A Line In The Sand: The Affair Between Henry II and Thomas Becket

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Tension between Church teachings and secular law has been present since the time of Christ. The early Church was a very powerful force. It had power over some of the most important aspects of human life. The Church administered sacraments, performed baptisms, had control over marriage and divorce, and performed last rites. The state, in theory, was in control of all things pertaining to the secular world. However, the laws of the state in some instances were still subject to the laws of the Church. Christians have always struggled with which laws to follow. Following the laws of the Church meant eternal salvation. Following the laws of the state meant paying homage to a king and not God. The question of which to follow has yet to be answered.

Throughout history there have been several struggles between the Church and State for supremacy. One of the most famous examples was between Henry II and Thomas Becket. Henry II wanted a more definitive line as to where Church authority ended and the laws of the State took over. Henry wanted a more unified system of government for his kingdom. He believed that no one should be able to avoid the legitimate laws of the State, not even clerks of the Church. He set out to accomplish this goal by appointing his best friend and Royal Chancellor, Thomas Becket, to be the Archbishop of Canterbury, the highest ranking Church official in England. Thomas, on the other hand, had no intentions of being a puppet of the king. Almost from the time of his appointment, Thomas challenged Henry’s machination to bring clerks of the Church under the jurisdiction of secular law. Thomas’s defiance eventually led to his assassination, termed by the Church, martyrdom.

This essay will take an in depth look into the conflict between Henry II and Thomas Becket and discuss both sides of the argument. It will seek to bring out the quarrel not only between Henry and Thomas, but also Church and State. The first section of this paper will give an overview of both Henry II and Thomas Becket and the skirmish between them. The second section of the essay will examine more closely Henry’s viewpoint on the conflict with Becket and Church doctrine. It will
then go on to discuss the lasting impact of Henry’s legal reforms. Section three will deal with Thomas Becket’s viewpoint on secular law and Church doctrine. It will also discuss the lasting impact that this event had on history. The fourth section will discuss the Becket affair from a theological standpoint. The teachings of Pope Gregory VII, Thomas Aquinas, and Martin Luther will be discussed. This section will shed light not only on the theological aspect of the conflict between Henry and Thomas, but also on how these men thought secular law was supposed to interact with the laws of the Church. The last substantive part of the essay will discuss the climate of Church and State today against a backdrop of secularization. It will suggest that the same issues that arose during the Middle Ages, with Henry and Thomas, still arise today. In many ways, the Church is still trying to protect its own.

I
Henry II and Thomas Becket: How It Came Together Before It All Fell Apart

Henry, Count of Anjou, Maine and Nantes, Duke of Normandy, Aquitaine, and Gascony, and lastly, Lord of Ireland, was King of England from 1154-1189. \(^{1}\) Henry’s rise to power was tumultuous. \(^{2}\) In 1153, after years of civil war, King Stephen, who had usurped the throne after the death of Henry I, declared Henry as his rightful heir. \(^{3}\) At nineteen years old Henry married one of the wealthiest women in the world at the time, Eleanor of Aquitaine. The marriage to Eleanor put Henry directly at odds with Louis IX, Eleanor’s ex-husband. Henry’s own holdings coupled with Eleanor’s made his kingdom a force to be reckoned with. Henry officially took the throne December 19, 1154 after the death of King Stephen. Henry was twenty-one years old. \(^{4}\)

The years of civil war left the kingdom that Henry inherited weakened. He wanted to reform the government and centralize control. His first order of business was to bring back sheriffs who

\(^{1}\) William Stubbs, *Early Plantagenets* 33 (1924).
\(^{2}\) Id.
\(^{3}\) Id. at 52.
\(^{4}\) Id. at 53.
would deliver justice in the outlying areas. Henry also needed to be surrounded by people that he could trust. The Archbishop of Canterbury, Theobald, introduced him to a bright and upcoming clerk, Thomas Becket. Thomas Becket had been born in 1120 as the son of a merchant. Not much is known about Thomas’ life before he entered the employ of Theobald, the Archbishop of Canterbury. The most quoted sources believe that he worked as a clerk in London. Through his relationship with Theobald, he became a good friend and trusted confidant of Henry II, who soon appointed Thomas as Royal Chancellor.

Henry and Thomas became fast friends. Thomas excelled in his position as Royal Chancellor. He became indispensable to Henry. Thomas appeared to enjoy his position as chancellor. Becket biographer, Frank Barlow, in his book titled *Thomas Becket*, discussed the opulent life that Thomas led as chancellor. He wrote, “It was thought that Thomas outshone the king in his magnificence…the bottomless purse, limitless credit, the satisfaction of all his caprices…must have been pure heaven.”5 Thomas was definitely seen as a man of the world.6 According to Barlow, Thomas’s machinations as chancellor was instrumental in returning law and order back to the realm after Henry ascended the throne.7 It is usually undisputed that Becket did an impeccable job as chancellor. The problems that arose between Henry and Thomas did not begin until after the death of Archbishop Theobald.

Before the time of the Conquest in 1066, “the clergy were, for all moral offenses, under the same rules as the laity, save that it was a bishop who in the common court attended their case and enforced justice.”8 Bishops sat along side sheriffs in the Royal Courts and administered divine law while the sheriffs administered secular law.9 When William the Conqueror came to power, he had to

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6 Id.
7 Id. at 49.
8 Stubbs, *supra*, at 61.
9 Id.
get the Church on his side, which resulted in the Church becoming more powerful than before.\textsuperscript{10} After the Conquest all members of the clergy were only subject to punishment given by the Church and were not subject to secular authority. When Henry took the throne he wanted to make the government more centralized and once again bring the members of the clergy under the rule of the state. In retrospect, Henry was making a very radical move. Most of his reforms sought to re-establish laws and holdings as they had existed during the reign of his grandfather, Henry I. However, when dealing with the Church, Henry wanted to re-establish procedural rules that had not been binding since the Conquest. To institute these reforms Henry called the Assize of Clarendon where he introduced the Constitutions of Clarendon. An assize takes place when a king calls everyone together to enact new reforms or “constitutions”. At Clarendon Henry had sixteen reforms that he wanted to make, the most controversial of which was a reform to bring criminous clerks under secular rule.

