediments of consanguinity, the Church took the view that sexual intercourse created a relationship with the partner. This relationship is known as affinity, and it impeded marriage with the partner's blood kindred over four generations. Affinity is 'a relationship arising from the

³ Clarke, 'English royal marriages'; p. 1028, n. 42. Clarke gives the dispensation in the original Latin, viz: 'Ricardus, dux Glouirestere [*sic*], laicus Lincolnensis diocesis, et Anna Nevile, mulier Eboracensis diocesis, cupiunt inter se matrimonium contrahere, sed quia tertio et quarto affinitatis gradibus invicem se attinent, quare petunt cum ipsis dispensari. Item cum declaratoria super tertio et quarto'.

⁴ For discussion of the failure of this dispensation to cover the full range of impediments to the marriage, see Hicks, *Anne Neville*, pp. 130-34; and M. Barnfield, 'Richard's "incestuous" marriage', *Ricardian Bulletin*, Summer 2006, pp. 55-57. Hicks also argues that a further impediment of affinity, in the first degrees, existed by virtue of Richard's brother having married Anne's sister.

⁵ C.G. Herbermann *et al.*, ed., 'Moral and canonical aspect of marriage', *The Catholic Encyclopaedia*, 1914 edition, vol. 9, online edition, copyright Kevin Knight 2003.

carnal intercourse of a man and a woman ... whereby the man becomes related to the woman's blood-relatives and the woman to the man's'.⁶

Affinity ... is a diriment impediment to the fourth degree of consanguinity of the deceased spouse; according to the ecclesiastical law a widower may not marry any of his deceased wife's blood-relations as far as the fourth degree inclusively, nor a widow her deceased husband's blood-relations.⁷

It is important to understand that a sexual relationship did not bring the respective relatives of the partners into affinity with each other. Since the Fourth Council of Lateran (1215 AD) it has been the absolute rule that 'affinity does not beget affinity. Therefore the relatives of the man do not become relatives of the woman's relatives, neither do those of the woman become relatives of the man's relatives'. Later in the same century St Thomas Aquinas set out more plainly that 'the brother or father of my affine does not become affine to me in any kind of affinity'.⁸ To sum up, 'The rules ... had the effect of forbidding couples descended from the same great-great-grandfather (or in other words, third cousins) from marrying. The impediment of affinity barred marriages between couples similarly related by marriage, thereby preventing a woman from marrying the widower of her sister (affinity in the first degree) down to the widower of her sister's great-great-grand-daughter (the fourth degree)'.⁹

Baptism was also held to create a spiritual bond between the baptised individual on the one hand, and the godparents on the other, but the canonical impediments arising from this were limited. The godparents were regarded as the spiritual parents of the sponsored child, and the godparents' children became spiritual siblings of the baptised child. 'Each of these [relationships] hinders the contracting of marriage and voids the contract'.¹⁰ These first-degree

⁶ 'Affinity (in canon law)', *Catholic Encyclopaedia*, vol. 1.

⁷ 'Consanguinity', *Catholic Encyclopaedia*, vol. 4. The *Encyclopaedia* refers to a modification of this rule where the affinity arises from illicit intercourse. This modification, however, was not introduced until the Council of Trent (1545-63). See also Martin Luther's objection to the impediment of affinity, that: 'Here too they have set up four degrees, so that after my wife's death I may not marry into her blood relationship, where my marriage extends up to the third and fourth degrees, unless money comes to my rescue!' (W.I. Brandt, trans., *Martin Luther, The Estate of Marriage, 1522*, p. 3 of 12, available on the website of the Department of History of Warwick University).

⁸ 'Affinity (in canon law)', *Catholic Encyclopaedia*, and St Thomas Aquinas, *Summa Theologica*, trans. fathers of the English Dominican Province, 1947 edition, online edition, 'Supplement, question 55, article 5'.

⁹ R.M. Helmholz, *The Oxford History of the Laws of England*, vol. 1: *The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1540s*, Oxford 2004, p. 541.

