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## A PRIMER ON THE ORIGINS AND IMPLICATIONS OF THE THOMAS BECKET AFFAIR

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Chorus: Here let us stand, close by the cathedral. Here let us wait. Are we drawn by danger? Is it the knowledge of safety, that draws our feet towards the cathedral? What danger can be for us, the poor, the poor women of Canterbury? What tribulation with which we are not already familiar? There is no danger for us, and there is no safety in the cathedral. Some presage of an act which our eyes are compelled to witness, has forced our feet towards the cathedral. We are forced to bear witness.<sup>1</sup>

### I. INTRODUCTION

This article examines the twelfth century controversy between Henry II and Archbishop Thomas Becket. Although the struggle

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<sup>1</sup> Michael Scott Freeley, *Towards the Cathedral: Ancient Sanctuary Represented in the American Context*, 27 SAN DIEGO L. REV. 801, 801 (1990) (quoting T.S. Elliot, *Murder in the Cathedral* 11 (1935)).

between these two individuals occurred during the distant centuries in medieval England, the ramifications of their conflict remains with us today, both spiritually and legally. It is for this reason that we explore this topic again.

## II. CANON LAW

Before the Norman Conquest, the Catholic Church's influence was not widespread in England.<sup>2</sup> As a result, there existed in England a singular tribunal consisting of both the bishop and the Earl whose responsibility it was to determine all controversies of legal significance, both lay and ecclesiastical.<sup>3</sup> Accordingly, no distinct separation existed between church courts and secular courts prior to the Conquest.<sup>4</sup> Not only were the two courts closely linked, but initially, the mood of the ecclesiastical courts and royal courts generally was one of compromise and reconciliation.<sup>5</sup> Over time, however, the legal disputes between lay and ecclesiastical members of the two competing establishments would become increasingly contentious. This, in turn, led William the Conqueror to carry out the promise he had made prior to his conquest of England – to set up separate ecclesiastical courts in England in exchange for the Pope's blessing of his ideological campaign.<sup>6</sup> In doing so, he removed suits "which belong to the government of souls" from lay tribunals to ecclesiastical tribunals, thereby permitting the legal separation of the two courts.<sup>7</sup> It was through this division that William, perhaps unintentionally, set in motion the struggle between church and state courts that would last well beyond his reign.<sup>8</sup> William's approach disrupted the traditional cooperative atmosphere that had previously existed between bishops and laypeople.<sup>9</sup> Before William's reign,

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<sup>2</sup> ROSCOE POUND, *THE HISTORY AND SYSTEM OF THE COMMON LAW* 40 (New York: P.F. Collier & Sons, 1939).

<sup>3</sup> W.R. Jones, *The Two Laws in England: The Later Middle Ages*, 11 J. CHURCH & ST. 111, 116 (1969)

<sup>4</sup> Jack Moser, *The Secularization of Equity: Ancient Religious Origins, Feudal Christian Influences, and Medieval Authorization Impacts on the Evolution of Legal Equitable Remedies*, 26 CAPITAL U. L. REV. 483, 515 (1997).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 516.

<sup>7</sup> *Id.* at 517.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 519.

ecclesiastical judges could participate in the adjudicatory procedures of state courts, and bring actions of an ecclesiastical nature before the secular courts to be decided according to temporal laws.<sup>10</sup> After the division of power, however, they could do neither of these things.

By necessity, the dispensation of justice would thereafter be determined by two types of courts – ecclesiastical and secular (lay) jurisdictions.<sup>11</sup> Not surprisingly, church courts did not implement English customary law in administering justice within their own tribunals; rather, these new ecclesiastical courts applied the medieval canon law of the Catholic Church.<sup>12</sup> Because these canon precedents were strongly based on Roman Law, they were by this time a well-established body of developed law, especially in the areas of crime and criminal procedure.<sup>13</sup> For this reason, church courts claimed the authority to preside over a wide range of legal issues.

To illustrate, the English church courts dealt not only with crimes and public offenses against morality, but also with secular matters.<sup>14</sup> Ecclesiastical courts claimed broad authority to regulate virtually every aspect of daily life of lay society, both among the clergy and the laity.<sup>15</sup> They believed they were endowed not only with the legal right but also the moral duty to subvert all religious or moral ideas that deviated from traditional orthodox Christian norms.<sup>16</sup> Unorthodox views, they believed, threatened not only the salvation of the individual, but also threatened to infect society in general.<sup>17</sup> As one commentator summarily stated, “[i]t would have

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<sup>10</sup> *Id.* at 517.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* At the time of Henry I (1100-1135), England had a strong administrative mechanism for resolving disputes, but the mechanism relied more on Anglo-Saxon law as it had evolved from local custom than from any real common law system. POUND, *supra* note 2, at 41. The body of law known as the common law would not begin to evolve in England until the reign of Henry II (c. 1154). *Id.*

<sup>13</sup> R.H. Helmholz, *The Early History of the Grand Jury and the Canon Law*, 50 U. CHI. L. REV. 613, 617 (1983).

