The Courts Christian in Medieval England

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I. INTRODUCTION

This Article examines the structure and jurisdiction of the pre-Reformation ecclesiastical courts in England to determine their effect on the Reformation. Although the ecclesiastical courts operated similarly throughout Western Europe, this Article will highlight only the English courts. England is the focus of this Article because the English legal system was the forerunner of our own. As a result, the effort to discover the impact of the ecclesiastical courts upon the Reformation has value for present-day Americans.

II. HISTORICAL SETTING

The workings of medieval English courts reflect the time period. In the eleventh century, most governments in Western Europe were monarchies. Generally, when a monarch died, he was succeeded by his eldest son. However, if that son was unpopular, then the closest male relative would succeed to the
throne. In England, a group of lay and ecclesiastical people, led by the Archbishop of Canterbury, chose the new monarch. The Archbishop then presided at the new King’s coronation service.

During the coronation service, the King was “solemnly vested with the official robes and emblems of his office and anointed with holy oil in a ceremony somewhat resembling that used at the consecration of a bishop.” The Archbishop would then place the crown on the King’s head; after this symbolic gesture, the King would receive holy communion during a celebration of Mass.

The King’s power and authority during this time was, in theory, absolute. The King, it was believed, received his authority from God. During the coronation ceremony, the people swore allegiance to the King; this allegiance, however, was not without limits. The King’s power was severely limited by the economic system. This was due, in large part, to the prevalence of the feudal system in twelfth-century England, which made the King dependent on his lesser lords for food, soldiers and even money. This provided the lesser lords with some measure of autonomy and power.

In the feudal system, the lord and the lesser lords of the

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3 See id; M. M. KNAPPEN, CONSTITUTIONAL AND LEGAL HISTORY OF ENGLAND 32 (1987) (“[T]he crown did not always pass to the eldest son, but rather to the most capable member of the royal family.”).

4 See DICKINSON, supra note 1, at 11. The Archbishop of Canterbury was the most powerful churchman and secular landlord in the county of Kent. See R.H. HELMHOLZ, CANON LAW AND THE LAW OF ENGLAND 348 (1987). See also KNAPPEN, supra note 3, at 34 (explaining that the coronation candidate for archbishop was not considered to be in office until church authorities received his oath and anointed him at a coronation ceremony).

5 See KNAPPEN, supra note 3, at 10; see also DICKINSON, supra note 1, at 11. The Archbishop of Canterbury was responsible for administering the oath and presiding over the monarch’s coronation. See NORMAN DOE, THE LEGAL FRAMEWORK OF THE CHURCH OF ENGLAND 10 (1996) (stating that at the coronation ceremony the candidate took an oath administered by the Archbishop of Canterbury or Archbishop of York).

6 DICKINSON, supra note 1, at 11.

7 See id.

8 See id. at 12 (clarifying that allegiance to the new ruler was conditioned on his conformity with rules of good government).

9 See COLIN RHYS LOVELL, ENGLISH CONSTITUTIONAL AND LEGAL HISTORY 61 (1962) (stating that the King did not have “autocratic” power, but “was subject to same limitations as any other lord in his relations with his vassals.”). The lords, in turn, received these supplies from their vassals, who were their tenants. See KNAPPEN, supra note 3, at 119-20.
manor routinely settled the disputes of their subjects. The civil courts which settled such disputes were not run by the government, but rather by individual holders of power. As a result, there was no central justice system. Instead, each area had its own courts without clearly defined jurisdiction.

Initially during this time, the ecclesiastical and royal authorities maintained good relations. This accord soon dissolved, however, resulting in a major conflict between church and state. The central issue was the scope of ecclesiastical jurisdiction. In 1072, King William I initiated a writ which forever changed the legal system of England. From that time on, "God's business was to be separated from Caesar's, with the appropriate renders being made in different courts." The struggle for jurisdiction between ecclesiastical and royal courts originated from this writ. To increase the power of the monarchy, the royal courts continually tried to limit clerical independence; at the same time, the ecclesiastical courts were attempting to in-

10 A manor was "[a]n estate with land and jurisdiction over tenants. Not necessarily a whole village, which might have several manors, just as one manor might own land in more than one village." WOOD, supra note 1, at 214.

11 See KNAPPEN, supra note 3, at 122. The right of the lord to keep order led to the development of private courts. See id. at 44.

12 See id. at 123. According to the author, "...if worse than a centralized monarchy, it was better than leaving the problem of law and order to be dealt with by means of family feuds or a grossly inadequate system of public courts." Id.