¹⁰ *Summa Theologica*, 'Supplement, question 56, article 5'.

relationships, however, unlike those of consanguinity, were dispensable. The papacy could, indeed, provide dispensations from any impediments except those enumerated in Leviticus, which were claimed to have been transmitted to Moses by God. If a couple unwittingly married whilst under the effect of a prohibited relationship they might seek a retrospective dispensation, but if they had married in the full knowledge of such an impediment they might be denied a dispensation, or even face excommunication. Since it appears that medieval people of all classes routinely kept in their heads knowledge of their ancestries within the relevant number of generations, ignorance of an impediment of consanguinity might require some explanation.¹¹

Another group of diriment impediments arose from a want of consent. 'Where as is not the consent of both parties there is no bond of matrimony...'¹²

Since consent does not take place where there is fear or coercion, it is necessary for all coercion to be eliminated when someone's assent is required. Now marriage is contracted by consent alone, and, when it is sought, the person whose intentions are in question should enjoy full security, lest he say out of fear that he is pleased by something he hates, with the result that usually follows from unwilling nuptials.¹³

Defect of consent through coercion is most often expressed as the impediment of abduction (*raptus*), which has been described as 'the incapacity of the abductor of contracting valid marriage with the woman whom he has abducted, until she has first been allowed to go free'.¹⁴

Prohibitory impediments to marriages arise from ecclesiastical rules that concern the propriety, but not the validity, of the marriage. For instance, the Church forbade marriages to be conducted clandestinely or during certain sacred periods such as Lent, Advent and the Christmas season (such a period being referred to as a *tempus clausum*).¹⁵ Lastly, it is important to understand that a dispensation is only an enabling document; it in no way joins the couple to each other or places any onus upon them to proceed with the marriage. It can therefore be requested independently by either party to the marriage, or by a

¹¹ J.V. Bullard and H. Chalmer Bell, eds, *Lyndwood's Provinciale: The Text of the Canons therein Contained, Reprinted from the Translation Made in 1534*, London 1929, p. 164; and J.A. Brundage, *Medieval Canon Law*, London 1995, pp. 175-76.

¹² *Lyndwood's Provinciale*, p. 116.

¹³ H.A. Kelly, 'The case against Edward IV's marriage and offspring; witchcraft; secrecy; precontract', *The Ricardian*, vol. 11 (1997-98), pp. 329-330.

¹⁴ 'Canonical impediments', *Catholic Encyclopaedia*.

¹⁵ 'Canonical impediments', *Catholic Encyclopaedia*.

third party, and is not nullified by a later dispensation being granted for the same individual to marry someone else.¹⁶

This has been a summary – albeit incomplete – of the canonical background against which Richard and Anne came into the world. They shared two sets of common ancestors within the prohibited degrees. As Richard's mother, Cecily Neville, and Anne's paternal grandfather, Richard, Earl of Salisbury, were both children of Ralph, Earl of Westmorland, and Joan Beaufort, Richard and Anne were related by consanguinity in the second and third degrees. Additionally, however, Richard's great-grandfather Edmund of Langley was Anne's great-great-grandfather (Edmund's daughter Constance, sister of Richard, Earl of Cambridge, being the mother of Anne Neville's maternal grandmother, Isabel Despenser), resulting in a further consanguinity in the third and fourth degrees. The identities of Richard and Anne's godparents are unknown, but given the closeness of their families it is likely that at least one of their parents had stood as sponsor to the other. It is known, for example, that Richard's mother Cecily Neville had sponsored Anne's elder sister Isabel.¹⁷

It is now a given that the only heirs of Warwick's body were to be the two daughters born to him during the 1450s. It cannot, however, have been so clear to the earl himself until many years had passed. Though only two had survived, Warwick's countess had borne several children and was not yet twenty-seven years of age when Anne arrived.¹⁸ With the passage of another childless decade, however, Isabel's and Anne's strategic positions as great co-heiresses became fixed, just at the time when Edward upset the aristocratic marriage market by his elevation to the queenship of a member of a particularly prolific gentry family.

¹⁶ 'Dispensation', *Catholic Encyclopaedia*, vol. 5. 'The supplica [petition] need not necessarily be drawn up by the petitioner, nor even at his instance; it does not, however, become valid until he accepts it'. 'Neither the non-use of a dispensation nor the fact of having obtained another dispensation incompatible with the former is, in itself, equivalent to a renunciation'.

¹⁷ Oxford, Bodleian Library, MS Dugdale 15, f. 75.