<sup>14</sup> *Id.*

<sup>15</sup> THEODORE F.T. PLUCKNETT, *A CONCISE HISTORY OF THE COMMON LAW* 219 (Rochester, New York: Lawyer’s Co-operative, 1929); JAMES A. BRUNDAGE, *MEDIEVAL CANON LAW* 70 (New York, New York: Longman Group, 1995).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

been difficult, indeed almost impossible, for an individual, regardless of social status or occupation, to remain untouched from one year's end to the next by the canonical regulations."<sup>18</sup> It was on this basis that church authorities claimed the right to regulate all commercial and non-commercial activity, matters of a sexual nature, legitimacy issues, labor concerns, testamentary succession, matters relating to the poor and disadvantaged, and the burial of the dead.<sup>19</sup> Throughout this period the church courts endeavored to make their legal system conform as much as possible to the ideal of Christian conduct, and to lessen the gap between law and moral conduct.<sup>20</sup>

Similarly, ecclesiastical courts claimed the right to prosecute and, if necessary, excommunicate those individuals whose views offended the church's values.<sup>21</sup> The most frequently tried issues in church courts were those of a criminal nature,<sup>22</sup> for church authorities had to try all crimes committed by clerics (or clerks) of whatever description.<sup>23</sup> Thus, anyone who enjoyed the privileges of clerical status - monks, hermits, nuns, and the like - were subject to the jurisdiction of the church.<sup>24</sup> It is important to note, however, while the church may have cast a wide net insofar as its claim of authority to resolve legal actions among clergy and laypersons alike, its assertions were at all times subject to the power granted the church courts by the English crown.<sup>25</sup> For this reason, conflicts would soon arise between the church and crown with respect to their courts' perceived interests and responsibilities.

First, the needs and demands of an individual claimant would often-times determine, or at least encourage, which court the claimant would petition for relief.<sup>26</sup> In other words, whether a claim was

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<sup>18</sup> *Id.* at 96.

<sup>19</sup> *Id.* at 71.

<sup>20</sup> PLUCKNETT, *supra* note 15, at 218.

<sup>21</sup> *Id.* Under canon law, "excommunication was the most serious sanction the Church had to wield against those who disobeyed its laws." Richard H. Helmholz, *Excommunication in Twelfth Century England*, 11 J. L. & RELIG. 235, 236 (1994-95).

<sup>22</sup> Helmholz, *supra* note 13, at 618.

<sup>23</sup> BRUNDAGE, *supra* note 15, at 71.

<sup>24</sup> *Id.*

<sup>25</sup> Jones, *supra* note 3, at 114.

<sup>26</sup> *Id.* at 115.

brought or heard in courts of church or crown often depended upon the relief sought.<sup>27</sup> For instance, canon law favored the flexible disposition of property by testament, while English customary law preferred conveyances in accordance with established rules.<sup>28</sup> A by-product of this consumer choice (or “forum shopping” as it is known today) was that each of the courts would feverishly work to safeguard their own jurisdictions from the encroachment by the other, while at the same time seek to draw as many claimants to their own tribunals as possible.<sup>29</sup>

A second factor contributing to this dissension concerned the uncertainty and ambiguity surrounding particular pleas or else the complex legal issues presented for review in any particular case, which, depending on the how the claim was viewed by any particular court and what method of proof would be used in the case might determine how the issue was decided.<sup>30</sup> One source of tension concerned the large number of disputes about land between bishops and laypeople. Again, the question concerned what method of proof would be used to determine the controversy.<sup>31</sup> While trial by battle was unacceptable to the church, documentary evidence or witness testimony was unacceptable to the king.<sup>32</sup> Generally speaking, such disputes were generated by both laymen and clergy, who were attempting to exploit jurisdictional rivalries for personal wealth or advantage.<sup>33</sup> Individual claimants were pleading their case to whatever court could resolve them, regardless of the pretensions of either jurisdiction.<sup>34</sup>

A third complicating factor was that the crown courts came to resent the sweeping jurisdictional claims of the ecclesiastical courts and, more importantly, claimed the authority to define the boundaries of the church’s jurisdiction – a claim that church authorities strongly

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<sup>27</sup> *Id.*

<sup>28</sup> BRUNDAGE, *supra* note 15, at 97.