13 J. C. Dickinson noted the pragmatic reasons for this:
At the opening of the eleventh century the papacy was much too heavily bogged down in local disorders to concern itself with advancing contentious claims that would challenge [the] royal control, and good relations between ecclesiastical and non-ecclesiastical authorities had long been strengthened by the fact that the former had for so long undertaken invaluable social functions which the latter had neither the wish nor the means to assume.

DICKINSON, supra note 1, at 13.


15 William I, formerly William Duke of Normandy, became King of England in 1066 as a result of the Norman Conquest. See J.H. BAKER, AN INTRODUCTION TO ENGLISH LEGAL HISTORY 14 (3d ed. 1990). He is also referred to as William the Conqueror. See DICKINSON, supra note 1, at 65.

16 See R.N. SWANSON, CHURCH AND SOCIETY IN LATE MEDIEVAL ENGLAND 140 (1989).

17 Id.

18 See id. According to the author, "...the royalist theory stressed the kingdom and subjection to the crown; the papalist view stressed the universality of the church and the special status of clerics and ecclesiastical issues, which were beyond the competence of mere laymen, and emphasized the superiority of the canonical system over the secular." Id. at 141.
crease their own jurisdiction.  

Noted historians Frederick Pollock and Frederic W. Maitland have declared that “[o]f all the centuries the twelfth is the most legal.” This can be attributed, in part, to the writings of a monk named Gratian. In 1140, Gratian published \textit{Concordia discordantium canonum}, later known as \textit{Decretum}, which was the catalyst behind an unprecedented study of the Canon Law. This book was updated regularly and became the basis of a new era in the canon law. According to Pollock and Maitland, “it was a wonderful system. The whole of western Europe was subject to the jurisdiction of one tribunal of last resort, the Roman curia.” However, this was not true in England in the first half of the twelfth century, as illustrated by the story of Henry II and Thomas Becket.

In 1154, Henry II was crowned King of England. Like many of his contemporaries, he had political problems with the Pope. Unlike his predecessor, Henry believed that the Pope had too much authority in England. Accordingly, Henry sought

\begin{itemize}
\item \textsuperscript{19} See id.
\item \textsuperscript{20} 1 Frederic Pollock & Frederic William Maitland, \textit{The History of English Law Before the Time of Edward I} 111 (2d ed. 1968).
\item \textsuperscript{21} He was commonly referred to as the “Gratian of Bologna.” See Mccall, supra note 14, at 23.
\item \textsuperscript{22} See Pollack & Maitland, supra note 20, at 112-13. Gratian’s book gave hypothetical cases and answered questions of law by examining different authorities. See id. Through this work, Roman law was absorbed into canon law. As a result of “this revival of legal studies in the clerical world ... the Church was encouraged to put forward claims to a jurisdiction in cases which had little or nothing to do with religion or God.” Mccall, supra note 14, at 23-24.
\item \textsuperscript{23} See Max Radin, \textit{Handbook of Anglo-American Legal History} 103 (Hornbook Series, 1936). Gratian’s work became “the most widely used book among canon lawyers, displacing earlier treatises.” Id.
\item \textsuperscript{24} Pollock & Maitland, supra note 20, at 114.
\item \textsuperscript{26} See id. at 36. Like every ruler in Europe, Henry was faced with the claims of the Church. The Church claimed that its authority was superior to the King’s authority. See id.
\item \textsuperscript{27} See id. Henry’s predecessor, King Stephen, was responsible for increasing the Church’s authority. See id. During his reign, King Stephen lost control over the Church and was often forced to submit to its dictation. See Z.N. Brooke, \textit{The English Church and the Papacy} 187 (1968). The bishops became papal instead of royal officials, and the king could not even punish a bishop who spoke out against him. See id. Overall, Stephen failed to preserve the barrier against papal authority over the English Church. See id. at 188. Therefore, when Henry II succeeded Stephen, he was faced with the challenge of overcoming the increased authority of the
\end{itemize}
to assert his own position of power by decreasing the power of the English bishops in whom the Pope's authority was vested. He needed an effective strategy to overcome the wealth and power of the bishops. In pursuit of his goal, Henry used an age-old method: he arranged for his friend and chancellor, Thomas Becket, to be appointed Archbishop of Canterbury. Becket, however, displayed little loyalty to the King after he was appointed. Further, Becket insisted on the enforcement of certain prerogatives of the church and clergy that had previously been ignored. In retaliation, Henry published the *Constitutions of Clarendon* in 1164. There were sixteen constitutions in all. The King's public action forced the Pope to take an official stance; consequently, the Pope condemned ten of the Constitutions, four of which concerned the jurisdiction of church courts. The ensuing struggle had no winner. Becket was murdered and Henry was forced to repent and submit to the authority of the Pope. As a result, church courts, with the right of appeal to Rome, became firmly established in England.