The Royal Chancellor was traditionally awarded a bishopric when he retired.\textsuperscript{11} So upon the death of Theobald, Henry thought to make Thomas Becket the new Archbishop of Canterbury. Thomas was not in the process of retiring from his position as chancellor. Henry thought that it made sense to appoint his trusted friend to the position of archbishop so that he could get help with some of the reforms that he wanted to make. Becket did not want to be archbishop and warned the king that he would take his position seriously. Henry did not expect Becket to take his new position quite so seriously. Becket was appointed to the position in 1162 and promptly became a devout champion of Church authority, putting him directly at odds with the king. Becket’s “conversion” was the starting point of the quarrel between himself and the king. It could be possible that Becket’s subsequent actions arose out of vindictiveness. Could Becket have become a thorn in the king’s side to prove a point? He never really wanted to become archbishop. By all accounts before Becket’s

\textsuperscript{10} Id. at 62.
\textsuperscript{11} Barlow, supra, at 49.
appointment to the archbishopric he was a man of the world. Whatever Becket’s real motives for opposing the King, his sudden conversion has been viewed with suspicion throughout history.

The basis of the conflict between Henry and Becket was that the clerks of the Church were not being punished for their crimes. The Church claimed that they had the “benefit of the clergy” and were only answerable to the Pope.\(^\text{12}\) Henry, on the other hand, believed that all people should be subject to royal authority in matter such as rape, murder, and theft. Things that were within the Church’s jurisdiction such as delivering the sacraments, marriage, and divorce were all common place and accepted by Henry. The benefit of the clergy and the ensuing immunity that the clergy enjoyed was too much for Henry to accept. The plea of the benefit of the clergy was being used to avoid punishment by royal courts as well as death sentences.\(^\text{13}\) Originally the benefit was only allowed for those who were ordained clerks.\(^\text{14}\) Later, it was expanded to include those who had minor connections with the Church.\(^\text{15}\) By claiming this benefit, clerks were in essence, outside the reach of the king.

The problems that Henry faced with Church encroachments in the secular arena came from the fact that there was no clear line as to where the Church’s authority ended and secular law began. After all, bishops crowned kings at coronations, the Pope could place an entire kingdom under interdict, and the Pope could give land grants of other kingdoms to rulers. All of this suggests that the Church had a pretty powerful hand in secular affairs.\(^\text{16}\) When Henry came to power, the Church had become even stronger under Stephen. Under Stephen’s reign the clergy not only had immunity in secular criminal cases but also in civil cases as well.\(^\text{17}\) Clearly, the Church could adjudicate crimes within the spiritual realm, however, the Church now was allowed to adjudicate secular cases

\(^{13}\) Id.
\(^{14}\) Id.
\(^{15}\) Id.
\(^{17}\) John Fletcher Hurst, *History of the Christian Church* Vol, 1 610 (1897).
involving local customs, or where there were no secular laws for the particular offense.\textsuperscript{18} The only bright line remaining between Church and State was surrounding secular criminal cases.\textsuperscript{19} The royal court exclusively held jurisdiction over criminal cases.\textsuperscript{20} The problem came when a clerk of the Church committed one of these criminal offenses and claimed benefit of the clergy. This is where Henry and Thomas’s quarrel began.

Needless to say, the quarrel did not end well for either man. At the Assize of Clarendon, Thomas originally agreed orally to accept the constitutions. However, once Henry committed the agreement to writing, Thomas refused to accept it. Understandably this angered Henry and in 1164 he had another meeting at Northampton where Thomas stood trial. At the trial not much was said on either side before Thomas left the trial and was forced into exile in France. Meanwhile, Henry also wanted to avoid another play for the throne like the one that happened when Stephen usurped; therefore, he had his son Henry (the young king) crowned while he was still alive. Traditionally, the Archbishop of Canterbury presided over the coronation of English kings. With Thomas in exile, Henry let the young king be crowned by the Bishop of York in 1170.

Henry grudgingly allowed Thomas to return to England in 1170. However, upon hearing that the young king had been crowned in his absence, Thomas excommunicated both Henrys and the Bishop of York. What happened afterwards has been disputed for quite some time, but legend has it that Henry, being so frustrated by Thomas’s actions, blurted out a question to his court, “[W]ill all [my] servants stand by and see [me] thus defied by one whom [I have] raised from poverty to wealth and power? [W]ill no one rid [me] of this troublesome clerk?”\textsuperscript{21} Four knights of Henry’s court heard this and took it to heart. Reginald Fitz Urse, Hugh de Morville, Richard Brito, and

\textsuperscript{19} Id.
\textsuperscript{20} Id.
\textsuperscript{21} Stubbs, supra, at 82.
William de Tracy traveled to Canterbury Cathedral and confronted Thomas.\textsuperscript{22} After a brief struggle the four knights killed Thomas in the cathedral. Shortly after Thomas’s body was discovered in the cathedral, the monks later reported, it was discovered that he wore a hairshirt next to his body, which bore signs of self scourging. Within a year after his martyrdom he was canonized as a saint. Henry, although perhaps not actually responsible for Thomas’s death, still had to do a heavy penance to Thomas’s shrine. He also had to renounce the offending sections of the Constitutions of Clarendon before the Church. Henry’s act of penance before the Church showed that in the end, the Church had a heavy hand in secular affairs. However, the rest of the Constitutions went on to form the basis of English common law.

