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How important for understanding the conflict between Henry II and Thomas is the political context of the legacy of the reign of King Stephen?

The reign of King Stephen has traditionally been seen as one of anarchy throughout England, a time of lawlessness and disorder in which ‘Christ and his saints were asleep’ and people ‘lived in fear and suffering’, ‘wasted away and died in droves’.¹ As a consequence of Stephen’s reign the English Church gained significant ecclesiastical freedoms, and upon Henry II’s accession his determination that he would restore the country to the conditions of his grandfather, Henry I, resulted in an assault against the liberties of the Church.² This, an intransigent archbishop, and Henry’s bitter disappointment at what he perceived to be a personal betrayal, is what is often said to have caused the Becket conflict.

This essay, which focuses on events in England rather than Henry’s other territories, will argue that whilst the Church had strengthened its position this was a state of affairs mirrored across Christendom, the result of growing papal jurisdiction and the increasing codification of canon law. It will discuss Stephen’s reign as a time of great upheaval, but ultimately an upheaval restricted in the nature and extent of its impact. Considering Henry II’s focus on restoration, it will also argue that he was a *reforming* king, and that this instinct to reform was key to the conflict. The political context of Stephen’s reign should be viewed as only one of several factors contributing to the dispute; for others we must look to the wider context of northern-European ecclesiastical developments, the instability of Pope Alexander III, the

¹ Dorothy Whitelock ed., *The Anglo-Saxon Chronicle: A Revised Translation* (London: Eyre and Spottiswoode, 1961), p. 200, hereafter ASC. K. R. Potter ed., *Gesta Stephani* (Oxford: The Clarendon Press, 1976), p. 153. For an example of the traditional argument see H. W. C. Davis, ‘The Anarchy of Stephen’s Reign’, *The English Historical Review*, 18(72) (1903), pp. 630-641.

² For the argument that Henry was attempting to re-erect barriers and ‘revive the royal in its old form’ see Z. N. Brooke, *The English Church and the Papacy: From the Conquest to the Reign of John* (Cambridge: Cambridge University Press, 1931), pp. 198-9.

ongoing tension between an increasingly state-like Church and a feudal society and, ultimately, to Henry's reforming intent.

Before it is possible to discuss the significance of the legacy of Stephen's reign to the Becket dispute it is first necessary to establish an understanding of that reign. The words of *The Anglo-Saxon Chronicle* have become synonymous with an image of Stephen's reign as anarchic, a time of widespread disorder and devastation ('horrors' and 'torments'), in which there had never been 'greater misery in the country'.³ Adulterine castles sprang up and (as opposed to pitched battles) became a focal point of the war, as C. Warren Hollister points out often resulting in the desolation of surrounding land either by the besieging or besieged.⁴ Such sources have been seen as illustrative of conditions throughout England, a country suffering from an 'absence of government', but how anarchic and widespread were those conditions?⁵

There is no doubt that the situation in much, if not most, of England during at least part of Stephen's reign was extremely difficult, but recent historiography has developed a more nuanced understanding, one of regional and temporal disruption.⁶ Criticised as having a 'penchant for the weird and the macabre' (for example, suggestions of death by 'toad'), the Peterborough chronicler has been accused of writing 'fantasy,...generalising wildly from local and temporary conditions'.⁷ Hollister defends such authors on the basis of corroboration of

³ Whitelock, *ASC*, p. 199.

⁴ C. Warren Hollister, 'The Aristocracy', in *The Anarchy of King Stephen's Reign*, ed. Edmund King (Oxford: Clarendon, 1994), pp. 37-66, (p. 51).

⁵ The word 'anarchy' is not generally found in the primary sources, but came into usage at the end of the nineteenth century and was cemented as a descriptor of Stephen's reign by Davis' 'Anarchy' in 1903, Graeme J. White, *Restoration and Reform, 1153-1165: Recovery from Civil War in England* (Cambridge: Cambridge University Press, 2000), p. 13.

⁶ For an early argument that different areas would have experienced upheaval at different times and therefore recovered at different times (and that urban areas might recover more quickly than rural), see Davis, 'Anarchy', pp. 634-5.

⁷ David Knowles, *The Monastic Order in England* (Cambridge: The University Press, 1963), p. 500. For 'toads' see Whitelock, *ASC*, p. 199. Hollister, 'The Aristocracy', p. 49. H. W. C. Davis cautioned against accepting the word of chronicles written by those who have 'framed a hasty induction from observations made within a

their descriptions in other sources, but we should not take the narrative sources alone as evidence of widespread disruption.⁸ The numismatic evidence from Stephen's reign and the early pipe rolls of Henry II can provide further corroboration, or allow for the challenging, of such sources. Mark Blackburn has made the compelling argument that the breakdown of central control (and its subsequent partial recovery) is seen most clearly in the coinage.⁹ In the distribution of the four substantive coin types of Stephen's reign (types 1, 2, 6 and 7) can be seen the division of the country into areas of separate control and the deteriorating use of centrally issued dies. Types 1 (from early in Stephen's reign, when things are considered to have gone fairly well) and 7 (issued after the 1153 peace agreement) are 'distributed throughout the country', whereas types 2 and 6 are 'limited to an area of south-eastern England'.¹⁰ Blackburn argues for a clear 'geographical demarcation', the areas under Stephen's control (broadly the south-east) largely producing coins using centrally issued dies, and other parts of the country producing a variety of coins dependent upon who had seized control in the absence of effective royal authority.¹¹ The numismatic evidence therefore suggests that there was a significant loss of royal authority in those areas not directly controlled by Stephen, any non-centrally issued coinage representing an 'abrogation of royal power'.¹²

restricted area and under the influence of a bias, political or religious', but does conclude that discrepancies between the chronicle evidence and that of the charters have been 'exaggerated', Davis, 'Anarchy', p. 631.

⁸ Hollister, 'The Aristocracy', pp. 49-50.

⁹ Mark Blackburn, 'Coinage and Currency', in *The Anarchy of King Stephen's Reign*, ed. E. King (Oxford: Clarendon, 1994), pp. 145-206, (p. 166).