The matter of legal jurisdiction was the core of the struggle between Henry and Becket. During this period in history, there

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28 See BROOKE, supra note 27, at 189.
29 See HOGUE, supra note 25, at 38. Because of the friendship between Henry and Becket, Henry expected Becket to promote secular authority. Once Becket had become archbishop, however, he promoted ecclesiastical rather than secular authority. See id. at 39.
30 See id. Becket became "an ascetic zealot and defender of the rights of the clergy, opposing royal acts with imperious willfulness." Id.
31 See id.
32 See POLLOCK & MAITLAND, supra note 20, at 124. The constitutions were intended to be the writings of Henry I, Henry II's grandfather. See id. For example, Article 1 called for all disputes concerning advowsons to be decided in royal courts. See HAROLD J. BERMAN, LAW AND REVOLUTION, THE FORMATION OF THE WESTERN LEGAL TRADITION 256 (1983). Advowsons concerned the right of patronage of church offices. See id. Article 4 provided that all bishops, archbishops and clergy must ask for permission from the King before leaving the kingdom. See id. at 257. The most controversial provision was Article 3, which dealt with "criminous clerks." Id; see also infra notes 42-45 and accompanying text.
33 See HOGUE, supra note 25, at 40. Most of the Articles in the *Constitutions of Clarendon* conflicted with the laws of the Church. See id.
34 See BROOKE, supra note 27, at 202. This issue of jurisdiction was a universal one. See id.
35 Becket's primary objection to the reforms was that the procedures resulted in double punishment. See DICKINSON, supra note 1, at 151.
36 See HOGUE, supra note 25, at 43.
37 See BROOKE, supra note 27, at 212.
was a class of people called clerks. They were tonsured but not necessarily ordained. Canon law provided that clerks accused of crimes must be tried in church courts. Henry, however, believed that "criminous" clerks, like other criminals, should be brought before the King's courts.

The conflict between Henry II and Becket symbolized the basic struggle between the King and the Church: two systems of justice and two sets of courts. The issue was whether the secular or the ecclesiastical system would prevail. Given that the King was "a Christian and hence a subject of the pope one would have thought that the pope...or his subordinate, the Archbishop of Canterbury, would only have had to admonish an English king that unless he yielded to Holy Church's jurisdictional demands he would be damned in hell." However, the Church lacked the power to enforce its decrees. Since it was in the interest of both the King and the Church to reach a compromise, concessions were made by both sides. After the death of Becket, Henry II was forced to loosen his grip. Through the Constitutions of Clarendon, Henry II was still able to restrict the civil jurisdiction of the church courts but "the right of the criminous clerks to be punished by ecclesiastical courts, he had to concede." As a result, "churchmen accused of crime were tried in the royal courts, but on conviction they claimed their clerical right."

III. THE STRUCTURE OF ECCLESIASTICAL COURTS

The formal structure of the church courts (the Courts Christian) began in the diocese. In England, the church was geo-

38 See Pollock & Maitland, supra note 20, at 439.
39 Tonsure is the "Roman Catholic or Eastern rite of admission to the clerical state by the clipping or shaving of a portion of the head." Merriam Webster's Collegiate Dictionary 1242-1243 (10th ed. 1993).
40 "Certainly from the time of Pope Innocent III (1210) and up to the post-Vatican II era, it was through the reception of first tonsure that an individual became a cleric and was incardinated or affiliated to the diocese for whose service he was promoted." 1985 Code c.266, §1.
41 See 1985 Code, supra note 39, at §1.
42 See id. at 448.
43 Berman, supra note 32, at 262.
44 Knapp, supra note 3, at 112.
45 Id.
graphically broken down into seventeen dioceses.\textsuperscript{47} The dioceses were then further divided into archdeaconries and, finally, into rural deaneries.\textsuperscript{48}