II
Henry II’s Quest to Bring Criminous Clerks under the Laws of the Royal Court

“Submit yourselves for the Lord’s sake to every authority instituted among men: whether to the king as the supreme authority, or to governors, who are sent by him to punish those who do wrong and to commend those who do right.”\textsuperscript{23}

At the Assize of Clarendon, Henry introduced the legal reforms that he wanted to make in regards to the Church. While many of the sections were controversial, only a few caused the clergy palpitations. The main reason that Henry wanted to enact the reforms was to undo some of the damage that had been done by Stephen’s reign. When Henry began his reign he accepted the grant of the Kingdom of Ireland from the Pope. By accepting the grant, Henry acknowledged that, “the Pope had a right to deprive the Irish princes of their dominions and bestow them upon whom he pleased.”\textsuperscript{24} It cannot be known exactly what Henry felt by this gesture, but his later actions show that he wanted to strengthen royal authority and decrease the influence of the papacy.

Henry wanted to centralize the government and bring the clergy more under royal control. The most controversial section of the constitutions was section three which stated,

\textsuperscript{22} Id. at 83
\textsuperscript{23} 1 Peter 2:13-14 (NIV).
\textsuperscript{24} William Jones, Ecclesiastical History A Course of Lectures 70 (1838).
Clerks charged and accused of anything, being summoned by the Justice of the King shall come into his court, about to respond there for what it seems to the King’s court that he should respond there; and in the ecclesiastical court for what it seems he should respond there; so that the Justice of the King shall send to the court of the holy Church to see in what manner the affair will there be carried on. And if the clerk shall be convicted or shall confess, the Church ought not to protect him further.  

Of course section three was dealing with the problem of criminous clerks. Henry wanted to make sure that anyone who committed a secular crime, clerk or layman, was subject to royal punishment. Along with section three, other sections made it unlawful for anyone to appeal to the Pope without the king’s leave. Henry wanted to make sure that even if an appeal to the Church was an option, it would not be without his approval. His approval meant that he would hold a check on Church authority.

A. Criminous Clerks

From Henry’s point of view, Thomas was being unreasonable. Henry wanted to have a set of laws that pertained to everyone equally. The disappearance of clerical immunity was absolutely essential to make this possible. While clerks remained immune to royal process, the clerk who murdered or stole could be allowed to escape justice. Ecclesiastical punishment consisted of degradation of rank, defrocking, or permanent exile in a monastery. Henry felt that this was inadequate punishment. Henry did not view the clerks to be receiving two judgments as Becket did. Henry felt that spiritual punishment was only part of a punishment and that secular punishment would be the real and sufficient punishment.

Anyone designated as a clerk might be tried in the Church courts and the term included all who served the Church in any capacity...the consequence was that any ill-conditioned man, by obtaining some low clerical position...eluded the penalties due flagrant crimes of violence.

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25 Ernest Flagg Henderson, Select Historical Documents of the Middle Ages 13 (1892).
26 Jones, supra, at 76.
27 Stubbs, supra, at 77.
28 Id. at 74.
29 Id.
Henry was informed that since his reign began, “more than one hundred murders and countless lesser offenses” had been committed by clerks. The real sticking point for Henry was when Philip de Broi, a clerk, who was convicted of murder in ecclesiastical court, was acquitted after clearing himself by legal compurgation. Henry ordered the case retried, but de Broi refused to cooperate. Angry, Henry ordered that he be tried for the murder and contempt of court. Thomas asserted that his court should try the case and Henry consented. Again de Broi was acquitted for the murder charge. For the contempt charge, he was sentenced to be scourged and forfeit his income. Henry was still not satisfied with this result and it increased his resolve for the constitutions at Clarendon.

B. Lasting Impact

The Constitutions of Clarendon obviously had an impact on the relationship between the Crown and the Church. However, the constitutions also had a more far reaching impact on the evolution of the law in general. Many of the reforms led to more courts being created, trial by jury, the grand jury process, and centralization of royal authority. The constitutions led to the formation of English common law and in turn led to the foundation of American common law. Henry’s reforms led to a more efficient process of adjudicating disputes and more rational results. His taming of feudalism shifted power from the hands of the barons to the royal court. The king’s court began to hear cases as opposed to feudal lords.

31 Id.
32 Id.
33 Id.
34 Id.
35 Id.
36 Id.
37 Id.
39 Id. at 435.
Henry also revived the office of the sheriff. Sheriffs would go about the country hearing cases. If a plaintiff could not have his plea heard in the lord’s court then the king’s sheriff would hear the case. The Constitutions of Clarendon made it clear that royal justices and not lords or bishops had the final word on where cases should be heard, resulting in the Court of Common Pleas.

III

Thomas Becket’s View on the Supremacy of Church Law

“The law of the Lord is perfect, reviving the soul. The statutes of the Lord are trustworthy making wise the simple.”

The Archbishop of Canterbury was one of the most powerful ecclesiastical positions during the Middle Ages. The archbishop was required to be a man of high moral reputation. Tradition also required that the archbishop should be a monk. The question as to whether Thomas was the right man for the position has been disputed for centuries. Theobald was said to have wanted Thomas to succeed him. His believed that, “Thomas would be able to influence, if not control, Henry… and that influence would in turn benefit the Church.” Up until Thomas was appointed Archbishop, only one other layman had been appointed to such a position.

Before Thomas was appointed, Henry informed him that he had permission from the Pope for him to remain Royal Chancellor while he assumed the archbishopric. Henry no doubt thought that he would have an easier time making reforms if Thomas held both positions. However, shortly after his appointment, Thomas resigned his position as Royal Chancellor to take over his ecclesiastical duties as archbishop.

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40 Id. at 454.
41 Psalms 19:7 (NIV).
42 Barlow, supra, at 64.
43 Id.
44 Id. at 65
45 Id.
46 Id.
47 Id.
48 Id. at 69.
49 Id. at 72.
Thomas's elevation to archbishop was definitely a culture shock. While he worked for the previous archbishop, he was not a priest or a monk. He had to learn a completely new way of life. Thomas was a man of the world and during his first few years as archbishop he continued his life as he had when he was Royal Chancellor. His subsequent resignation from his position as Royal Chancellor offended and angered Henry. Henry believed that Thomas’s holding of both positions would lead to an easier time instituting reforms.\textsuperscript{50} Becket’s change in lifestyle, from being a man of the world to devout monk, was according to Barlow, the direct cause of the quarrel with Henry.\textsuperscript{51} Thomas’s new role as archbishop only slowed down the reforms that Henry wanted to make. The friendship between king and archbishop quickly started to sour.