¹⁰ Blackburn, 'Coinage', p. 162. For the argument that Stephen's early years went well see White, *Restoration*, pp. 21-2. Traditionally the end point for this early success has been seen as the arrest of the bishops in June 1139, but more recent historiography suggests a continuance of lower-level administrative personnel at this point, and a far more drastic loss of control when Stephen was captured in February 1141. On this see Edmund King, 'Introduction', in *The Anarchy of King Stephen's Reign*, ed. E. King (Oxford: Clarendon, 1994), pp. 1-36, (p. 26). For the counter-argument, that following the 1139 arrest 'the collapse came quickly', see E. J. Kealey, 'King Stephen: Government and Anarchy', *Albion: A Quarterly Journal Concerned with British Studies*, 6(3) (1974), pp. 201-217, (p. 206).

¹¹ Blackburn, 'Coinage', p. 165.

¹² Edmund King, 'The Anarchy of King Stephen's Reign', *Transactions of the Royal Historical Society*, 34 (1984), pp. 133-153, (p. 148).

In terms of government administration, Kenji Yoshitake's detailed study of the operation of the exchequer both during and after Stephen's reign suggests an organisation which survived, but experienced 'a significant retrogression of...practice'.¹³ In the absence of pipe rolls for Stephen's reign Yoshitake takes as evidence 'fluctuations' relating to the payment of county farm in the early pipe rolls of Henry II, and argues that the method of payment (by tale, weight, or blanch) should have been specified and often is not (what G. J. Turner describes as 'remarkable' carelessness).¹⁴ Where it is specified, the frequent use of payment 'by tale' is indicative of retrogression during Stephen's reign, this being the least sophisticated of the three methods, and Henry's pipe rolls show a return to payment by blanch 'as soon as possible'.¹⁵ Yoshitake suggests that this supports Richard fitz Nigel's assertion that the *scientia* of the exchequer had been lost.¹⁶ Despite this, Graeme White discusses the probability that a 'previously determined' list of 'totals due' was passed on from Stephen's reign.¹⁷ If such an 'exactory roll' existed it is suggestive of the maintenance of an administrative system including the creation and preservation of written records.¹⁸ In addition to such records there was at least to some extent continuity of personnel. T. A. M. Bishop has found four scribes (x, xi, xiii, and xiv) who worked both for Henry I and Stephen, and even when Stephen was released from imprisonment in November 1141 a number of scribes returned to work for him (xx, xxi, and xxii).¹⁹ Such scribes would have brought with them valuable knowledge of governmental practice, which may explain some of the continuation of Henry I's methods of government.

¹³ Kenji Yoshitake, 'The Exchequer in the Reign of Stephen', *The English Historical Review*, 103(409) (1988), pp. 950-59, (p. 953).

¹⁴ *Ibid.*, p. 951. G. J. Turner, 'The Sheriff's Farm', *Transactions of the Royal Historical Society*, 12 (1898), pp. 117-149, (p. 128).

¹⁵ Yoshitake, 'The Exchequer', pp. 954-6.

¹⁶ *Ibid.*, p. 952. For a caution regarding fitz Nigel's *Dialogus de Scaccario*, see N. Karn, 'Nigel, bishop of Ely, and the restoration of the exchequer after the 'anarchy' of King Stephen's reign', *Historical Research: the bulletin of the Institute of Historical Research*, 80(209) (2007), pp. 299-314, (p. 301).

¹⁷ White, *Restoration*, p. 143.

¹⁸ Turner, 'Sheriff's Farm', p. 131.

¹⁹ T. A. M. Bishop, *Scriptores Regis: Facsimiles to identify and illustrate the hands of royal scribes in original charters of Henry I, Stephen, and Henry II* (Oxford: The Clarendon Press, 1961), p. 25.

A picture therefore develops of not absent but divided authority, with someone usually in control: Stephen in the south-east, Angevin forces in the south-west, and the Scottish king in areas of the north. White argues that whoever might have had this control usually had a vested interest in maintaining a functioning administrative system, albeit used for their own ends.²⁰ Stephen has been much criticised for his creation of additional earldoms, a ‘cheap form of patronage’, but he may have had compelling reasons to do so, and whilst such local government tended to further undermine and fragment royal authority it did not ‘in itself destroy the traditional administrative system’, and may in fact have been responsible for its maintenance.²¹ On the basis of these pieces of evidence, we can see that Stephen’s reign left a legacy of diminished practice in key areas such as the exchequer and a significant lapse in royal control of minting, but whilst historians continue to be divided on the precise extent of the damage (see for example the ongoing debate over the meaning of the word ‘waste’ in the early pipe rolls) it is clear that a system of government did continue to function, albeit at a reduced level.²²

In addition to the partial survival of Henry I’s administrative system the peace agreement of 1153 drew up plans for co-operative government and detailed the steps to be taken to restore order. Stephen could not have known how short the remainder of his reign would be, and he evidently began to implement the terms of the agreement, taking the first action on adulterine

²⁰ White, *Restoration*, pp. 53-4 and p. 61.

²¹ *Ibid.*, pp. 57-60. For an earlier argument in support of the idea that Stephen’s motivation in creating new earls was his concern over the loyalty of existing sheriffs to Roger of Salisbury see R. H. C. Davis, *King Stephen* (London: Longman’s, Green and Co. Ltd, 1967), p. 33. For White’s suggestion that government by magnates was an ‘essential response to the curtailment of effective royal authority’ see *Restoration*, p. 56.