¹⁸ On 7 July 1453 the Vatican had granted 'To Anne, Countess of Warwick, of the diocese of Salisbury. Indult and dispensation for life to her, who is weakened by former illnesses and the birth of children, that the confessor of her choice may, by his advice and that of her physician, if present, grant to her in Lent and on other fast days, whilst she is pregnant, to eat milk-meats and eggs and flesh (carneis), and not to fast'. (W.H. Bliss and C. Johnson, ed., *Calendar of Entries in the Papal Registers relating to Great Britain and Ireland*, vol. 10, London 1893, p. 151).

Partly because of the rift the Woodville marriage created between Edward and some of his relatives (most importantly, Warwick) and partly because of the number of unwed siblings Elizabeth brought with her to court, this flighty match was to change the course of English political life. It was only after this event that Warwick made public his breach with Edward and his ambition to claim the king's brothers for his daughters. As the above résumé of the canonical rules shows, such a double marriage would not have violated the canon laws relating to affinity. Having squandered his own usefulness in the diplomatic marriage stakes, however, Edward was not willing to bestow his male heir upon a mere domestic relation, and early in 1466 Clarence was offered to Mary of Burgundy. Edward may, however, have offered Warwick a compromise, for within a year of Elizabeth's presentation as queen both Gloucester and Lord Lovell had been given by the king into the earl's household. Gloucester was only thirteen months younger than Isabel, and Lovell probably a little older than Anne. Lovell, however, was beneath the earl's ambitions, and by the end of that winter he had settled him on his niece, Anne FitzHugh.¹⁹

The Burgundian chronicler, Wavrin, relates that, when Edward's diplomatic overtures to Burgundy were finally reciprocated by the visit of a Burgundian embassy to England (apparently in December 1466), Warwick was so incensed that he pointedly stayed away from court, and afterwards enticed the king's two brothers to Cambridge to win them over to his cause. Edward, Wavrin relates, heard of this and had his brothers hauled before him, demanding to know whether either of them had entered into a betrothal or understanding with Warwick's daughters, which they denied.²⁰ Almost certainly Wavrin is incorrect in claiming that Richard was lured away from court by Warwick as he was still in Warwick's household at that time. What is certain, however, is that in 1467 Warwick petitioned Pope Paul II for a dispensation for Isabel to marry Clarence. Though no trace of this dispensation has yet been found in the Vatican Archives a great deal is known about it and how it was obtained since it was much referred to during the Readeption and since Clarence's own copy survived into the seventeenth century.²¹ There is, however, no reason to suppose that Warwick would not also have requested a dispensa-

¹⁹ M.A. Hicks, *Richard III*, Stroud 2000, p. 56.

²⁰ Jehan de Wavrin, *Recueil des Croniques et Anciennes Istouires de la Grant Bretagne*, ed W. Hardy *et al.* 5 vols, London 1864-91, vol. 5, pp. 158-59.

²¹ Dugdale's transcription of the now lost original reads: 'Dispensatio Pauli PP iii [*sic*] de matrimonio contrahendo inter nobilem virum Georgium Ducem Clarencie & Isabellam filiam nobilis viri Ricardi Nevill Comites Warwici, licet ipse Georgius & Isabella secundo & tertio & tertio & quarto consanguinitatis gradibus coniuncti sunt, Ac etiam licet mater ipsius Georgij eundem Isabellam de sacro fonte levavit. Datum Rome apud sanctum Petrum pridie Idus Martij Anno 1468 7^o Edwardi 4^o' (Bodleian MS Dugdale 15, f. 75).

tion for Richard's marriage to Anne. Indeed, this may be what the Milanese Ambassador was referring to when he wrote rather clumsily in August 1469 that Warwick 'has married his two daughters to the king's two brothers, and last St John's day [*sic*] the duke of Clarence married his wife at Calais across the water'.²²

Clarence's dispensation was granted on 14 March 1468, and he finally married Isabel at Calais on 11 July 1469. In the interim, however, Warwick and Edward's relationship had deteriorated to the level of armed conflict and Richard had been removed from the earl's household. Any dispensation that had been granted for his marriage to Anne would have become, for the time being, redundant.