A. Conflict with the King

The first major conflict between Thomas and Henry took place in 1163. Henry wanted to impose a general land tax.\textsuperscript{52} The payments given to sheriffs for aid would be going to the royal treasury.\textsuperscript{53} Thomas opposed this tax outright. He felt that the tax was a free-will offering to officials and not a royal rent.\textsuperscript{54} Thomas further stated that, “not a penny should be paid from his estates or Church lands.”\textsuperscript{55} Henry became outraged. Henry also wanted Thomas to support reforms that dealt with Church abuses. He acknowledged that the Church was in charge of cases relating to religion.\textsuperscript{56} However, for Thomas this meant that Church officials were under its exclusive jurisdiction for all criminal and civil matters.\textsuperscript{57} Traditionally, kings and bishops worked together on punishments for

\textsuperscript{50} Id. at 82.  
\textsuperscript{51} Id. at 83.  
\textsuperscript{52} Id. at 88.  
\textsuperscript{53} Id.  
\textsuperscript{54} Id. at 89.  
\textsuperscript{55} Id.  
\textsuperscript{56} Id. at 90.  
\textsuperscript{57} Id.
wrongdoers.\textsuperscript{58} However after Stephen’s rule, the Church had become more separated from the royal government.\textsuperscript{59}

Henry tried to work out his grievances with Thomas before the Assize of Clarendon. He called a meeting with the bishops at Westminster. There he asked them to adhere to the ancient customs of his grandfather, Henry I; but in the matter of criminous clerks he wanted the bishops to adhere to the rules followed during the Conquest. Thomas and the bishops refused, further angering the king.\textsuperscript{60} At the Assize of Clarendon, Henry once again asked for Thomas to observe the ancient customs and to the constitutions that he presented. Thomas publicly assented to the constitutions but immediately recanted once the constitutions were put in writing. The reasoning he gave was that he needed time to think and that he was experiencing a weakness of the flesh when he originally agreed.\textsuperscript{61}

Thomas’s objections to the constitutions lay with the clause involving criminous clerks. Thomas believed that a clerk should only be punished by ecclesiastical courts.\textsuperscript{62} The constitutions proposed that the clerks would first be tried in ecclesiastical courts and if convicted there they should be sent to the secular courts for sufficient punishment.\textsuperscript{63} However, if clerks were acquitted in the ecclesiastical courts it was unlikely that they would face any secular courts. Thomas opposed even sending convicted clerks to secular courts for more punishment. Thomas was said to have relied on the prophet Nahum who stated, “God himself will not judge twice in the same business.”\textsuperscript{64} Thomas believed that the degrading of a Church office was sufficient punishment for a clerk.\textsuperscript{65} His only concession would be that a clerk who turned into a repeat offender could then be handed over

\textsuperscript{58} Id. at 91.  
\textsuperscript{59} Id.  
\textsuperscript{60} Id. at 95.  
\textsuperscript{61} Id. at 100.  
\textsuperscript{62} Id. at 103.  
\textsuperscript{63} Id. at 101.  
\textsuperscript{64} Id. at 105.  
\textsuperscript{65} Id.  

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to royal courts. Thomas would not concede to Henry’s reforms and the Assize ended without resolution.

B. Double Jeopardy

The Church claimed jurisdiction over all, “personal causes, criminal or civil, in which a clerk was the accused or the defendant”. When Thomas raised the problem of double punishment at Clarendon, he had agreed to allow imprisonment as additional punishment in ecclesiastical courts. The problem that Thomas had with a clerk being punished was not the fact the clerk would be punished in two courts, but the fact that there would be two judgments. According to George C. Thomas in *Double Jeopardy*, Henry was right when he thought the clerics should be punished in royal courts. Thomas wrote, “The lawgiver cannot violate any principle forbidding multiple punishments or multiple judgments. Fully authorized punishments and judgments cannot be multiple.” George Thomas explained that double jeopardy only really came into play if one sovereign, “is not really sovereign with respect to the relevant group of wrongdoers.” He wrote, that, “as long as both sovereigns are truly sovereign in respective spheres each can impose the penalties it wishes.” Obviously Becket did not view things this way, perhaps because he viewed the Church as the only true sovereign in matters of criminous clerks.

Paradoxically, Thomas’s views about dual punishment made a lasting impact. Now, as part of the common law, double judgments are not allowed. The idea of double jeopardy can be seen in both the civil and criminal context of our common law today. In the situation with clerks, Thomas Becket believed that the Church had exclusive sovereignty. This is the precise area where “benefit of the clergy” comes into play. One claiming benefit of the clergy was prohibited from being

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66 Id. at 103.
68 Id.
69 Id. at 75
70 Id.
71 Id.
Prosecuted by the state. Benefit of the clergy literally meant that, “an offender who claimed benefit of the clergy could bar a second secular judgment even though he had never been criminally punished by relying on the first judgment.” During Henry’s reign, verdicts were defined in terms of judgment; therefore, a judgment by the Church was enough to bar secular judgment. Henry’s issue was that anyone could claim this status and not receive secular punishment whether the offender was truly a clerk or not.

C. Lasting Impact

After Becket’s martyrdom it was rumored that he had worn a hairshirt next to his skin infested with lice and had signs of self scourging on his back. Thomas had been a champion of Church authority, but based on his worldliness as Royal Chancellor, many doubted whether his sudden conversion was real. After the reported discovery of the hairshirt and marks upon his back, many started to believe that his conversion had indeed been real. Even after the canonization, however, some contemporaries of Thomas referred to him as a trouble maker and traitor to the crown.