²² For the principal opposing arguments on the definition of ‘waste’ see Emilie Amt, who argues for it having a literal connection with the inability of land to produce taxable goods (either as a result of damaged crops, dead animals, or no-one available to work the land), and J. A. Green who argues that at times it meant ‘land from which no tax was forthcoming, for whatever reason’, suggesting that political issues such as disputed ownership (and therefore liability) would have resulted in the non-payment of tax and that this was sometimes labelled as ‘waste’. Emilie Amt, *The Accession of Henry II in England: Royal Government Restored, 1149-1159* (Woodbridge: The Boydell Press, 1993), p. 141 and J. A. Green, ‘The Last Century of Danegeld’, *The English Historical Review*, 96(379) (1981), pp. 241-258, (p. 252).

castles, issuing a new coinage (type 7), and attempting to put the Exchequer on a firm footing.²³

Restoration is a key theme for the early years of Henry II's reign, his early charters reiterating his intent to return to the customs of his grandfather, but his challenge was to regain disparate, divided control of a semi-functioning administration, rather than to recover from an unmitigated disaster.²⁴

Absent from this discussion so far is consideration of the state of the Church in England. Often seen as a time in which the Church took advantage of a weak king to draw to itself as much influence as possible, an opportunity for the floodgates of papal jurisdiction and reform to open, the reality was more nuanced than this. Narrative sources such as William of Malmesbury's *Historia Novella* describe the Church's sufferings, whether this be through plundering, loss of land or churches, the gifting of abbatial office to 'unfit persons', or the exaction of *tenserie*.²⁵ David Knowles points to abbeys which suffered attacks, and a papal letter of 1140 describes the magnates as having 'transformed into tyrants' who 'oppress churchmen with unaccustomed exactions'.²⁶

Damage or injury notwithstanding, the Church's increasing influence and authority was aided by a number of factors. The rapid spread of reforming monastic orders such as the Cistercians and the prominence of reform-minded men in key positions resulted in the Church

²³ White, *Restoration*, p. 138.

²⁴ *Ibid.*, p. 54. For Henry's coronation charter, which spells out his intent to return to his grandfather's customs, see *English Historical Documents, 1042-1189*, ed. D. C. Douglas and G. W. Greenaway (London: Eyre Methuen, 1981), pp. 439-40 (hereafter *EHD*).

²⁵ 'The result was that under him the treasures of some churches were plundered and their landed property given to laymen; churches belonging to clerks were sold to strangers; bishops were made prisoners and compelled to alienate their property; abbacies were granted to unfit persons either to oblige friends or to pay off debts', K. R. Potter ed. *Historia Novella* (London: Thomas Nelson & Sons, 1955), p. 20.

²⁶ Knowles, *Monastic Order*, pp. 269-70. King, 'Anarchy', p. 135. Knowles' conclusions on the scale of the damage have been challenged by Thomas Callahan, Jr. (and others) who argues that evidence has been found for material damage to fewer than ten per cent of monastic houses, many of which suffered only minor injury and received restitution afterwards. Thomas Callahan, Jr., 'The Impact of Anarchy on English Monasticism, 1135-1154', *Albion: A Quarterly Journal Concerned with British Studies*, 6(3) (1974), pp. 218-32, (p. 220).

achieving ‘a recognition of its authority in the very highest affairs of state’.²⁷ His position as Stephen’s brother, bishop of Winchester, and papal legate might have been unique, but Henry of Blois was not alone in being committed to the implementation of Gregorian reforms, David Knowles arguing that during Stephen’s reign the English Church was controlled by ecclesiastics with a ‘European outlook’ and a ‘desire for spiritual reform’.²⁸ It is worth noting, however, that Henry increasingly struggled to manage Stephen, the latter’s arrest of the bishops of Salisbury, Lincoln, and Ely in June 1139 causing the ‘intensely personal arrangement’ between the two to be ‘shattered’.²⁹

Such reform-minded men were also to be found in monastic environments, and the influence of the Cistercians can be particularly seen in the north of England in, for example, their intervention in the disputed election of the archbishop of York.³⁰ The strong filial connections within the Cistercian order are well-known and this, coupled with familial links amongst the nobility, argues for an increasing network of connections with the continent.³¹ We must take with caution, however, the suggestion that the impact of this can be attributed to Stephen, that prior to his reign English kings successfully managed to isolate England from wider ecclesiastical developments, that Stephen was unable to maintain this ‘barrier’, and that as a consequence England became rapidly exposed to ‘papal intrusion’.³² It is certainly true that Stephen struggled to maintain authority over the actions of the clergy, but it is no longer

²⁷ H. A. Cronne, *The Reign of Stephen, 1135-54: Anarchy in England* (London: Ebenezer Baylis and Son, 1970), p. 134, p. 124.

²⁸ Knowles, *Monastic Order*, p. 297, p. 516. Not least of these outward-facing, high-ranking churchmen was Theobald, archbishop of Canterbury.

²⁹ Cronne, *Reign of Stephen*, pp. 128-9.

³⁰ Knowles describes Cistercian abbots in England, aided by St. Bernard of Clairvaux, as a ‘formidable group of opponents’, the equal of which could not have been found in Europe at the time, although he does not limit monastic influence to the Cistercians alone, *Monastic Orders*, p. 79.

³¹ On connections between England and Normandy see J. L. Patourel, ‘What Did Not Happen in Stephen’s Reign’, *History*, 58(192) (1973), pp. 1-17, (p. 13).

³² Z. N. Brooke, ‘The Effect of Becket’s Murder on Papal Authority in England’, *The Cambridge Historical Journal*, 2(3) (1928), pp. 213-228, (p. 215).

supportable to argue that prior to his reign England was especially isolated. Mary Cheney successfully argues that the practice of appealing to the papacy was 'fairly well established' by the third decade of the twelfth century, citing the appeals of Bishop Urban of Llandaff over relatively mundane matters as evidence that such appeals were routine.³³ Even Knowles, who argues for the exceptional 'isolation in which the Norman kings had maintained their dominions' agrees that 'the processes of change' were underway before Stephen came to the throne.³⁴ Cheney's argument on papal appeals applies equally to the awareness and use of canon law in England, the interpretation of which became a central point of disagreement between Thomas and Henry, and she suggests that English clergy were 'in no way behind their contemporaries abroad in their knowledge and use' of canon law.³⁵ The increasing impact of canon law was not unique to England and neither was England unique in being immune to it; the Church's increase in England under the reign of Stephen must be viewed in the context of such gains in ecclesiastical strength across northern-Europe, Charles Duggan arguing that Stephen's reign 'ran parallel in time to a phase of remarkable development in papal centralisation and jurisdiction' and that thus the Becket dispute 'can never be understood divorced from its European context'.³⁶

Instead, therefore, of the collapse of a previously impenetrable barrier between England and the papacy, we see a situation in which royal control of the Church's relations with the papacy has weakened and the Church has taken to itself certain increased liberties (for example, the right to deal with disputed cases of advowson). Rather than a newly crowned Henry II determined to claw back these rights and regain control, Warren argues that Henry was

³³ Mary Cheney, 'The Compromise of Avranches of 1172 and the Spread of Canon law in England', *The English Historical Review*, 56(222) (1941), pp. 177-97, (p. 179).