Within another year, Clarence and his in-laws found themselves fugitives in France. A reconciliation to the cause of King Henry VI was cemented by the marriage of Warwick's still-single daughter, Anne, to Henry's son and heir, Edward of Lancaster, Prince of Wales. The dispensation issued by the Papal Penitentiary, which was dated 17 August 1470, had probably reached the couple well before the end of November, when a second one was granted in France by the Latin Patriarch of Jerusalem on the eve of his departure for England. The main reason for obtaining a second dispensation would have been that, in waiting for Warwick's consolidation of his conquest of England, Advent had arrived and so the couple were faced with a choice between delaying the nuptials until after 6 January or obtaining a dispensation for marriage during a *tempus clausum*; they appear to have married in the middle of the prohibited season, about 13 December.²³

With hindsight, it is easy to forget how total Warwick's victory appeared at the time. So confident was the pope of King Henry's security that he wrote to Warwick and Clarence, and to archbishops Neville and Bourchier, to remind

²² A.B. Hinds, ed., *Calendar of State Papers and Manuscripts Existing in the Archives and Collections of Milan*, London 1912, p. 131.

²³ The Penitentiary dispensation reads: 'xvi kal. Septembris. Nobiles Eduardus de Anglia, laicus Londoniensis diocesis, et Anna de Warwyk, domicella Saresbiriensis diocesis, desiderant invicem matrimonialiter copulari, sed quia quarto consanguinitatis gradu invicem sunt sunt [*sic*] coniuncti, quare petunt ut, huiusmodi impedimento non obstante, matrimonium inter se contrahere possint cum legitimatione proli suscipiende' (Clarke, 'English Royal Marriages', p. 1027, n. 33). 'Le jeune prince usant d'une dispensation accordé par le patriarche de Jérusalem à la veille de son départ pour l'Angleterre, le 28 novembre 1470, avait épousé Anne Neville; le grand vicaire de Bayeux avait béni cette union vers le 13 décembre à Amboise' (J. Calmette and G. Périnelle, *Louis XI et l'Angleterre (1461-1483)*, Paris 1930, p. 133.) Throughout the 15th century the position of the Latin Patriarch of Jerusalem was by default held by the Grand Master of the Knights of the Holy Sepulchre, and the incumbent at this time may have been an Englishman.

them of the political risks he had taken in providing the dispensations for the triumphant marriages of the earl's daughters.²⁴ Any dispensation that might have been issued for Anne's marriage to the disgraced traitor Gloucester would naturally have been overlooked. Within a few months, though, Edward IV was back on his throne and Anne was a widow being courted by her former intended Gloucester. Yet now, when Richard was finally ready to accept her, her brief Lancastrian marriage placed a new impediment of affinity in the way of their union, for Prince Edward had been Richard's second cousin once removed. And it was not the permission of an eager Kingmaker he now required but that of an extremely hostile Clarence.

It seems that part of the bargain whereby Edward had lured Clarence back to his side had been a promise that he could keep the entire Warwick inheritance by virtue of his marriage to Isabel, ignoring the rights of both her mother, whose inheritance it was, and of her younger sister. Now that Anne was no longer the conveniently exiled Lancastrian princess of Wales but a helpless orphan of not quite fifteen, this agreement looked less than just. Even the countess of Warwick, whose support of her husband's policy was probably well known, was able to argue that her position as 'covert baron' absolved her of any blame.²⁵

In order to sustain his claim to the whole estate, Clarence would need to prevent Anne's remarriage, probably by edging her into a nunnery. And in order to sustain his claim to immediate access to even half the inheritance, he was going to have to prevent the restoration to favour of the girls' mother. In the meantime he claimed the rights of a guardian over Anne and refused Richard's suit. Richard persisted, and Anne simply disappeared. Crowland tells us that Clarence 'had the girl hidden away so that his brother would not know where she was, ... The duke of Gloucester, however, was so much the more astute, that having discovered the girl ... he had her removed into sanctuary in St Martin's'.²⁶

Richard was in a difficult position. There can be little doubt that Anne wished to marry him and to claim her half of the family inheritance but, however willing she was, if he took her into his own household he would become guilty of statutory abduction or rape. Anne would not be legally free to marry him unless she were placed outside his control, but outside his protection she would again be vulnerable to her brother-in-law. This is doubtless why Richard placed her in sanctuary. Even here, though, the as-yet landless Anne was probably dependent on Richard for her upkeep, and it was perhaps this ambi-

²⁴ Calmette and Périnelle, *Louis XI*, p. 120 n. 4.