The supreme power of the church belonged to the Pope.\textsuperscript{49} The Pope had full authority and power; he was the supreme legislator, administrator, and judge.\textsuperscript{50} He could make laws, impose taxes, and punish crimes.\textsuperscript{51} All actions and decisions of church officers could be appealed to him.\textsuperscript{52} He was the "universal judge" who could excommunicate those who did wrong.\textsuperscript{53}

The Pope, as leader of the church, was the "universal ordinary" which gave him jurisdiction over all matters involving church law.\textsuperscript{54} On his own initiative, he could bring important cases to Rome to be decided.\textsuperscript{55} Alternatively, he could make an \textit{ad hoc} delegation to a specific person to hear a case locally.\textsuperscript{56}

During the twelfth century, the bishop was the Chief Judge of the Consistory Court of the Diocese.\textsuperscript{57} The bishop was more than the Pope's officer; he was "supreme on his own level of authority."\textsuperscript{58} Absent papal intervention, he was a legislator, administrator, and judge of his own diocese.\textsuperscript{59} Although he typically delegated his judicial authority, the bishop often exercised his authority to hear specific matters himself.\textsuperscript{60}

\begin{itemize}
\item \textsuperscript{47} See SWANSON, supra note 16, at 1. These dioceses were: "Canterbury, Carlisle, Chichester, Durham, Ely, Exeter, Hereford, Lincoln, London, Norwich, Rochester, Salisbury, Winchester, Worcester, York, and the two double-headed bishoprics of Bath and Wells, and Lichfield, and Coventry." Id.
\item \textsuperscript{48} See id.
\item \textsuperscript{49} See BERMAN, supra note 32, at 206. "The pope was head of the church; all other Christians were its limbs, its members." Id.
\item \textsuperscript{50} See id.
\item \textsuperscript{51} See id.
\item \textsuperscript{52} See id.
\item \textsuperscript{53} See id. (discussing the Pope's judicial powers).
\item \textsuperscript{54} See HOGUE, supra note 25, at 73 (discussing "divinely ordained character" of King and Pope).
\item \textsuperscript{55} See id.
\item \textsuperscript{56} See id.
\item \textsuperscript{58} BERMAN, supra note 32, at 209.
\item \textsuperscript{59} See id.
\item \textsuperscript{60} See POTTER, supra note 57, at 222; see also KNAPPEN, supra note 3, at 37. The Church was dominated by two archbishops, one at Canterbury and one at York. See id. Theoretically, the archbishops were elected by the clergy of their areas; however, in reality they were chosen by the King and the Witan - the wise men of the area. See id. at 32, 38.
\end{itemize}
The bishop was assisted in his work by the archdeacon, an integral member of the staff of the diocesan bishop. The archdeacon's office was “administrative and not pastoral” and the archdeacon carried out various duties. He was responsible for “the instruction of clergy below the rank of priest and for parish clerks,” and had the authority to impose a church tax on the inhabitants to maintain the church building. He was compensated from a prebend—a portion of revenues of the cathedral of the diocese. This remuneration was supplemented by other sources.

The office of the archdeacon soon became an unpopular one. One reason was the archdeacon's collection of procurations, which were taxes that the parish clergy were obligated to pay for the archdeacon's visits to the parishes. These fees were not regulated and invited abuse by those in positions of power.

Another reason for the office's unpopularity was the archdeacon's responsibility for punishing major moral offenses among the laity. A characteristic punishment was "humiliating acts of public penance with the guilty person parading scantily clad in the traditional white sheet at some major Sunday service in view of the faithful, sometimes receiving, into the bargain, a public beating."

Below the office of the archdeacon was that of the rural dean. This local official was in charge of a specific territory known as a rural deanery consisting of a group of adjoining par-
Each dean was responsible for supervising the clergy of his deanery in their work and ensuring that the clergy "duly administered the complex round of worship to which they were bound; that they respected their obligations to maintain a celibate life; did not dress frivolously or omit to maintain a tonsure and avoided such perennial and obvious pitfalls as drunkenness and gambling."\(^7\)

Although the bishop wielded considerable power over his cathedral chapter during the beginning of the twelfth century, due to the unreliability of his subordinate officers, most notably the archdeacons, he sought assistance from the administration of the diocese toward the end of the century.\(^7\) This assistance was provided by two officials—the vicar general and the official principal. The vicar general was responsible for the routine work of the diocese in the bishop's absence.\(^7\) The official principal held the bishop's main court, which was known as the consistory.\(^5\) Although the bishop could sit on the court himself, he usually did so only for specific cases.\(^5\)