<sup>29</sup> *Id.*

<sup>30</sup> Jones, *supra* note 3, at 115.

<sup>31</sup> Charles Donahue, Jr., *Biology and the Origins of the English Jury*, 17 LAW & HIST. REV. 591, 593 (1999).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

contested.<sup>35</sup> Superior power rested with the crown, which, if necessary, could halt any procedures of the Christian courts which infringed or threatened to infringe upon the authority of the crown, and could similarly punish those ecclesiastical judges who disobeyed the crown's commands.<sup>36</sup> It is not difficult to understand that the two legal systems could not co-exist once their shared goals continued to erode and the distrust between the crown and church became more and more apparent.<sup>37</sup> The controversy between King Henry II and Archbishop Thomas Becket brings to bear the intensity of this conflict.

### III. THE BECKET AFFAIR

In 1154, Henry II's reign as King of England began. Henry, like many rulers before him, believed the Catholic Church in general and the Pope in particular had too much authority in England.<sup>38</sup> "Accordingly, Henry sought to assert his own position of power by decreasing the power of the English bishops in whom the Pope's authority was vested."<sup>39</sup> In furtherance of this goal, he appointed his friend and colleague, Thomas Becket, Archbishop of Canterbury.<sup>40</sup> However, Becket's views were not completely aligned with those of Henry.<sup>41</sup> Becket advocated "clerical immunity" – a system in which the church, relying upon the canon law principle that clerks had to be tried in church courts, permitted its holy order to escape the authority of the royal courts in cases of alleged wrongdoing.<sup>42</sup> The right of the church courts, Becket believed, was central to the authority of the Church, and he insisted on enforcing its prerogatives.<sup>43</sup>

"Henry, however, believed 'criminous' clerks, like other criminals, should be brought before the King's court."<sup>44</sup> Henry's

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<sup>35</sup> Richard H. Helmholz, *Conflicts Between Religious and Secular Law: Common Themes in the English Experience*, 12 CARDOZO L. REV. 707, 709 (1991).

<sup>36</sup> Jones, *supra* note 3, at 114.

<sup>37</sup> Moser, *supra* note 4, at 517.

<sup>38</sup> Peter D. Jason, *The Courts Christian in Medieval England*, 37 CATHOLIC LAW. 339, 342 (1997).

<sup>39</sup> *Id.* at 342-43.

<sup>40</sup> *Id.* at 343.

<sup>41</sup> *Id.*

<sup>42</sup> Moser, *supra* note 4, at 521.

<sup>43</sup> *Id.*

<sup>44</sup> Jason, *supra* note 38, at 344.

principle concern was that the doctrine of clerical immunity was being abused by many of his ecclesiastical subjects, in the desire to circumvent the authority of the crown's courts and seek relief under the more hospitable ecclesiastical courts.<sup>45</sup> To be sure, many royal subjects assumed the role of "clerks" as a means of saving themselves from prosecution under the crown.<sup>46</sup>

In response, Henry published the Constitutions of Clarendon in 1164, which was designed to expand the power of the crown at the expense of church courts and to end what he believed to be jurisdictional overreaching by church authorities.<sup>47</sup> Henry published sixteen Constitutions in all.<sup>48</sup> Not surprisingly, Henry's actions brought an immediate response from the Pope, who promptly denounced "ten of the Constitutions, four of which concerned the jurisdiction of church courts."<sup>49</sup> More important for our purposes, however, was the controversy that erupted between Becket and Henry II with respect to the Constitutions.

Becket was concerned that the jurisdictional reforms set up by Henry provided the possibility of double punishment (now known as the concept of "double jeopardy"), as Henry's plan permitted the prosecution of crimes in both the ecclesiastical and King's courts.<sup>50</sup> Becket, however, believed that when a person may be tried by either court and has been tried by one, it was intolerable that he should be tried again for the same crime.<sup>51</sup> Becket insisted there should be but one trial, and naturally, that any such trial should be before the ecclesiastical courts since clerics were exempt from secular criminal process by virtue of their religious standing.<sup>52</sup> Becket perceived Henry's authority as an unlawful concentration of power in the crown

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<sup>45</sup> Moser, *supra* note 4, at 520.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Jason, *supra* note 38, at 343.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at n. 35. More specifically, Henry's Clarendon declaration pronounced, among other things, that "while jurisdiction of the ecclesiastical courts was retained over felonies less than treason committed by ecclesiastical personnel, the punishment itself could be carried out only by the royal courts." Moser, *supra* note 4, at 521.