³⁴ Knowles, *Monastic Orders*, p. 267.

³⁵ Cheney, 'Compromise', p. 196.

³⁶ Charles Duggan, 'From the Conquest to the Death of John', in *The English Church and the Papacy in the Middle Ages*, ed. C. H. Lawrence (London: Burns & Oates, 1965), pp. 63-115, (p. 67).

‘singularly undoctinaire’ in the first years of his reign, leaving the Church to manage itself and ‘not interfering, but intervening’ (often when requested to do so by ecclesiastical authorities).³⁷ Stephen was acting in accordance with custom when he took to himself the right to hear the case of Osbert, archdeacon of York, but Henry granted the case to Theobald, symptomatic of the fact that he was not at this stage ‘inclined to challenge the jurisdiction of ecclesiastical courts’.³⁸ How such clerks were dealt with would become critical to the dispute between Thomas and Henry, but if the latter had been content to continue in the vein in which he began it is hard to imagine the conflict escalating as it did. That said, flashpoints of disagreement between the two, for example at the Council of Northampton in October 1164, highlight ongoing tensions over the conflicting duties of the clergy (many of whom were significant landholders) to the king in a feudal society, and to a Church which saw its income as its own. This was an issue Anselm and Henry I had argued over, and at Northampton the same unresolved conflict is seen, described by David Knowles as ‘in essence the problem of reconciling feudal discipline with the requirements of canon law’.³⁹

Alongside such ecclesiastical developments must also be set the particular context of papal weakness. Henry’s eventual backing (and later threat to withdraw it) of Alexander III resulted in a pope forced to balance the demands of a king whose continuing support he required, and an archbishop who was taking a stand on ecclesiastical liberty. Alexander was in a difficult position, and his inability or unwillingness to take a firm stand earlier was perhaps significant

³⁷ W. L. Warren, *Henry II* (London: Eyre Methuen, 1973), pp. 435-8.

³⁸ For the Osbert case see David Knowles, ‘The Case of St William of York’, in David Knowles, *The Historian and Character* (Cambridge: The University Press, 1963), pp. 76-97. On the customary nature of Stephen’s taking of the case for the secular courts see Frank Barlow’s discussion of archbishop Theobald’s letter to the papacy stating that the Church had been forced to relinquish the case ‘according to the custom of our nation’, Frank Barlow, *Thomas Becket* (London: Orion Books, 1997), p. 92 and H. G. Richardson and G. O. Sayles, *The Governance of Medieval England from the Conquest to Magna Carta* (Edinburgh: The University Press, 1963), p. 291. For Henry’s disinclination to interfere with ecclesiastical jurisdiction see White, *Restoration*, p. 169.

³⁹ David Knowles, *The Episcopal Colleagues of Thomas Becket* (Cambridge: Cambridge University Press, 1951), pp. 142-3.

for the longevity of the dispute. This, then, was the state of the Church at the beginning of Henry II's reign, an institution beginning to consider itself 'a kind of *municipalitas* – a self-contained system of jurisdiction and legal claim', but an institution whose head was reliant upon the support of a king controlling a feudal system in conflict with the increasingly codified rights of the Church.⁴⁰

Before considering the Constitutions of Clarendon, which must loom large over any discussion of the conflict, it is important to note J. W. Alexander's conclusion that the dispute was made up of a series of individual disagreements on different issues, and this essay's further argument that in many of these instances what Thomas was reacting to was an attempt by Henry to instigate reforms.⁴¹ Thomas has been widely criticised for his support of Henry's restorative actions when he was chancellor ('when there was a clash of interests between church and state he was usually to be found advocating the views of the court party').⁴² These tended to be individual cases, however, and even those prominent controversies such as the Battle Abbey case did not themselves fundamentally alter the relationship between Church and state. Whilst they may have set a possible precedent for the future, in Thomas' opposition as archbishop he was standing against attempts by Henry to instigate reforms which would have a permanent, sweeping effect.

It is arguable that Thomas' initial stand against Henry's attempted reforms came in July 1163 at Woodstock when he objected to Henry's proposed changes to sheriff's aid. Warren describes this objection as 'obtuse and cantankerous', nothing more than 'another unilateral

⁴⁰ Rowan Williams, '“Saving our order”: Thomas Becket and the law', *International Journal for the Study of the Christian Church*, 20(3-4) (2020), pp. 288-98, (p. 291).

⁴¹ J. W. Alexander, 'The Becket Controversy in Recent Historiography', *Journal of British Studies*, 9(2) (1970), pp. 1-26, (p. 7).

⁴² Austin Lane Poole, *From Domesday to Magna Carta, 1087-1216* (Oxford: The Clarendon Press, 1951), p. 200.

declaration of independence', but Anne Duggan suggests there is more to it than this.⁴³ Critical for this discussion is her argument that what Thomas was actually objecting to was the 'arbitrary transfer to royal coffers of a customary good will payment'.⁴⁴ He is standing for 'established custom' against a reform instigated by Henry which was designed to improve royal revenues.⁴⁵ Whilst this supports the argument that Thomas was opposed to Henry's attempts to reform, it also provides a reason (beyond a desire to increase law and order and access to justice) for Henry's reforming intent, the financial imperative of a king whose predecessor depleted the treasury and oversaw a period of disrupted taxation and royal revenue.⁴⁶ In this way we see that Henry's desire for reform can be clearly linked with the legacy of Stephen's reign, but it is not reasonable to attribute it entirely to that legacy. As in so much of the dispute the motivations of both key parties were various. Henry's determination to have his son, Young Henry, crowned must have been motivated by recognition of the damage so recently caused by a disputed succession, but also by his attempt to secure peace with Louis of France, as much as by a desire to insult Thomas; Thomas' adamant opposition to the crowning by the archbishop of York must be recognised as intimately connected to the fact that York and Canterbury were at this time engaged in 'chronic conflict', Thomas (and Theobald before him) constantly having to defend his rights as primate both against those to whom the see had lost property during the civil war, and against an archbishop of York in Roger Pont de l'Eveque who seemed to have a particular personal antipathy towards him.⁴⁷ In both cases the legacy of Stephen's reign had a part to play, but it was not the sole or even the most significant factor.