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\(^7\) See DICKINSON, supra note 1, at 86.
\(^7\) Id.; see also ROBERT E. RODES, JR., ECCLESIASTICAL ADMINISTRATION IN MEDIEVAL ENGLAND 104 (1977) (stating that the rural dean "served the bishop and his courts ... as an ecclesiastical sheriff.").
\(^7\) The chapter of canons has evolved over the centuries. It seems to have arisen from the practice of priests living according to the "canonical rule," the norms found in various canons of church councils. During the Merovingian period there were many attempts to promote this type of discipline, encouraging priests to live the "canonical life" within the cloister of the bishop's residence. Eventually, however, priests whose benefices required them to live elsewhere remained outside the bishop's residence. The aspect of common life receded, but priests still sought to live the "canonical life." They continued therefore to meet regularly in the chapter (capitulum).

The origin of the title "chapter" is not clear. It may have arisen from a reference to the group as a caput parvum in comparison to the bishop as the caput maius, from the practice of deciding matters by individual vote (capitatim), or from the tradition of reading a chapter of the rule (capitulum regulae) at meetings. During the Middle Ages the chapter became a very significant group in the diocese, controlling episcopal elections and governing the diocese when the see was vacant. Certain canons became important officials, e.g., the canon theologian (canonicus theologus) and the canon penitentiary (canonicus poenitentiarus), both of whom were given canonical status by the Council of Trent.

1983 CODE c.503-10, introduction.
\(^7\) See DICKINSON, supra note 1, at 256.
\(^7\) See id. at 256-57.
\(^7\) See HOLDSWORTH, supra note 46, at 599.
The bishops created the Commissary Court in response to the archdeacons' gradual assumption of a customary jurisdiction.\textsuperscript{77} This addition, along with the Consistory Court, provided two main Courts Christian which administered justice in the diocese.\textsuperscript{78} As litigation increased, the bishop appointed a Chancellor\textsuperscript{79} to preside over the Consistory Court,\textsuperscript{80} but the bishop retained the right to personally hear some matters in his Court of Audience.\textsuperscript{81}

The Commissary Court, subordinate to the Consistory Court, provided the commissary general with the power to hear criminal and probate cases.\textsuperscript{82} Procedure was summary and the common method of defense was by compurgation.\textsuperscript{83} Appeals

\textsuperscript{77} See id. at 599-600.
\textsuperscript{78} See id. at 598-99.
\textsuperscript{79} The office of chancellor developed from a secular model, combining archival preservation and notarization. The cancellarius was the doorkeeper at the grille of the Roman law court who eventually assumed the duties of secretary to the magistrate. After the decline of the Roman Empire, a similar office of great dignity was held by the royal chancellor, the keeper of the king's seal. In the twelfth century the bishop's chancellery was developed particularly through the activity of the cathedral chapter. The office of chancellor (similar to that in the royal court) was assigned to a member of the chapter. He was responsible for signing and preserving the letters of the bishop. The title was soon applied in ecclesiastical circles to the figure who was in charge of the entire documentary system of the diocese as distinct from ordinary notaries or transcribers. During the thirteenth century, the chancellor assumed the regulation of teaching and lecturing in the newly founded universities. This academic function eventually evolved into a separate office of considerable importance and the title is used to the present day in both Catholic and secular universities. The Council of Trent made no mention of the office of chancellor, but it did confirm the right of the bishop to establish a notary in his curia. After Trent, the diocesan chancellor was recognized as the bishop's principal notary and, as such, the authenticator of legitimate documents. To this responsibility was soon joined that of custodian of the diocesan archives. This twofold office developed in particular legislation and diocesan practice, which "gradually attributed the name of chancellor to the one who was the notary of the episcopal curia, and specifically to that notary who had care of the safe-keeping of the documents drawn up by all the notaries of the diocese."

1983 CODE c.482-491, introduction.

\textsuperscript{80} See KNAPPEN, supra note 3, at 179.
\textsuperscript{81} See HOLDSWORTH, supra note 46, at 601.
\textsuperscript{82} See Richard Monson Wunderli, Ecclesiastical Courts in Pre-Reformation London 9 (1975) (unpublished Ph.D. dissertation, University of California (Berkeley)) (on file with Thomas M. Cooley Law Library). The Commissary Court's jurisdiction was limited, as it included only the city of London and those parishes and villages adjoining the city. See id.