²⁵ BL Cotton MS Julius B xii, f. 314r.

²⁶ N. Pronay and J. Cox, eds, *The Crowland Chronicle Continuations 1459-1486*, London 1986, p. 133.

guity that provided Clarence with a legal argument against Richard's suit. A complaint of Clarence's does indeed survive to the effect that Richard's marriage to Anne was void because it had been effected by force (see events of 1473 below). In the Michaelmas term of 1471 the two brothers laid their respective cases before the Council. The Crowland Chronicler, who according to a marginal note in the chronicle was a doctor of canon law, remembered the controversy particularly clearly:

As a result [of Anne's placement in sanctuary] so much disputation arose between the brothers and so many keen arguments were put forward on either side with the greatest acuteness in the presence of the king, sitting in judgement in the council-chamber, that all who stood around, even those learned in the law, marvelled at the profusion of the arguments which the princes produced for their own cases.²⁷

It would appear that Clarence was arguing the letter of the law whilst flouting its spirit, which left the royal councillors in a difficult position. Eventually the difficulty appears to have been solved by King Edward's personal arbitration. By mid February of 1472 Clarence had grudgingly agreed to a marriage without any division of property, and before another month had passed he had given up some of his manors to Gloucester.²⁸ It was probably at this point that Richard and Anne sent to Pope Paul's successor Sixtus IV for the dispensation from affinity discovered by Peter Clarke in the archives of the Papal Penitentiary. Anne's widowed status was evidently known to the Penitentiary since she is referred to as a *mulier* (woman) rather than a *domicella* (damsel). That the couple asked only for absolution from the new impediment of affinity implies that the impediments of consanguinity had already been absolved, for a dispensation needed to cover all existing impediments in order to be valid. This dispensation was granted in Rome on 22 April 1472, and the couple were probably married in late May or June, at around the time of Anne's sixteenth birthday.

The marriage did not, however, settle the matter. Anne had not as yet been granted anything like her fair share of her mother's inheritance, and the countess of Warwick was lobbying ceaselessly for permission to leave Beaulieu Sanctuary in safety and for restoration to her estates. 'In absence of clerkes, she hathe wretyn lettres in that behalfe to the kynges highnes with her owne hand. And not only makyng suche labores, suytes and meanes to the Kynges Highnes, sothely also to the Quenes good grace, to my ryght redoghted lady the kynges moder, to my lady the kynges eldest doughter, to my lordes the kynges brethren, to my ladyes the kynges Susters, to my lady of Bedford moder to the

²⁷ Pronay and Cox, *The Crowland Chronicle Continuations*, p. 133.

²⁸ J. Gairdner, ed., *The Paston Letters*, 5 vols. under one cover, Gloucester 1986, vol. 5, pp. 135-36; and *CPR 1467-1477*, p. 330.

Quene, and to other ladyes noble of this realme'. The countess' letters, however, had not had the desired effect. As the result of 'som synester informacion to his seid Highnes made', Edward merely 'directe his most drad letters to the Abbot of the monastere of Beaulieu, with right sharpe commaundement, that suche persones as his Highnes sent to the seid monastere shuld haue garde and straye kepyng of her persone'.²⁹

Not to be outdone, however, when Parliament finally met late in 1472 the outraged countess drafted a petition to the Commons, which was probably presented to the House in the early months of 1473.³⁰ It was evidently rejected, but by the end of May Gloucester had obtained the king's permission for the countess to join his own household in the North, 'whereto som men seye that the Duke off Clarence is not agreyd'.³¹ Whether it was because of his anger at Gloucester's winning over of their mother-in-law, or as a cover for a fresh bid for the throne (as John Paston believed), Clarence was in arms by the autumn, declaring 'as he wolde but dele with the Duke of Glowcester'.³² The declared basis of his hostility to his brother, according to the Milanese ambassador to France, was still the latter's union with Anne, who, Clarence declared, Richard had taken to wife 'by force'.³³ It seems to have been an old argument, and in reviving it Clarence perhaps showed real fear at the possible long-term consequences of Richard's new trump card, possession of the rightful owner of the disputed estates. One writer, erroneously believing Edward to have not only released the countess but restored her property, expressed his belief that she had decided to donate it all to Gloucester.³⁴