One very vocal critic of Thomas was Gilbert Foliot. To be sure, his criticisms need to be taken with a grain of salt. He was passed over for the archbishop position in favor of Thomas, even though he was the more qualified candidate. Gilbert wrote after Thomas’s death and he was quick to point out in his assessments that Thomas had not been a priest until the day of his consecration. Gilbert goes on to criticize the fact that Thomas initially accepted the king’s constitutions at Clarendon. Michael Staunton’s article A Turbulent Reputation discussed how Gilbert, “painted a picture of a united clergy standing firm against any encroachment upon Episcopal rights and

72 Id. at 76
73 Id.
74 Id.
abandoned by their leader.” It was not that Gilbert did not agree with Thomas in theory; he disagreed with his tactics. He believed that Thomas did more harm to the Church than good due to his inappropriateness for the job. Gilbert believed that a compromise between Church and Crown could have been struck. At Thomas’s trial at Northampton he said of the archbishop, “The man’s a fool, and always will be.”

Gilbert Foliot was not the only critic of Becket. Another contemporary, Lamberth Anonymous, believed that Thomas had, “been driven more by desire for glory, zeal for his own vindication and pride, than by righteousness”. Lamberth pointed out that one cannot be a Christian and at the same time hate their neighbor. Lamberth, however, conceded that Thomas’s intentions were unclear and maybe he should be given the benefit of the doubt. He quoted, “Judge not that you not be judged.”

Becket’s life and death have been questioned repeatedly over the centuries. Even today there are mixed emotions regarding his quarrel with the king and his sainthood. As recently as 2001 he was placed on History’s 100 Great Britons only a few years later to come in runner up to Jack the Ripper as one of the worst Britons.

Another lasting impact of the Becket affair was that the Church retained much of its supremacy over secular matters until the Reformation. During Henry’s reign and thereafter the Church claimed a monopoly over spiritual matters. The Reformation undermined the “Church’s

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76 Id. at 24.  
77 Id.  
78 Id.  
79 Id.  
80 Id. at 26.  
81 Id. at 27.  
82 Id.  
83 Id. at 23.  
84 Id. at 23.  
The rise of Protestantism, nationalism, and various political theories influenced Church and State relationships. Henry VIII really solidified the most control over the Church, even being honored by the Pope as Defender of the Faith. Soon after this, Henry VIII severed ties with Rome to form the Church of England. He declared himself to be the Supreme Head of the Church. Today the monarch of the United Kingdom remains the Supreme Head of the Church.

IV
A Theological Debate: Where is the Line between the Law of God and the Law of Man?

“Give unto Caesar what is Caesar’s and give unto God what is God’s.”

The conflict between Church and State has been going on since the time of Christ. The question then becomes where to draw the line? Several theologians have tried to interpret where the line begins and ends. Many have discussed how Christians are supposed to act in regards to the laws of the state. Although many theologians have discussed this, the three that will be evaluated in this article will be Pope Gregory VII, Thomas Aquinas, and Martin Luther.

Pope Gregory VII, also known as Hildebrand, had very clear views on how Church law should be the supreme authority on Earth. Writing as early as 1083, his thinking could have had an impact on Thomas Becket and his views about ecclesiastical authority. Gregory wrote very strongly in a letter to his brother, Hermann of Metz, about the relationship between Church authority and secular authority. One belief that Gregory held was that, “[A]ll especially important affairs and the judgments of all Churches ought to be referred to [the Church of Rome] as to their head and mother, that from her shall be no appeal, that her judgments may not and cannot be reviewed or reversed by anyone.” Gregory believed that all matters of the Church should be kept within the Church. He

86 Id.
87 Id. at 403.
88 Mark 12:17 (NIV).
definitely would have rejected Henry’s idea that once convicted in the ecclesiastical courts that the criminous clerk should be turned over to the royal courts to face more justice. Gregory went further to say that priests are the masters of kings and princes. Therefore, the king’s law could not be superior or even equal to that of the Church.

Gregory’s letter to Hermann went on to say that, “[T]here is nothing in this world more excellent than a priest or more lofty than a bishop.” It seemed to follow from Gregory’s thinking, that criminous clerks, although criminals, were still above kings and princes. Gregory obviously believed the Church and its brethren were higher in esteem than the secular authority of the royal courts. Gregory’s ideas might not have been so radical in the eyes of Thomas Becket. Surely Thomas did not view the king to be beneath priests and clerks. However, Thomas did believe that the Church should have autonomy over its clerks. Thomas also believed the double judgment that would be handed down by the royal courts to be wrong. One can see Gregory’s influence on Thomas with this line of thinking. Thomas Aquinas, centuries later seemed to have a more moderate view than Gregory.

Thomas Aquinas’s *On Kingship* discussed how a ruler should rule his kingdom to be in accordance with the laws of God. He stated that a government is necessary for a man to live in society. The Bible states, “Where there is no governor, the people shall fall”. Aquinas said that if man were left alone without a ruler that self-interest would take over. Therefore, under his theory a government is necessary. Aquinas preached that the best form of government is a monarchy, so long as the monarch does not become a tyrant. The duty of a king was to rule his kingdom in a similar

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90 Id. at 169.
91 Id. at 170.
92 Proverbs 11:14.
94 Id. at 10.
fashion as a divine government.\textsuperscript{95} The purpose of a government was to help men lead a virtuous life.

A virtuous life will lead men to God in the end. Aquinas stated,

\begin{quote}
The person who is charged with the care of our ultimate end ought to be over those who have charge of things ordained to that end, and to direct them by his rule...just as the king ought to be subject to the divine government administered by office of the priesthood, so he ought to preside over all human offices and regulate them by the rule of his government.\textsuperscript{96}
\end{quote}

Aquinas believed that a king should have all control over secular matters and should only be answerable to the Church law, assuming that he was not tyrannical. He wrote, “The king, taught the law of God, should have for his principal concern the means by which the multitude of those subject to him may live well.”\textsuperscript{97} Aquinas’s statement meant the king should lead the people in the ways of living a virtuous life and the secular laws should be made to further that end.