\textsuperscript{83} See R.H. Helmholz, Crime, Compurgation and the Courts of the Medieval
could be taken to the Consistory Court which had general jurisdiction in the diocese.\textsuperscript{84} Apart from the Commissary Court appeals, the Consistory Court heard cases pertaining to matrimony, annulments, and benefices.\textsuperscript{85} Further, the Consistory Court had original jurisdiction over matters heard in a Commissary Court, if litigants chose to bring their claims to this forum.\textsuperscript{86} However, due to its higher professional standard, the Consistory Court was more expensive. Appeals from the Consistory Court were taken to an archbishop.\textsuperscript{87}

Apart from these diocesan courts, an independent system of courts developed; these were the Peculiar courts.\textsuperscript{88} These courts handled matters in which the bishop was a party to the litigation, matters concerning the greater abbeys which had been exempted from episcopal jurisdiction, and matters involving the King's chapel royal which had also been exempt from the bishop's control.\textsuperscript{89}

Provincial courts were the church courts of last resort in England, which were presided over by the Archbishops of Canterbury and York.\textsuperscript{90} A well-organized court system developed in Canterbury which included the court of the "Official Principal" - the Court of Appeals from Diocesan courts, and a court of original jurisdiction in all ecclesiastical causes.\textsuperscript{91} Jurisdiction was re-

\textit{Church, 1 LAW. \\ & HIST. REV. 1, 13-18 (1983).} Compurgation was a procedure whereby a defendant took an oath that he was innocent or telling the truth and other members of the community, the compurgators, "swore ... to their belief in the trustworthiness of the oath of the accused." Id. at 13. Consequently, the issue at the trial was the believability of the oath and not the facts of the case. \textit{See id.} Although sometimes arbitrary, the number of compurgators required depended on the severity of the offense. \textit{See id.} at 16-17. Several requirements were placed on prospective compurgators under the Canon Law: "They had to be of good repute, free from public crime or infamia. They must be neighbors of the accused, familiar with his character [and] they must, in appropriate cases be of equivalent status." \textit{Id.} at 17.

\textsuperscript{84} \textit{See Wunderli, supra note 82, at 7-9; see also TIMOTHY BRIDEN \\ & BRIAN HANSON, MOORE'S INTRODUCTION TO ENGLISH CANON LAW 112 (3d ed. 1992).}

\textsuperscript{85} \textit{See KNAPPEN, supra note 3, at 180 (discussing the jurisdiction of Consistory Court).}

\textsuperscript{86} \textit{See id. at 179.}

\textsuperscript{87} \textit{See Wunderli, supra note 82, at 7-8.}

\textsuperscript{88} \textit{See HOLDSWORTH, supra note 46, at 600.}

\textsuperscript{89} \textit{See HOLDSWORTH, supra note 46, at 600 n.2 (referencing the Ecclesiastical Commission 1883, 26). The Court of Peculiars was developed for the thirteen London parishes exempted from the jurisdiction of the Bishop of London. See id. at 602. The Dean of the Arches presided over this court. See id.}

\textsuperscript{90} \textit{See id. at 600-01; BRIDEN \\ & HANSON, supra note 84, at 112 (discussing Provincial Court).}

\textsuperscript{91} \textit{See HOLDSWORTH, supra note 46, at 601.}
stricted to diocesan business unless the Archbishop took personal jurisdiction in his Court of Audience.

In addition to the archbishop’s Audience, where more or less routine handling was given to matters reserved for the personal disposition of the archbishop, two courts separated from the archbishop’s personal jurisdiction, specialized in provincial, as distinguished from diocesan, business. One of these, the Prerogative Court, exercised the jurisdiction of the metropolitan to administer the estates of those who died leaving goods of significant value (*bona notabilia*) in more than one diocese.  

The Court of Canterbury, or Court of Arches, as it was more commonly known, had “general appellate jurisdiction over the province and original jurisdiction in cases presenting grounds for

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92 RODES, supra note 72, at 109.

From the earliest days of the Church a special relationship existed between “mother” and “daughter” churches, that is, between churches which had evangelized other communit[i]es [sic] which hence were considered to be their “daughters”. This relationship existed between larger towns in an area, where the faith first took hold, and the smaller towns in that region. In the Eastern Empire, which was divided into provinces, this led by the fourth century to the name “metropolitan” being applied to the mother church (the “metropolis” of the area) and its bishop. Early councils confirmed the authority of the metropolitans in the surrounding churches.