Finally, King Edward used Parliament to force Clarence to a settlement. First he passed an act of resumption in order to confiscate his lands, then by another act tackled the question of the countess' inheritance head-on. She was declared legally dead, whilst her property was divided between her daughters and their husbands. Thus, finally, Clarence was deprived of any incentive to annul his brother's marriage as the act declared that, if the couple were 'divorced', then so long as Richard took no other wife and continued to seek a legal marriage with Anne he would retain a life interest in her estates. This settlement probably only fuelled Clarence's hostility to the king, but it seems to have put paid to his attempts to separate Richard and Anne. It was, in the end,

²⁹ BL Cotton MS Julius B xii, f. 314r.

³⁰ BL Cotton MS Julius B xii, ff. 314r-315r. The petition can be assumed to have been rejected since it was not enrolled and the countess did not regain her lands. It survives amongst other documents relating to Richard as duke of Gloucester.

³¹ *Paston Letters*, vol. 5, pp. 188-89.

³² *Paston Letters*, vol. 5, p. 195.

³³ J.L. Laynesmith, *The Last Medieval Queens*, Oxford 2004, p. 70.

³⁴ M.A. Hicks, *False, Fleeting, Perjur'd Clarence*, Gloucester 1980, p. 117.

only Anne's impending demise that brought Richard back into the marriage market.³⁵

Almost as soon as Anne sickened in the January of 1485, scandal began to rear its head. Crowland tells us it was believed that Richard planned to marry Elizabeth of York and that some said he was considering a divorce, 'for which he believed he had sufficient grounds' (the chronicler was presumably thinking back to Clarence's objections to the marriage). There are, it must be said, problems with this notion. First, had Richard wished to replace Anne by Elizabeth, his motive for doing so would have arisen not at Christmas 1484 but the previous spring, when in short succession Elizabeth had left sanctuary and Anne's only child had died. Yet eight months had passed between then and the queen's illness with no preparations for an annulment and with the couple continuing to share a bed. Soon after Christmas, however, Anne 'began to be seriously ill ... and her sickness got worse and worse'. Because of her severe, and apparently contagious, illness Richard obeyed the orders of her doctors and stopped visiting her at night. Ironically, it may have been this cessation of marital relations that sparked rumours of an intended divorce just at the time when Richard would no longer need a divorce in order to rid himself of his wife. As soon as it became clear that she was dying, the rumourers claimed that Richard was poisoning her.³⁶

Crowland relates that at this point some councillors of Richard's who had been implicated in the executions of Elizabeth's uncle and half-brother Rivers and Grey, afraid lest Richard really did intend to marry her, had taken it upon themselves to bring in 'over a dozen doctors of theology, who asserted that the pope had no power of dispensation over that degree of consanguinity'.³⁷ The probable reason for the high-level theological consultations is that an uncle-niece marriage is similar to one of the marriages specifically prohibited by Leviticus, that is, that of a man with his aunt. The theologians who pronounced on behalf of Richard's councillors presumably pointed out that the level of consanguinity between a woman and her uncle is identical to that between a man and his aunt. In fact, the case was actually not quite so clear-cut. The prohibitions in Leviticus do not deal in degrees; they enumerate only the female relations a man cannot marry; and Leviticus does not say that a man cannot marry his niece.³⁸ It is likely, therefore, that the authors of the Leviticus list had

³⁵ Hicks, *Clarence*, p. 122-23; and *The Parliament Rolls of Medieval England*, gen. ed. C. Given-Wilson, CD-Rom edition, Scholarly Digital Editions 2005, Edward IV, 1472 parliament, second roll (October-December 1473), mm. 100-01.

³⁶ *Crowland Chronicle*, p. 175.

³⁷ *Crowland Chronicle*, pp. 175, 177.

³⁸ Leviticus, Chapter 18, *The Jerusalem Bible*, London 1974, pp. 126-27.

felt a greater repugnance to a man marrying his aunt than to a man marrying his niece.