⁴³ Warren, *Henry*, p. 459.

⁴⁴ Anne Duggan, *Thomas Becket* (London: Arnold, 2004), p. 38.

⁴⁵ *Ibid.*, p. 257.

⁴⁶ Warren adds to the financial difficulties debts incurred by Henry 'on his way to the throne', Warren, *Henry*, p. 263.

⁴⁷ Warren, *Henry*, p. 496. Alexander, 'Becket Controversy'. p. 20, Knowles, *Monastic Orders*, p. 285.

In sheriff's aid we have seen some of Thomas' first opposition to Henry II's attempted reforms, and it is significant that this issue arose in 1163. Henry's early work was focussed on continuing the restoration begun by his predecessor, with a focus on the recovery of royal demesne.⁴⁸ The date may be debated, but it seems clear that there came a point at which the principal work of restoration had been completed. Warren puts this between 1163-66, arguing that these years represent the 'culmination of restoration', White argues for Henry's return to England in January 1163 as the critical moment, but both agree that from the early 1160s Henry was free to begin focusing on other priorities.⁴⁹ It is arguable that both of his pressing concerns were in part motivated by the impact of Stephen's reign: new methods of securing or increasing royal revenues were required, despite recovery in the royal finances in Henry's early years; and an increasing number of complaints regarding the lack of efficient justice in the ecclesiastical courts would have been concerning, particularly if Austin Lane Poole is correct in concluding that 'scandals were frequent, crimes were committed almost with impunity, and it was said that since the king's accession above a hundred murders had been perpetrated by clerks'.⁵⁰ Even had Henry not had the interest in justice with which Paul Brand credits him, it is plausible to conclude that his first efforts to gain greater royal authority over ecclesiastical matters came about through a sincere desire to reduce such crimes and widen his subjects' access to justice.⁵¹

It was at the Council of Westminster in October 1163 that Henry took his first step in relation to criminous clerks in a proposal that clerks be first tried and degraded in an ecclesiastical court and subsequently sentenced and punished in a secular court, a proposal which was unanimously

⁴⁸ Graeme White, 'Continuity in Government', in *The Anarchy of King Stephen's Reign*, ed. E. King (Oxford: Clarendon, 1994), pp. 117-144, (pp. 137-8).

⁴⁹ W. L. Warren, *The Governance of Norman and Angevin England, 1086-1272* (London: Edward Arnold (Publishers) Ltd, 1987), p. 105.

⁵⁰ Poole, *Domesday to Magna Carta*, p. 201. White, *Restoration*, p. 10.

⁵¹ Brand sees Henry as 'an activist king, interested in justice and the law, and determined to find a more active role for the monarchy in their provision', Paul Brand, 'Henry II and the Creation of Common Law', in *Henry II: New Interpretations*, eds. Christopher Harper-Bill and Nicholas Vincent (Woodbridge, Suffolk: Boydell Press, 2007), pp. 215-241, (p. 241).

rejected by the bishops. Warren argues that by the early 1160s Henry was attempting to 'introduce clearer definitions into the relationship of Church and State', that these proposals, the precursor to the Constitutions of Clarendon, represented a 'marking out of boundary lines'.⁵² Only a few months later, in January 1164, came those Constitutions, justified by Henry (as so often) as an attempt to revert to the customs of his grandfather but containing several clauses which were to be vehemently opposed. As clause iii regarding criminous clerks became the 'axis about which the controversy turned', let us consider it first.⁵³ The previous custom, as best we can understand it, seems to have been that the Church had the right to deal with criminous clerks. Much has been made of William the Conqueror's 1072/76 ordinance which is alleged to have 'established courts spiritual to hear ecclesiastical cases', but Colin Morris argues that in reality the ordinance was merely attempting to return to the bishops jurisdiction which had 'fallen into lay hands'.⁵⁴

The charter used by Becket in his argument was in fact Stephen's charter of 1136 which stated:

I assert and confirm that jurisdiction and power over churchmen and all clerks and their property and the distribution of the goods of the Church are in the hands of the bishops.⁵⁵

Warren argues that Thomas' use of this to argue that 'the clergy were hitherto...exempt from lay jurisdiction' is disingenuous, that he would have been fully aware that exceptions existed in which criminous clerks were claimed for the secular courts (Osbert of York by Stephen for example), but it does seem reasonable to assume that generally ecclesiastical courts

⁵² Warren, *Henry*, p. 447.

⁵³ Alexander, 'Becket Controversy', p. 15.

⁵⁴ *Ibid.*, p. 9, C. Morris, 'William I and the Church Courts', *The English Historical Review*, 82(324) (1967), pp. 449-463, (pp. 450-1).

⁵⁵ 'charter of Stephen addressed generally (1136)', *EHD*, p. 435.

had dealt with criminous clerks during Stephen's reign.⁵⁶ Where a crime was particularly serious the king might take the case for his own courts, but even then the clerk was most probably degraded first and the intervention was often at the instigation of the Church itself.⁵⁷ If this was a practice which had arisen during Stephen's reign, then Henry was to some extent justified in his assertion that he was simply reverting to previous custom, but a closer look suggests that he was doing more than this.

Maitland's summary of clause iii ('accusation and plea in the temporal court; trial, conviction, degradation in the ecclesiastical court; sentence in the temporal court to the layman's punishment') is widely accepted as an accurate interpretation of the clause as Henry intended it to operate, and is clearly not so very different from the previous practice.⁵⁸ There is, for example, no apparent intent on Henry's part to try clerks in the secular courts (if degradation occurs beforehand then the person being tried in the secular court will be lay), and the 'historicity' of the customs listed in the Constitutions does not seem to have been seriously questioned at the time.⁵⁹ So why did the clause generate so much opposition? Significantly, even had Henry only been citing 'genuine ancient customs' (as Frank Barlow argues he was), he would have faced opposition on the grounds that what had been considered acceptable by the Church in Henry I's time was no longer in accordance with the newly codified canon law. Thomas' principal argument was based around opposition to the notion of double punishment, that if a clerk had already been tried and punished in an ecclesiastical court (and degradation was considered a punishment) then he could not be tried again for the same offence in a secular court because God does not judge twice in the same matter (*'Non judicabit deus bis in*

⁵⁶ Warren, *Henry*, p. 463.