The West did not have the same organization into provinces as in the Eastern Roman Empire, but the older and more active churches in evangelization were recognized as “metropolitan”. By the sixth century the bishops there were called archbishops, and by the eighth century the bishops subject to them became known as “suffragans” because they could vote (*suffragio*) in a provincial council. The metropolitans exercised important authority in their area: they confirmed the election of suffragan bishops and consecrated them, convened and presided over provincial councils, maintained discipline over their suffragans and supplied for their ministry in cases of negligence, and served as a court of appeal from decisions in the diocesan courts of their suffragans.

1983 CODE c.435, introduction.

The Prerogative Court featured the official principal or a special commissary to preside over cases and had testamentary jurisdiction. See RODES, supra note 72, at 109.

93 This was known as the Court of Arches because it was held at St. Mary-le-Bow which was built on arches. See RODES, supra note 72, at 109; see also BRIDEN & HANSON, supra note 84, at 112 (noting that it was known as the Court of Arches “from the fact that it usually sat in the arched crypt of the church of St. Mary le Bow.”). At York, there was a Chancery Court, a Prerogative Court and a Court of Audience. See RODES, supra note 72, at 112. These corresponded to the Court of Arches, the Prerogative Court and the Court of Audience at Canterbury. See id. Ultimately, any matter cognizable in the courts Christian was appealable to the Pope. See id.
bypassing the suffragan."94

Before the late eleventh century, ecclesiastical jurisdiction was unlimited. The jurisdiction of the church comprised many different types of cases. These included: "(1) administration of the sacraments; (2) testaments; (3) benefices, including administration of church property, patronage of church offices, and ecclesiastical taxation in the form of tithes; (4) oaths, including pledges of faith; and (5) sins meriting ecclesiastical censures."95

Additionally, any person could bring a lawsuit in the church courts on the grounds of "default of secular justice."96 Any individual could bring any type of suit before the ecclesiastical courts, even if the opposing party objected.97 Consequently, the church’s jurisdiction was limitless.

IV. RELATIONSHIP OF CHURCH COURTS AND KING’S COURTS

The jurisdiction of the church courts was not distinguishable from that of the King’s courts.98 Criminal offenses were also matters of morals.99 Last Wills and Testaments were closely linked to the deceased’s last confession and distribution of estates affected property rights.100 Civil wrongs, such as defamation, could also be considered moral wrongs.101

An example of the times proves illustrative. During feudal times, when a member of the landed gentry built a church, the builder and his heirs had a property right of advowson;102 that is, the lord had a right of “presentment” of a cleric to a position in the church.103 This was a valuable right because wealthy families paid handsomely to have a relative appointed to such a posi-

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94 RODES, supra note 72, at 109. A suffragen was a bishop who was consecrated for certain specified purposes or for things that took orders. See id. A suffragen bishop was "commissioned to perform on [the bishop’s] behalf those functions that required episcopal orders." Id. at 104.

95 Berman, supra note 32, at 222.

96 Id. at 223.

97 See id.

98 See Knappen, supra note 3, at 37 (stating that "[i]t is an error to speak of Church and State in this period as two separate entities.").

99 See id.

100 See id.

101 See id.

102 See id; see also Briden & Hanson, supra note 84, at 30 (calling advowson a "right of patronage").

103 See Hogue, supra note 25, at 40.
When disputes arose concerning who had this right of "presentment," both the church courts and the King's courts claimed jurisdiction. The dispute was ultimately resolved in an article of the Constitution of Clarendon giving the right to name a candidate to the landowner and the right to install the new man to the bishop.

The method of resolving these and other types of jurisdictional disputes was by a writ of prohibition obtainable in the King's courts. The writ of prohibition was "primarily an instrument to prevent the ecclesiastical courts from exceeding their jurisdiction." This writ was directed to the ecclesiastical judge and prohibited him from continuing the litigation in the church court. According to the monarchy, this writ was created to remedy the abuse of the ecclesiastical courts by the populace. The church courts were preferred because they settled matters quickly and at less cost. "Many a litigant, layman as well as clerk, tried to sue in a court christian by disguising the true nature of his plea." The only relief for many defendants was a writ of prohibition and it was available to any individual who could pay the fee. If the writ was followed, it was a final judgment in the Court Christian.