Although Aquinas admitted that there needed to be a government ruled by a king, he seemed to squarely put the Church’s law, or divine law above secular or human law. Aquinas gave four reasons that human laws should be subject to divine law in his work \textit{Summa Theologiae}. The first reason he gave was that men were set for eternal happiness that it is out of “proportion to their natural resources” and that it must be directed by divine law.\textsuperscript{98} Second, he said that human judgment cannot be trusted and that it is subject to arbitrariness.\textsuperscript{99} Human law should be subject to divine law because divine law cannot be mistaken.\textsuperscript{100} Third, human law was not enough to judge what goes on inside of someone and divine law is needed as a check\textsuperscript{101}. Last, Aquinas said that human law cannot punish all wrongdoing, so divine law was needed to make sure all wrongdoing is punished.\textsuperscript{102}

\textsuperscript{95} Id. at 53.
\textsuperscript{96} Id. at 64.
\textsuperscript{97} Id. at 65.
\textsuperscript{98} Thomas Aquinas, \textit{Summa Theologiae} 2a2ae. 77,1 (Thomas Gilby trans., 1975).
\textsuperscript{99} Id.
\textsuperscript{100} Id.
\textsuperscript{101} Id.
\textsuperscript{102} Id.
Clearly under Aquinas’s view, human law cannot function without the divine law and, therefore, it should be subject to divine law. Obviously, Aquinas presupposed that a good king would have no problem being regulated by the Church since the measure of a good king is one who leads the people in living a virtuous life. But in reality most kings, especially Henry, wanted autonomy from the Church.

Aquinas wrote over fifty years after Thomas Becket’s showdown with Henry, so it is safe to assume that Becket was not influenced by his writing. However, Becket appeared to have the same beliefs. It might be unfair to say that Becket believed that all of Henry’s laws should be subject to the Church laws, but it is safe to say that Becket felt that if an incident fell on the proverbial line that the Church should win the debate. A criminous clerk was certainly an issue that straddled this line between ecclesiastical and secular laws. Under the rubric of Aquinas, a criminous clerk would not be an issue. Even if he had been punished under human laws he would still be subjected to divine laws as well. Aquinas did not seem to have the same issues as Becket with someone being punished twice. The purpose of divine law to Aquinas was to complement or fill in where the human law failed. Aquinas certainly believed in the need for both laws but his solution to the conflict was that human laws should be subject to divine law.

Martin Luther was also very vocal about his views on secular authority. He laid out his theory in his work entitled *On Temporal Authority*. He started his thesis by laying out the validity of the secular law. He wrote that secular law had been in place since the beginning of the world. The Bible said in Genesis 9:6, “Whoever sheds the blood of man, by man shall his blood be shed.” Luther explained the quoted passage to mean that it is, “God’s will that the temporal sword and law be used for the punishment of the wicked and the protection of the upright”.103

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Luther and Aquinas were both of the opinion that there needed to be a secular authority. But Luther went a step further and thought about how Christians might not feel the need for secular authority. The Bible talks about turning the other cheek. As a Christian, one is not supposed to take law into his own hands. The Bible stated, “Beloved, defend not yourselves, but leave it to the wrath of God; for it is written, 'Vengeance is mine; I will repay says the Lord”. Therefore, Christians on the whole believed that wrongdoing should be punished by God and not secular authority. Luther made the point of saying that in a perfect world where everyone was Christian, there would be no need for secular authority. However, that not being the case, secular authority is needed to apply to the non-Christian.

Under Luther’s thesis, there were two governments, the kingdom of God that produced righteousness, and the temporal government that sought to prevent evil deeds. Luther wrote that “neither would be sufficient without the other.” Luther believed that without the kingdom of God, no one could become righteous; and the temporal authority extended over all, not just Christians. Both Aquinas and Luther agreed that neither can exist without the other. But where Aquinas believed that the secular government should be subject to canon law, Luther seemed to believe the opposite. He wrote, “Although you do not need to have your enemy punished, your afflicted neighbor does. You should help him that he may have peace and that his enemy may be curbed, but this is not possible unless the governing authority is honored and feared.” So Christians should submit to temporal authority even though they may have no need of it because by their submissions they will be helping others.

104 Id.
105 Id.
106 Id. at 252.
107 Id.
108 Id. at 254.
Luther’s thesis appears to be more in line with Henry’s thinking. Luther would agree that criminous clerks should be held accountable under the laws of the state. Clerks of the Church or not, everyone should be subjected to the same governing law. On the other hand, Luther drew a very firm line as to where temporal rule ends and canon law begins. He said that when the secular law started to prescribe laws for the soul, then it goes too far and into the realm of the Church laws, and should not be tolerated.\textsuperscript{109} God was the only one who has rule over the soul; therefore, secular authority should reign over earthly things.\textsuperscript{110} The line that Luther drew begged the question as to whether criminous clerks were committing crimes of the soul or earthly crimes. Murder is no doubt a sin, but should it be punished under secular authority or God’s law?

Luther shed light on this question by writing of David’s commander Joab. He wrote, “He had a commander, Joab by name, who committed two underhanded crimes when he treacherously murdered two upright commanders, whereby he justly merited death twice over.”\textsuperscript{111} So Luther seemed to have no problem with temporal authority handing out punishments when the crime was murder.

The problem of the criminous clerk would not be a problem under Luther’s thesis because everyone would be subject to the same temporal authority. Christian, non-Christian, clerk, or blacksmith all would be subjected to the same punishments. Luther’s bright line rule as to where temporal law ends and God’s law begins is simpler to follow than Aquinas’s five-tiered breakdown. Under Luther, as long as the governing authority does not prescribe laws that seek to punish the soul, it should have authority to govern everything else. Anything falling outside of the realm of God is fair game for rulers and under Luther, rulers should regulate and Christians should make it a point to obey the laws as well.