⁵⁷ On the rule being breached only 'exceptionally, and with ecclesiastical connivance' see Barlow, *Thomas Becket*, p. 102.

⁵⁸ F. W. Maitland, 'Henry II and the Criminous Clerks', *The English Historical Review*, 7(26) (1892), pp. 224-234, (p. 226).

⁵⁹ Barlow, *Thomas Becket*, p. 102.

idipsum').⁶⁰ Historians are divided over Thomas' justification for this approach, with Maitland making the initial argument that Henry had canon law and custom behind him.⁶¹ Charles Duggan argued against this, that in fact Thomas had the greater foundation in canon law and that his apparently novel argument was supported by precedent, whilst Beryl Smalley makes the interesting suggestion that while his stance may not have been formally codified in canon law, Thomas' 'use of the Nahum text had a background in the teaching of theology in the schools'.⁶²

The beginning of the clause provides clues to a possible reason for its reception:

Clerks cited and accused of any matter shall, *when summoned by the king's justice*, come before the king's court to answer there concerning *matters which shall seem to the king's court* to be answerable there, and before the ecclesiastical court for what shall seem to be answerable there, but in such a way that the justice of the king shall send to the court of holy Church to see how the case is there tried. And if the clerk shall be convicted or shall confess, the Church ought no longer to protect him.⁶³

Embedded in this clause is the principle that henceforth it is the secular authority which will determine if a case shall be tried in secular or ecclesiastical courts. What had previously been exceptional, and often at the initiative of the Church, was to become the rule and entirely at the initiative of the secular authority; as Warren puts it, 'malleable custom' was being turned into

⁶⁰ The biblical verse on which this interpretation is based reads 'What do ye imagine against the Lord? he will make an utter end: the affliction shall not rise up the second time', Nahum, 1:9, *The Holy Bible containing the Old and New Testaments*, Authorised King James Version (London and New York: Collins' Clear-Type Press, undated), p. 782.

⁶¹ Maitland, 'Criminous Clerks', pp. 224-34.

⁶² Charles Duggan, 'The Becket Dispute and the Criminous Clerks', *Bulletin of the Institute of Historical Research*, XXXV(91) (1962), pp. 1-28, (p. 17). Duggan points to John of Salisbury's discussion of double punishment in his *Policraticus*, and a related argument had also been made in the Philip de Broi case, see Barlow, *Thomas Becket*, p. 93. Beryl Smalley, *The Becket Conflict and the Schools: A Study of Intellectuals in Politics in the Twelfth Century* (Oxford: Basil Blackwell, 1973), pp. 124-8.

⁶³ *EHD*, pp. 767-8, (my italics).

the ‘rigidity of law’.⁶⁴ If the other particularly contentious clauses are considered it will be found that they too share this development, that they take the occasional and render it ordinary. Anne Duggan suggests that clause viii was of ‘the gravest importance to the jurisdictional structure of the Church’, stating as it did that:

With regard to appeals, if they should arise, they should proceed from the archdeacon to the bishop, and from the bishop to the archbishop. And if the archbishop should fail to do justice, the case must finally be brought to the lord king, in order that by his command the dispute may be determined in the archbishop’s court, in such wise that it *proceed no further without the assent of the lord king*.⁶⁵

This puts in place a system whereby the king’s court becomes the ultimate court of appeal, with any subsequent appeal to the papacy requiring royal consent.

It is true that the Anglo-Norman kings had attempted to control links between the papacy and England, but it was oversight rather than prevention that was their goal, the use of a ‘sieve’ rather than a barrier.⁶⁶ Where restrictions were applied it was often the case that a specific issue which a king felt threatened the royal prerogative was at issue, rather than any intent to sever links entirely.⁶⁷ The wording of this clause does not guarantee that Henry intended such severance, Richardson and Sayles arguing that its range is limited and that Henry’s restrictions only became wider during the dispute with Thomas, but Anne Duggan argues that this clause is another instance of Henry taking a ‘sporadic’ past custom and turning it into a ‘rule’, an

⁶⁴ Warren, *Henry*, p. 476.

⁶⁵ *EHD*, pp. 768-9, (my italics). Duggan, *Thomas Becket*, p. 58.

⁶⁶ Z. N. Brooke argued that William I had erected a ‘barrier’ which was maintained by his successors, Z. N. Brooke, ‘The Effect of Becket’s Murder on Papal Authority in England’, *The Cambridge Historical Journal*, 2(3) (1928), pp. 213-228, (p. 215). Warren counters that in fact such restrictions formed a ‘net or sieve’, Warren, *Henry*, pp. 405-6.

⁶⁷ Warren, *Henry*, p. 409.

attempt to reform the relationship between the Church and state.⁶⁸ The same argument can be applied to clause i which states:

If a dispute shall arise between laymen, or between clerks and laymen, or between clerks, concerning advowson and presentation to churches, let it be treated and concluded in the court of the lord king.⁶⁹

The Church argued that ‘cases concerning advowson were so closely linked to spiritual matters that they should be heard only in the ecclesiastical court’, and ecclesiastical courts had ‘almost entirely’ dealt with such cases previously (with occasional royal intervention such as in the case of William bishop of Norwich).⁷⁰ Thus Henry’s proposal represented a significant change in previous practice. Whilst each clause of the Constitutions was disputed on its own grounds, and often for a multiplicity of reasons, it is possible to see across those discussed here an attempt by Henry to take that which had previously been occasional and make it obligatory, whilst also removing the ecclesiastical initiative which had been behind many of the customs.

There can be no doubting the significance of the legacy of Stephen’s reign for that of Henry II, particularly in his early years as king. Henry had serious work to do upon taking the throne in terms of reconstituting and centralising an effective, efficient administration, regaining royal rights, and restoring a depleted treasury. However, it was not principally this work of restoration (for much of which the two were working alongside one another as king and chancellor) which caused the conflict between Henry and Thomas, rather it was Henry’s attempts to go further than the customs of his grandfather’s time. At the outset of the conflict Thomas could not have known of Henry’s future plans for the Assizes of Clarendon and

⁶⁸ Richardson and Sayles, *Governance*, p. 307. Duggan, *Thomas Becket*, p. 59.