<sup>51</sup> POUND, *supra* note 2, at 41.

<sup>52</sup> *Id.*

and as an assault upon the liberty of the Church – a stance that would make him a martyr for his cause.<sup>53</sup>

Conversely, Henry insisted upon the supremacy of the crown, at least in matters of lay relations.<sup>54</sup> This matter of jurisdiction was the core of the conflict between these two old friends.<sup>55</sup> And it was for this right that Becket struggled to preserve the liberty and authority of the church, and it was for this cause that he would ultimately lose his life also, surprisingly enough, at the hands (at least indirectly) of his old friend.<sup>56</sup> At the height of their controversy, Becket was murdered by four loyal subjects of Henry II who, perhaps mistakenly, perceived Henry's ill-fated remark "Who will free me from this turbulent priest?" as a directive from Henry to kill Becket.<sup>57</sup> Under the auspices of this royal "mandate," four of Henry's knights took it upon themselves to assassinate Becket on the floor of the Canterbury Cathedral in 1170.<sup>58</sup>

The public outrage surrounding Becket's assassination forced Henry II to repent and submit to the authority of the Pope for his role in Becket's death.<sup>59</sup> But more than anything else, he did this for the sake of restoring unity in England.<sup>60</sup> After Becket's death, Henry was forced to limit the state's power over ecclesiastical courts – limits that survive today throughout the West.<sup>61</sup> Indeed, the principle of separation of church and state entered the formal canon law soon after Becket's death, declaring void any statute that contravened ecclesiastical liberty.<sup>62</sup> These limits were instrumental in creating a

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<sup>53</sup> Edward McGlynn Gaffnery, Jr., *The Principled Resignation of Thomas More*, 31 LOY. L.A. L. REV. 63, 69-70 (1997).

<sup>54</sup> *Id.*

<sup>55</sup> Jason, *supra* note 38, at 343.

<sup>56</sup> R.H. Helmholtz, *Magna Carta and the Ius Commune*, 66 U. CHI. L. REV. 297, 313 (1999).

<sup>57</sup> Paul H. Robinson, *Rules of Conduct and Principles of Adjudication*, 57 U. CHI. L. REV. 729, 738 (1990).

<sup>58</sup> Marvin Zalman, et al., *Michigan's Assisted Suicide Three Ring Circus – An Intersection of Law and Politics*, 23 OHIO N.U. L. REV. 863, 901 n. 178 (1997).

<sup>59</sup> Jason, *supra* note 38, at 343.

<sup>60</sup> Abbe Smith & William Montrose, *The Calling of Criminal Matters*, 50 MERCER L. REV. 443, 515 n. 491 (1991).

<sup>61</sup> Jason, *supra* note 38, at 344.

<sup>62</sup> Helmholtz, *supra* note 56, at 313.



balance between the state and the individual by curtailing the absolute power of the state to regulate all matters.

Upon reflection, Henry's actions can be explained as a campaign to displace the power of the Church in the temporal and spiritual affairs of England and to establish one rule of law in all of England.<sup>63</sup> Becket, on the other hand, "attempted to establish that human law was in the shadow of divine law, appealing to a law greater than the law articulated by Henry II."<sup>64</sup> Despite the unfortunate circumstances surrounding the Becket affair, it is fair to say that the struggle contributed greatly to the development of a body of law that remains with us to this day.

Through his efforts to limit the ecclesiastical jurisdiction and his powerful royal in the administration of justice, Henry II developed a body of law suited for the needs of England at the time, and it is through the rise of the system of courts laid down in the century to follow Henry II that served as the foundation of the common law.<sup>65</sup> Similarly, it was Thomas Becket's adherence to the equitable principles of canon law that was primarily responsible for bringing about the adoption of the concept of double jeopardy in the common law.

#### IV. CONCLUSION

As we have seen, the jurisdictional struggle between the courts in twelfth century England generally, and the rivalry between Henry II and Becket specifically, reflected the political controversy and power struggles of the era. The secularization of equity was an arduous and deadly process. On a larger scale, however, the Becket affair provides the bedrock upon which our common law and modern notions of legal equity rest. And while contemporary courts may have obviated the need for ecclesiastical courts inasmuch as modern judges now resort to the use of equitable remedies as a means of achieving a just and fair result in our courts, the origins of such equitable relief properly lie in medieval England.

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<sup>63</sup> Moser, *supra* note 4, at 522.

<sup>64</sup> Smith & Montrose, *supra* note 60, at 515 n. 491.

<sup>65</sup> POUND, *supra* note 2, at 42.