\textsuperscript{109} Id. at 261.
\textsuperscript{110} Id.
\textsuperscript{111} Id. at 276.
Although both Aquinas and Luther wrote long after the Becket affair, both theologians give insight into both sides of the argument. Aquinas used his breakdown of the different laws and human nature to show how, even though secular law and canon law are both needed, secular law should be tempered by Church law. In an area like the criminous clerks, the Church law would win over secular authority. Aquinas’s view was more in line with Becket’s view of Church policy. Although both laws need to exist together, the Church should have final say or at least be complementary to secular law. If an issue fell on the line between the two, favor should go to the Church. Luther, on the other hand, believed that all should be subjected to the secular authority as long as the secular authority was not prescribing laws that affected or tried to influence the soul. A criminous clerk committing an earthly crime like murder would definitely be subjected to the secular law.

V

The Clergy Continuing to Look After Their Own: A Look at Clergy Abuse and the Ministerial Exception.

“The commandments, “Do not commit adultery”, “Do not commit murder”, “Do not steal”, “Do not covet”, and whatever other commandments there may be, are summed up in this one rule: “Love your neighbor as yourself.””

The world has definitely changed since the time of Henry and Thomas. The world has few if any all-powerful monarchies. The Church, while still a force in the religious community and sometimes in the larger culture, is no longer the center of most societies. Certainly the culture of Europe and much of the United States today is steeped in a climate of secularism. Secularism is the movement of the world away from the Church. The shift started to occur during the Renaissance. During the Renaissance religion stopped determining social norms for people, according to George Mantzarides. In his article, The Phenomenon of Secularization, he discusses how religion shifted from a

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112 Romans 13:9 (NIV).
necessary variable to a dependent variable.\textsuperscript{114} The Church became a part of private life and less a part of public life.\textsuperscript{115} One of the biggest changes that occurred during this time was that people began to believe that the authority of the state came from the people and not God.\textsuperscript{116}

The shift to secularization continued through the centuries with advances in science, technology, and industrialization.\textsuperscript{117} Mantzarides wrote that because of these advances, “Religion is pushed to one side or confined to an area where science is unable to help man.” \textsuperscript{118} The need for a strong Church has weakened since the time of Henry and Thomas Becket. To be sure the Christian sentiment has not been lost in American culture. One can still see Christianity having a voice in society. Examples include public outrage during the Clinton scandal, the abortion debate, and the debate over gay marriage.\textsuperscript{119} The climate of secularization, however, does not seemed to have weakened the Church’s resolve to protect its own. Even in this new climate, the same debate involving benefit of the clergy and criminous clerks still exists.

The case of \textit{Rita M v. Roman Catholic Archbishop of Los Angeles} is a prime example of the court’s reluctance to impose liability on the clergy. The case is an even better example of the Church protecting its priests. In \textit{Rita M}, Rita was a sixteen year old girl who was seduced by numerous priests.\textsuperscript{120} The priests constantly told her that having sex with them was ethical and religiously endorsed.\textsuperscript{121} Eventually Rita became pregnant by one of the priests.\textsuperscript{122} Collectively, the priests arranged for Rita to be sent to the Philippines to have her baby there.\textsuperscript{123} After Rita nearly died, her mother finally became aware of her predicament and consulted an attorney. However, before filing

\begin{flushright}
\textsuperscript{114} Id. at 5. \\
\textsuperscript{115} Id. \\
\textsuperscript{116} Id. \\
\textsuperscript{117} Id. at 7 \\
\textsuperscript{118} Id. \\
\textsuperscript{119} David A. Hollinger, \textit{The “Secularization” Question and the United States in the Twentieth Century}, 70 Church History 132 (2001). \\
\textsuperscript{120} \textit{Rita M v. Roman Catholic Archbishop of Los Angeles}, 187 Cal. App. 3d, 1453, 1456 (Ct. App. 1986). \\
\textsuperscript{121} Id. at 1457. \\
\textsuperscript{122} Id. \\
\textsuperscript{123} Id.
\end{flushright}
the complaint, Rita contacted the Bishop of Los Angeles and made him aware of the situation. He told her that there was nothing he could do for her.\textsuperscript{124} Not only does this case illustrate that the criminous clerk problem still persists but it also shows how the priests are continuing to protect their own.

Another case that illustrates clergy abuse is the 1993 case of \textit{Moses v. The Diocese of Colorado}. In the case, Mary Tenantry filed suit against the Diocese of Colorado alleging that the Diocese breached their fiduciary duties to her, negligently hired and supervised a priest, and that it was vicariously liable for the priest’s breach of fiduciary duty.\textsuperscript{125} Mary had documented mental problems and went to Father Robinson for guidance.\textsuperscript{126} During their sessions, Father Robinson initiated a sexual relationship with Mary.\textsuperscript{127} The Diocese was aware at the time of hiring Father Robinson that he had problems with depression, low self-esteem, and sexual identification ambiguity.\textsuperscript{128} The Bishop never revealed this information about Father Robinson to the hiring board.\textsuperscript{129}

After the affair between Mary and Father Robinson ended, Mary’s mental state deteriorated and she ended up divorcing her husband as a result. When the matter was brought to the attention of the Bishop, he told Robinson, “to be more careful in the future.”\textsuperscript{130} The Bishop, to further protect Father Robinson, prohibited Mary from talking about the affair to anyone but her husband, going anywhere near the Church, or talking to Father Robinson.\textsuperscript{131} The Bishop took no steps to help Mary.\textsuperscript{132}

\textsuperscript{124} Id. at 1458.
\textsuperscript{125} Moses \textit{v. Dioceses of Colorado}, 863 P. 2d 310, 314 (Colo. 1993).
\textsuperscript{126} Id.
\textsuperscript{127} Id. at 314.
\textsuperscript{128} Id. at 315.
\textsuperscript{129} Id.
\textsuperscript{130} Id. at 316.
\textsuperscript{131} Id. at 316.
\textsuperscript{132} Id.
The Free Exercise clause guarantees the freedom to act; however, conduct is still subject to regulation for the protection of society. The Court held that as far as Father Robinson was concerned there was a breach of fiduciary duty, negligent hiring, and negligent supervision. However, the Court held that because Father Robinson was not acting within the scope of his employment when he engaged in a sexual relationship with Mary, that the Diocese could not be held vicariously liable for his acts. Even though the Court ultimately holds Father Robinson liable, the Court makes it clear that it has “applied a doctrine of abstention to cases that do not involve property disputes” if the matter is purely ecclesiastical. Even though Father Robinson was punished in this case, the case still gives a great example of clergy abuse and how the Church still tries to protect its own.