Theologians had recognised and addressed the fact that the prohibitions of Leviticus are not, like the Church's own rules, based upon exact genealogical equivalence. In his *Summa Theologica*, Aquinas had discussed the fact that 'according to the Divine Law which is contained in the Old Law, the prohibition of degrees does not apply equally in the ascending and descending lines: since in the Old Law a man was forbidden to marry his father's sister but not his brother's daughter'. This by no means implied, however, that the Church would look kindly upon a first-and-second-degree union simply because it was permitted by Leviticus, for the Old Law was deemed to have been perfected by the New Law of Christ, 'the law of the spirit of love', from which had arisen rules designed to 'encourage a wider friendship' between human beings.³⁹

The Church's wide-ranging and self-imposed rules, however, had their critics, and Martin Luther was to argue fiercely for a return to the simple Levitic code: 'since my father's sister and my brother's daughter are related to me in the same degree, I would have to say either that I cannot marry my brother's daughter or that I may marry my father's sister. Now God has forbidden my father's sister, but he has not forbidden my brother's daughter, although both are related to me in the same degree'.⁴⁰

There is no doubt rumours were abroad that Richard intended to marry Elizabeth: his public denial of them is known from a reliable source.⁴¹ What Crowland is not able to tell us is whether the rumours were true. The only other evidence for such marriage plans is the letter from Elizabeth to the duke of Norfolk that Sir George Buck claimed to have been privately shown in or before 1619. Whilst there is no reason to doubt Buck's honesty, and therefore the letter's existence, to question the true meaning of what he saw is not mere wishful thinking. It appears that Buck had not been afforded an opportunity to copy the letter and merely relayed its contents from memory. A person's first impressions of any document will be swayed by his pre-existing knowledge and beliefs, and every researcher will have experienced instances when the initial impression of a document's drift has turned out, after careful transcription and study, to have been misleading. What Buck believed he had seen was a letter so unusual that his understanding of it has to be subject to doubt. The version published by Kincaid in 1979, based partly on Buck's own manuscript, British Library Cotton Tiberius E x, and partly on other early versions, has usually been followed since:-

³⁹ *Summa Theologica*, 'Supplement, question 54, article 4'.

⁴⁰ Martin Luther, *The Estate of Marriage*, p. 3 of 12.

⁴¹ J.R. Lander, *The Wars of the Roses*, Tiptree 1974, pp. 255-56.

First she thanked him [Norfolk] for his many courtesies and friendly [offices, an]d then she prayed him as before to be a mediator for her in the cause of [the marriage] to the k[ing], who, as she wrote, was her only joy and maker in [this] world, and that she was his in heart and thoughts, in [body] and in all. And then she intimated that the better half of Fe[b]ruary was past, and that she feared the queen would ne[ver die]. And these be her own words, written with her own hand, and this is the sum of her letter, ... ⁴²

It is important to bear in mind that the above is Kincaid's reconstruction of Buck's final reconstruction of Elizabeth's letter, and not the letter itself. Indeed, the earliest manuscripts reveal that the words 'in the cause of the marriage' and 'written with her own hand' were later additions.⁴³ The traditional interpretation of the letter raises more questions than it answers. As evidence that a marriage to Elizabeth was Richard's brainchild (as rumour suggested) it is badly flawed, for it appears to show Elizabeth fervently lobbying an insufficiently responsive Richard. Yet the idea that Elizabeth herself was conniving at the marriage is at odds with Crowland's references to the hatred she bore towards the people responsible for the executions of her uncle and half-brother. There is also something less than plausible about her having sought out Jocky Howard to pursue such a delicate matter. And would she have been so rash as to express to Norfolk her dismay at the queen's failure to die?

Actually, a marriage to Elizabeth was not in Richard's interests. Even the rumour of it was useful to his enemies. First, it was by any normal standards incestuous and therefore blackened his reputation directly. Secondly, a desire to share his throne with Elizabeth inferred an admission of her legitimacy, thereby not only labelling him a usurper but also corroborating the rumours that he had killed her brothers (had they been alive, marriage to Elizabeth would have revived rather than suppressed the danger posed to Richard by the claims of Edward's offspring). Last but by no means least, it threatened to alienate his northern power base. And, to achieve these dubious gains, there would have been the almost-insurmountable hurdle of obtaining a dispensation for the infamous first-and-second-degree consanguinity, as well as no fewer than three other impediments of relationship. Richard and Elizabeth

⁴² A.N. Kincaid, ed., *The History of King Richard III by Sir George Buck, Master of the Revels*, Gloucester 1979, p. 191.