⁶⁹ *EHD*, p. 767.

⁷⁰ White, *Restoration*, p. 197. Cheney, ‘Compromises’, pp. 191-3. For the William bishop of Norwich case see White, *Restoration*, p. 177.

Northampton, for the creation of the General Eyre, that Henry would be credited with the beginnings of the English Common Law, not even of the supplementary decrees in 1169 that would follow (and go significantly further than) the Constitutions of Clarendon in 1169.⁷¹ Perhaps, however, he could see that Henry intended to widen royal justice at the expense of ecclesiastical jurisdiction, that the Constitutions represented the wedge in the door to an eventual 'transformation in royal government'.⁷² Whether it is seen in the early conflict between the two over sheriff's aid or in the Constitutions of Clarendon which sought to make what had been exceptional in Henry's grandfather's reign obligatory in his own, at the bottom of much of the dispute was a king's reforming intent and the efforts of an archbishop, emboldened by canon law and a growing papal jurisdiction, to hinder him.

⁷¹ Warren sees these Assizes as Henry attempting to improve 'the administration of criminal jurisdiction' whilst also increasing the 'financial return to the Crown from it', Warren, *Henry*, p. 281. Some historians (Richardson and Sayles amongst them) view Henry's 1169 decrees, supplementary to the Constitutions, as dubious, but Knowles, Duggan and Brooke argue for them as legitimate, and strong evidence of Henry's intent to reform. Richardson and Sayles, *Governance*, p. 308, M. D. Knowles, Anne Duggan & Christopher Brooke, 'Henry's Supplement to the Constitutions of Clarendon', *The English Historical Review*, 87(345), pp. 757-71. Brand, 'Creation of Common Law', p. 239.

⁷² W. L. Warren, *The Governance of Norman and Angevin England, 1087-1272* (London: Edward Arnold (Publishers) Ltd, 1987), p. 106.

Bibliography

Primary Sources

- Douglas, D. C. and Greenaway, G. W. (eds.), *English Historical Documents, 1042-1189* (London: Eyre Methuen, 1981).
- Potter, K. R. (ed.), *Gesta Stephani* (Oxford: The Clarendon Press, 1976).
- Potter, K. R. (ed.), *The Historia Novella* (London: Thomas Nelson & Sons, 1955).
- The Holy Bible containing the Old and New Testaments*, Authorised King James Version (London and New York: Collins' Clear-Type Press, undated).
- Whitelock, D. (ed.), *The Anglo-Saxon Chronicle: A Revised Translation* (London: Eyre and Spottiswoode, 1961).

Secondary Sources

- Alexander, J. W., 'The Becket Controversy in Recent Historiography', *Journal of British Studies*, 9(2) (1970), pp. 1-26. <URL: <https://www.jstor.org/stable/175153>>, [Accessed: 21st September 2022].
- Amt, E., *The Accession of Henry II in England: Royal Government Restored, 1149-1159* (Woodbridge: The Boydell Press, 1993).
- Amt, E., 'The Meaning of Waste in the Early Pipe Rolls of Henry II', *The Economic History Review*, 44(2) (1991), pp. 240-249. <URL: <https://www.jstor.org/stable/2598295>>, [Accessed: 17th December 2022].
- Barlow, F., *The English Church: 1066-1154* (Suffolk: Longman Group, 1979).
- Barlow, F., *Thomas Becket* (London: Orion Books, 1997).
- Bishop, T. A. M., *Scriptores Regis: Facsimiles to identify and illustrate the hands of royal scribes in original charters of Henry I, Stephen, and Henry II* (Oxford: The Clarendon Press, 1961).
- Blackburn, M., 'Coinage and Currency', in King, E. (ed.) *The Anarchy of King Stephen's Reign* (Oxford: Clarendon, 1994).
- Brand, P., 'Henry II and the Creation of Common Law', in Harper-Bill, C. and Vincent, N. (eds.) *Henry II: New Interpretations* (Woodbridge, Suffolk: Boydell Press, 2007).
- Brooke, C., *Medieval Church and Society* (London: Sidgwick & Jackson, 1971).

Brooke, Z. N., 'The Effect of Becket's Murder on Papal Authority in England', *The Cambridge Historical Journal*, 2(3) (1928), pp. 213-228. <URL: <https://www.jstor.org/stable/3020770>, [Accessed: 21st September 2022].

Brooke, Z. N., *The English Church and the Papacy: From the Conquest to the Reign of John* (Cambridge: Cambridge University Press, 1931).

Callahan, T. Jr., 'The Impact of the Anarchy on English Monasticism, 1135-1154', *Albion: A Quarterly Journal Concerned with British Studies*, 6(3) (1974), pp. 218-232. <URL: <https://www.jstor.com/stable/4048243>>, [Accessed: 16th December 2022].

Cheney, C. R., 'The Punishment of Felonous Clerks', *The English Historical Review*, 51(202) (1936), pp. 215-236. <URL: <https://www.jstor.org/stable/553518>>, [Accessed: 21st September 2022].

Cheney, M., 'The Compromise of Avranches of 1172 and the Spread of Canon law in England', *The English Historical Review*, 56(222) (1941), pp. 177-97. <URL: <https://www.jstor.org/stable/554507>>, [Accessed: 21st September 2022].

Coulson, C., 'The Castles of the Anarchy', in King, E. (ed.) *The Anarchy of King Stephen's Reign* (Oxford: Clarendon, 1994).

Cronne, H.A., *The Reign of Stephen, 1135-54: Anarchy in England* (London: Ebenezer Baylis and Son, 1970).

Dalton, P., *Conquest, Anarchy and Lordship: Yorkshire, 1066-1154* (Cambridge: Cambridge University Press, 1994).

Davis, H. W. C., 'The Anarchy of Stephen's Reign', *The English Historical Review*, 18(72) (1903), pp. 630-641. <URL: <https://www.jstor.org/stable/548993>>, [Accessed: 2nd August 2022].

