

Session 3

From chancellor to archbishop

The immediate aftermath of the election

- Elected archbishop 23 May 1162
- Made priest 2 June
- Consecrated 3 June

A fast track promotion

Henry's motives

- Part of re-establishment of his government in England
- Had in 1155 papal bull allowing him to have his son crowned in his lifetime – Capetian model
- Hopes to run England under a regency council under chancellor/archbishop?

Continental parallels

- The Empire: Frederick Barbarossa and Archbishop Rainald of Dassal
- France: Louis VII and Bishop Hugh of Soissons
- Outwardly Thomas's was a smooth election but there may have been tensions

(1) Thomas's actions

William Fitz Stephen – passage 1

- Thomas changes – he ‘puts off the old man and puts on the new’ – noted by biographers
- Resignation as chancellor – not replaced until early 1163, by Geoffrey Ridel [who does not yet use the title]
 - A sign of independence?

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- Herbert of Bosham explains that Thomas was anxious to adapt to his new life and office
 - John of Salisbury: as chancellor Thomas was only obeying orders; he plays down any real change
 - Modern commentators divided: Thomas was always consistent in what he did; he was an actor playing a part; he was always pious (i.e. there was no real change); he was a hypocrite

Hero of Canterbury: putting the estates in order

- Claims from king the custody of Rochester castle
- Claims Saltwood and Hythe, as well as lordship over William de Ros, from the king
- Thus he tries to restore what had been lost in Stephen's reign

Tonbridge Castle

- Held of Canterbury by Roger de Clare, earl of Hertford
- Thomas demands homage and duties
- This should have been pursued in the king's court but instead makes the grand gesture

The clerk of Eynsford

- The fief was held by William of Eynsford
- Thomas presents a clerk called Lawrence to the living of the parish church
- William demanded right of presentation and expelled Lawrence
- Thomas excommunicated William
- Henry II claimed tenant in chief could not be excommunicated without royal consent – it was against the customs of the realm

Not all bad ...

- Thomas supported Henry's request to the pope to translate Gilbert Foliot from Hereford to London (1162)
- Henry and Thomas frequently together from Henry's return from France in January 1163
- Henry did not object to Thomas attending Alexander III's council at Tours where he canonised Edward the Confessor [pope had been expelled from Rome by the Emperor]

(2) Council of Woodstock 1-7 July 1163

Gathering at the king's hunting lodge north of Oxford

Present:

Thomas, Gilbert Foliot, the bishop of Lincoln

The king's brother, William, and his uncle, Reginald

Various officials

From Wales the Lord Rhys of Deheubarth and Owain of Gwynedd

From Scotland King Malcolm IV

The context

- Note it was not a full council
- King now able to give full attention to English affairs
- Concern with finance and taxation

The sheriff's aid

- A goodwill, customary payment to sheriffs for 'courteous behaviour'
- Henry proposes this be standardised and become a tax; instead of being paid to the sheriff it would go direct to the Exchequer
- This would improve efficiency and add accountability; also prevent corruption

Thomas's opposition

- He would not pay it on church lands
- Sheriffs would lose incentive to be 'courteous'
- As chancellor he would probably have agreed with Henry – and this is not really a church matter
- So why oppose the king
- AND Thomas carried the day
- AND ... in front of all those important people!

(3) Council of Westminster October 1163

- Full council – all the bishops and over 50 barons
- Context: the translation on 13 October of Edward the Confessor – symbolic, propaganda
- The issue of criminous clerks
- Henry wants support on matters of ecclesiastical justice and its operation

The context

- Practical: Concern with the high incidence of crime – reported to Henry when he returned to England that over 100 serious crimes had been committed by clerics
- Theoretical: how clerks are judged and how guilty clerks are punished

What was a clerk?

Major Orders

- Bishop
- Priest
- Deacon
- Subdeacon [from 1207]

Minor Orders

- Subdeacon [to 1207]
- Porter
- Lector
- Exorcist
- Acolytes

Together these may have accounted for one in seven of the population, so we are not thinking of a tiny minority; clerks would have been literate but in many ways not so different from the rest of society

Benefit of Clergy

- All these clerks claim benefit of clergy – exemption from trial in a lay court
- This not abolished until 1827

(4) Osbert de Bayeux, archdeacon of Richmond

- Accused of the murder of William Fitz Herbert, archbishop of York, in 1154; first accusation made by a clerk in the presence of King Stephen
- Osbert denies charge: 'a clerk ... not subject to lay jurisdiction but only to that of the church'
- Stephen who is in York at the time kept the case for himself because of its severity

But Stephen died ...

- Theobald: 'we just and only just succeeded in recalling the case to the judgement of the church'
- Henry: conceded case to the church but probably only as an individual case, not setting precedent
- Trial highlighted slowness of clerical justice
- Many years delay

The outcome

- The case went to and from Rome
- Osbert's innocence eventually required to be cleared by the oaths of various churchmen
- Deprived of office and becomes a lay baron

Theories of Ecclesiastical Justice

- How, where and by whom clerks should be tried
- Henry: does not necessarily claim that clerks should be tried by a secular court, but they should be punished by them
- Thomas: the clergy are a separate order
- The term *privilegium fori* originally applied to bishops but seems to have widened to clergy

Evolving ideas

- Writ of William I
 - separates type of pleas, not persons
- *Leges Henrici Primi*
 - do just that

Emerging clashes

- Growing influence of canon law which pushes the doctrine of clerical privilege to the full.
- This gradually hardens, but there are still important cases (e.g. William of St Calais of Durham) where bishops are tried as barons.
- Tightening of royal justice
- *Libertas ecclesie* v. royal prerogative
- Canon law v. custom

Traditur curie

- ‘Let him be handed over to the court’
- Henry: a clerk found guilty is degraded and then handed over to the secular court for punishment
- Thomas: a clerk found guilty is degraded, and if he is found guilty of another crime he is no longer protected by his status.

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- Thomas objects that a clerk cannot (as Henry would have it) be handed over to the secular court the first time, as this would be to punish twice for the same crime. This would be a second trial
 - ‘God does not judge twice for the same offence’
 - Claims ‘special privilege’ for clergy

The end of the Council of Westminster

- Henry demanded that the bishops agree to uphold royal custom
- Thomas and the bishops: yes, *salvo ordine suo* (saving their [clerical] order)
- Not good enough for the king, who left the council and the following date confiscated Thomas's castles and estates that he held – and still held – as chancellor; he also took his son from Thomas's custody

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And so....

- Start of a diplomatic war, and Thomas corresponds with the pope, who urges caution
- Thomas allows himself to be persuaded to make peace with the king and accepts the customs 'in good faith'
- Change of direction without consulting the bishops