⁴³ A. Hanham, 'Sir George Buck and Princess Elizabeth's letter: a problem in detection', *The Ricardian*, vol. 7 (1985-87), p. 399; and A.N. Kincaid, 'Buck and the Elizabeth of York letter: a reply to Dr. Hanham', *The Ricardian*, vol. 8 (1988-90), pp. 46-49. BL, Cotton Tiberius E x and a mid 17th century manuscript copy (BL, Egerton 2216) both show the same later alterations, but with the significant difference that in the Egerton manuscript the words 'in the cause of the marriage' were inserted after, rather than before, 'the king'.

were also related by affinity in the third and third degrees (through Elizabeth and Anne Neville's shared descent from Ralph Neville), affinity in the fourth and fourth degrees (through Elizabeth and Anne's shared descent from Edmund of Langley), and spiritual fraternity (Richard's mother being Elizabeth's godmother). Even if a papal dispensation had swept aside all these impediments, it would not have rendered the marriage valid in the eyes of those who would presume Elizabeth to have been forced into it against her will.

In order to nullify Tudor's claim that he would make Elizabeth his queen, Richard needed to marry her to someone who would not pose a dynastic threat: but he did not need to marry her himself. In order to produce a new heir of his body, he needed to remarry very quickly after Anne's demise: but he did not need to marry his niece. For himself, a dynastic match of clear and unimpeachable legality and propriety offered the best security and the greatest degree of national acceptability.

Within days of Anne's death Richard sent an embassy to King John II of Portugal, which according to Portuguese sources came to discuss a marriage between himself and King John's elder sister, Joanna, and between Elizabeth and the king's second cousin, Manuel, Duke of Beja. This embassy must have been in secret preparation for several weeks. Therefore if Elizabeth's letter of late February did concern a marriage for her that was dependent upon the queen's death, logically it would have been the Portuguese match. This was a scheme of which Sir George Buck knew nothing.⁴⁴

The dispensations required for the Portuguese marriages would not have been difficult to obtain. The four prospective partners, and Richard's first wife, were all united by descent from John of Gaunt, but the relationships of the proposed couples were not particularly close. Richard was Gaunt's descendant in the third degree, Anne Neville in the fourth. Elizabeth was also descended from Gaunt in the fourth degree. Joanna was a great-grand-daughter of Philippa of Lancaster, queen to John I of Portugal, and was therefore also Gaunt's descendant in the fourth degree; the same was true of Duke Manuel. Richard and Joanna would therefore have required a dispensation from consanguinity in the third and fourth degrees, and affinity in the fourth and fourth degrees; whilst Elizabeth and Manuel would have required one only from consanguinity in the fourth and fourth degrees. Politically, these marriages would have helped to neutralise not only Elizabeth's claim to the English throne but also the Lancastrian claim of the Portuguese royal house.

⁴⁴ B. Williams, 'The Portuguese connection and the significance of the holy princess', *The Ricardian*, vol. 6 (1982-84), pp. 138-45; and 'The Portuguese marriage negotiations: a reply', *ibid.*, pp. 235-36. Also Wendy Johnson's contribution to 'The debate: Elizabeth of York's letter', *Ricardian Bulletin*, Spring 2005, pp. 30-31.

It is clear that his matrimonial choices embroiled Richard in repeated controversy, but the roots of these controversies lay in politics rather than incest, and there is no proper evidence that he himself ever sought or contracted a marriage that violated custom and Church law. His plans for the Portuguese marriages of himself and Elizabeth ended with Bosworth, but it may be that Henry VII attempted to inherit them. Some Portuguese authorities have claimed that Henry sought Joanna's hand after Bosworth, and in 1490 he negotiated for the marriage of Elizabeth's sister, Anne, to Duke Manuel, a dispensation for the match being granted on 1 March 1491.⁴⁵ This marriage too came to nothing; the sudden death, on 13 July, of King John's only son Prince Afonso left the duke of Beja heir to the Portuguese throne and he married Afonso's young widow, Isabel of Aragon. Anne of York in the end became the wife of the third Howard duke of Norfolk, grandson of the duke to whom Elizabeth had perhaps written regarding her own doomed marriage to Manuel.

⁴⁵ Williams, 'The Portuguese marriage negotiations: a reply', p. 236, n. 2; *Papal Registers*, vol. 15, no. 631.