Davis, R. H. C., *King Stephen* (London: Longman's, Green and Co. Ltd, 1967).

Davis, R. H. C., 'What Happened in Stephen's Reign 1135-54', *History*, 49(165) (1964), pp. 1-12. <URL: <https://www.jstor.org/stable/24404525>>, [Accessed: 20th November 2022].

Duggan, A. J., 'Henry II, the English Church and the Papacy, 1154-76', in Harper-Bill, C. and Vincent, N. (eds.) *Henry II: New Interpretations* (Woodbridge, Suffolk: Boydell Press, 2007).

Duggan, A., *Thomas Becket* (London: Arnold, 2004).

Duggan, C., 'From the Conquest to the Death of John', in Lawrence, C. H. (ed.) *The English Church and the Papacy in the Middle Ages* (London: Burns & Oates, 1965).

Duggan, C. 'The Becket Dispute and the Criminous Clerks', *Bulletin of the Institute of Historical Research*, XXXV(91) (1962), pp. 1-28. <DOI: doi.org/10.1111/j.1468-2281.1962.01411>, [Accessed: 2nd December 2022].

- Green, J. A., 'The Last Century of Danegeld', *The English Historical Review*, 96(379) (1981), pp. 241-258. <URL: <https://www.jstor.org/stable/568289>>, [Accessed: 28th November 2022].
- Holdsworth, C., 'The Church', in King, E. (ed.) *The Anarchy of King Stephen's Reign* (Oxford: Clarendon, 1994).
- Hollister, C. Warren, 'The Aristocracy', in King, E. (ed.) *The Anarchy of King Stephen's Reign* (Oxford: Clarendon, 1994).
- Holt, J. C., '1153: The Treaty of Winchester', in King, E. (ed.) *The Anarchy of King Stephen's Reign* (Oxford: Clarendon, 1994).
- Karn, N., 'Nigel, bishop of Ely, and the restoration of the exchequer after the 'anarchy' of King Stephen's reign', *Historical Research: the Bulletin of the Institute of Historical Research*, 80(209) (2007), pp. 299-314. <DOI: doi.org/10.1111/j.1468-2281.2006.00392>, [Accessed: 20th November 2022].
- Kealey, E. J., 'King Stephen: Government and Anarchy', *Albion: A Quarterly Journal Concerned with British Studies*, 6(3) (1974), pp. 201-217. <URL: <https://www.jstor.org/stable/4048242>>, [Accessed: 2nd August 2022].
- King, E., 'The Anarchy of King Stephen's Reign', *Transactions of the Royal Historical Society*, 34 (1984), pp. 133-153. <URL: <https://www.jstor.org/stable/3679129>>, [Accessed: 20th November 2022].
- King, E., 'Introduction', in King, E. (ed.) *The Anarchy of King Stephen's Reign* (Oxford: Clarendon, 1994).
- Knowles, D., *The Historian and Character* (Cambridge: The University Press, 1963).
- Knowles, D., *The Monastic Order in England* (Cambridge: The University Press, 1963).
- Knowles, D., *Thomas Becket* (London: A. and C. Black Ltd., 1970).
- Knowles, M. D., Duggan, A. J. & Brooke, C. N., 'Henry II's Supplement to the Constitutions of Clarendon', *The English Historical Review*, 87(345), pp. 757-771. <URL: <https://www.jstor.org/stable/562200>>, [Accessed: 2nd August 2022].
- Maitland, F. W., 'Henry II and the Criminous Clerks', *The English Historical Review*, 7(26) (1892), pp. 224-234. <URL: <https://www.jstor.org/stable/546314>>, [Accessed: 2nd August 2022].
- Morris, C., 'William I and the Church Courts', *The English Historical Review*, 82(324) (1967), pp. 449-463. <URL: <https://www.jstor.org/stable/559422>>, [Accessed: 3rd January 2023].
- Patourel, J. L., 'What Did Not Happen in Stephen's Reign', *History*, 58(192) (1973), pp. 1-17. <URL: <https://www.jstor.org/stable/24408228>>, [Accessed: 20th November 2022].

- Poole, A. L., *From Domesday to Magna Carta, 1087-1216* (Oxford: The Clarendon Press, 1951).
- Richardson, H. G. and Sayles, G. O., *The Governance of Medieval England from the Conquest to Magna Carta* (Edinburgh: The University Press, 1963).
- Richardson, H. G. and Sayles, G. O., *Law and Legislation: from Æthelberht to Magna Carta* (Edinburgh: The University Press, 1966).
- Smalley, B., *The Becket Conflict and the Schools: A Study of Intellectuals in Politics in the Twelfth Century* (Oxford: Basil Blackwell, 1973).
- Spigelman, J. J., 'A Turbulent King and His Priest', *Quadrant*, 45(1-2) (2001), pp. 45-52. <DOI: doi.org/10.3316/informit.641062671562257>, [Accessed: 20th December 2022].
- Turner, G. J., 'The Sheriff's Farm', *Transactions of the Royal Historical Society*, 12 (1898), pp. 117-149. <URL: <https://www.jstor.org/stable/3678063>>, [Accessed: 26th November 2022].
- Warren, W. L., *Henry II* (London: Eyre Methuen, 1973).
- Warren, W. L., *The Governance of Norman and Angevin England, 1086-1272* (London: Edward Arnold (Publishers) Ltd, 1987).
- White, G., 'Continuity in Government', in King, E. (ed.) *The Anarchy of King Stephen's Reign* (Oxford: Clarendon, 1994).
- White, G. J., *Restoration and Reform, 1153-1165: Recovery from Civil War in England* (Cambridge: Cambridge University Press, 2000).
- Williams, R., '“Saving our order”: Thomas Becket and the law', *International Journal for the Study of the Christian Church*, 20(3-4) (2020), pp. 288-98. <DOI: doi.org/10.1080/1474225X.2020.1863695>, [Accessed: 20th December 2022].
- Yoshitake, K., 'The Exchequer in the Reign of Stephen', *The English Historical Review*, 103(409) (1988), pp. 950-959. <URL: <https://www.jstor.org/stable/570263>>, [Accessed: 22nd November 2022].