If the judges and juries were taken away from these cases, it might be hard to tell whether the cases were taking place today or during the reign of Henry II. In the Moses case the Bishop knew of the sexual and mental issues of Father Robinson. Knowing this, the Bishop hired him. It can really come as no surprise that Father Robinson victimized a parishioner. The interesting part of the case is how the other fathers, bishop, and Diocese rallied around Father Robinson. The Bishop even went so far as to tell Mary to stay away from the Church. However, at no time was Father Robinson subjected to anything harsher than a brief questioning about the affair.

Mark K v. Roman Catholic Archbishop of Los Angeles is another example of the clergy shielding their members. In this case nine plaintiffs filed suit against Father Llanos. They all claimed that he molested them when they were minors. At least two parents of the victims brought his inappropriate actions to the attention of the Church. The Cardinal of the Church simply stated,

\begin{enumerate}
\item Id. at 319.
\item Id. at 314.
\item Id.
\item Id. at 319.
\item Id. at 319.
\item Id. at 607.
\end{enumerate}
“We will take care of it…we will handle this”. However, no recourse was taken against Father Llanos and he was still allowed to be in the presence of young boys. Several of the plaintiffs stated that they had mental issues come up later in life due to the molestation. Most of them claimed that they did not realize that their mental issues were caused by the molestation. Here again a higher Church official had information brought directly to him by concerned parents and yet he refused to even admonish the priest much less impose a heavier penalty. Because of that Father Llanos was free to molest more young boys. The criminous clerk appears again.

Along with the benefit of the clergy there has come a new “ministerial exception” adopted by the courts. There are several examples of courts refusing to intervene in ecclesiastical matters for fear of violating the First Amendment. The First Amendment states, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”. The Free Exercise Clause allows us to practice our religion without interference from the state. Although sexual exploits are a major area where the benefit of the clergy and the problem of the criminous clerks still exists, there is another area where the courts give the Church the benefit of the doubt. The “ministerial exception” given to religious entities prohibits them from incurring liability based on employment discrimination. EEOC v. Hosanna-Tabor Evangelical Lutheran Church & School is a case currently before the Supreme Court. The case involves a teacher who was fired from her job at a religious school due to illness. The lower court granted summary judgment in favor of Hosanna-Tabor on the grounds that the claim by the teacher fell within the ministerial exception.

On appeal now before the Court, the question turns on whether the teacher is a ministerial employee and, therefore, subject to the exception. But the case raises larger questions about the legitimacy of the exception itself. In essence, the exception gives the Church free reign to hire and

139 Id.
140 Id.
141 Id.
142 EEOC v. Hosanna-Tabor Evangelical Lutheran Church & School, 597 F.3d 769, 776 (6th Cir. 2010).
fire ministerial employees without being subjected to state and federal discrimination laws. The stated goal is to assure that the state does not control the Church’s leadership choices. But this case might be seen as another example of the courts creating an exception for the benefit of the clergy.

After reviewing these cases one beings to wonder if anything has really changed since Henry II’s time. He fought hard to punish priests like Father Llanos and Father Robinson with the laws of the state. It can certainly be argued that Thomas Becket ultimately won the debate. According to Jill Fedje, “Between 1983 and 1987 approximately two-hundred Catholic priests were publicly accused of sexual misconduct.”  

Even though the background of the current American society is highly secularized, the Church is still a formidable presence. With the clergy still shielding their own from punishment, it is hard to see how the Church is any different today than it was for Thomas Becket. The problem of the criminous clerk continues to plague society. But it does raise the question of separation of Church and State. During the time of Henry and Thomas it is hard to say which one of them really wanted the separation of Church and State. Henry had serious objections to allowing the Church to adjudicate accusations against clerks in cases of rape, murder, or theft. In that sense, Henry wanted laymen and clerks to be held accountable under his laws, and did not wish to simply leave the Church alone. This might suggest that Henry did not necessarily want a separation, but that he wanted more control over the Church. Thomas, on this account, could be said to want a separation of the Church from the State. He certainly wanted the Church to have autonomy over clerks and anything relating to Church authority. Thomas viewed the Church as the final authority on religious

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144 Id.
matters including matters relating to clerks and, therefore, not subject to royal authority, suggesting that he probably would have advocated for a separation of the Church and State.

Instead it might be argued that Henry and not Thomas favored separation of the Church and State inasmuch as Henry insisted that the religious nature of the Church should not entitle clerks to receive favorable treatment relative to his other subjects. Separation might be thought to regulate religious neutrality and equality of treatment from the State, in which case it was Henry and not Thomas who advocated separation of Church and State.

Conclusion

Even though Henry and Thomas have long since left the Earth, many of the struggles that they dealt with in terms of law and Christianity are still present today. Henry struggled hard to bring criminous clerks to justice. One can see from the clerical abuse cases taking place before the courts in recent years that the criminous clerk has not been completely eradicated. Bishops and priests still protect their own for better or worse. Thomas fought hard to make sure that the Church protected its flock. It is hard to say whether there was a clear winner of the debate. It appears that 800 years later the line is still firmly implanted in the sand.