Historically, there has been debate over the relationship between church courts and state courts. Reverend William

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104 See id.
105 See id.
106 See id.
108 Norma Adams, The Writ of Prohibition to Court Christian, 20 MINN. L. REV. 272, 287 n. 68 (1936) (describing the origin, characteristics of ancestry, and modern significance of the writ of prohibition). It has been suggested that the writ of prohibition is analogous to the modern-day injunction. See id.
109 See id.
110 See id.
111 See Adams, supra note 108, at 288.
112 Id.
113 See id. at 277.
114 See id. at 278. Disobedience of the writ of prohibition, however, was common throughout the thirteenth century. See id. Litigants wishing to take advantage of the Courts Christian's updated procedures and relaxed evidentiary standards frequently proceeded in contempt of the writ. See id. at 278, 288.
115 See HOLDSWORTH, supra note 46, at 630.

The ecclesiastical courts still have jurisdiction over many matters of exclusively ecclesiastical cognizance, such as questions of doctrine and ritual,
Stubbs D.D. (1825-1901), Bishop of Oxford and Professor of Modern History at Oxford, argued that both lay and ecclesiastical courts believed that the Canon Law was persuasive, but not binding. Frederick Maitland M.A. (1850-1906) opposed this position. He argued that the Decretals were regarded by the Courts Christian as binding statutory law.

Although Maitland’s view has been proven correct by later scholarship, it has been suggested that in actuality no real tensions existed between the two systems. The Decretals were a collection of cases previously decided, he explains, but there is no record that these cases were considered precedent. As a result, there was very little practical application of foreign church law in English courts; instead, local customs and practices were implemented in routine cases. It has been suggested that, apart from legislation from the twelfth century to the Reformation designed to prevent appeals to Rome when the King had an interest in laws regarding the use of writs of prohibition, there was no organized attempt to wrest jurisdiction from the Courts Christian during this time.

On the contrary, the two systems cooperated. When jurisdictional disputes arose, they were caused by the insistence on ordination, consecration, celebration of divine service, disputed applications for faculties. They formerly had jurisdiction over many questions concerning ecclesiastical property such as tithes, church dues, and dilapidations; but recent statutes have much curtailed their jurisdiction over these matters.


See Charles Donahue, Jr., Roman Canon Law in the Medieval English Church: Stubbs vs. Maitland Re-Examed After 75 Years in the Light of Some Records From the Church Courts, 72 Mich. L. Rev. 647, 680 (1974). The author explains the relationship between English Church courts and the King’s courts and the relationship between English Church courts and the Papal Court, and discusses how two different legal systems, Canon Law and common law, operated simultaneously. See id. at 655-56.

See id. at 665.

See id. at 651-655. There are indications that the Church and King’s courts functioned cooperatively. See id. at 701 (discussing the English courts’ role in filtering cases to the Church courts through grants and denials of tuition and the application of papal law, supplemented by local law and custom).

See id. at 680.

See id. at 705. In reviewing the records of the ecclesiastical courts, there is “strikingly little evidence of substantive law.” Id. at 704-05. Instead, the ecclesiastical courts frequently applied local law and custom to disputes. See id.

See id. at 665.
of the individual litigants rather than by an official act of the Church or King.\textsuperscript{122}

V. IMPACT ON THE REFORMATION

The Reformation in England began during the reign of Henry VIII and continued through the reigns of his successors Edward VI, Mary and then Elizabeth, who ruled into the seventeenth century. During the seventeenth century, there were struggles between the Puritans and the Episcopalians and, ultimately, a civil war in which the King was deposed.\textsuperscript{123} When the monarchy was restored in 1660, the church was under the authority of the monarch, the supreme governor of the English church.\textsuperscript{124} The Church was bound to follow a national prayer book and the clergy was bound to follow the Thirty-nine Articles of Religion.\textsuperscript{125} While they retained the traditional creeds and continued the traditional offices of bishop, priest and deacon, these Articles also included basic reforms.\textsuperscript{126}

Most scholars agree that the Reformation in England was more political than religious.\textsuperscript{127} Some have even suggested that England would have remained loyal to Rome had it not been for Henry VIII's desire for a male heir.\textsuperscript{128} The Reformation appears to have been motivated by a general moral decline rather than by specific events or institutional deficiencies. Consequently, it is difficult to assert that the operation of the ecclesiastical courts was a major cause of the Reformation. When people lose faith in the fairness of a system, however, reform naturally follows. Close scrutiny of this judicial system reveals various abuses that may have impacted this period.

Richard Wunderli has examined the ecclesiastical courts of London in great detail.\textsuperscript{129} The records allude to the typical con-
ditions under which the courts operated. Fifteenth and sixteenth century London were each a symbol of diversity, both uniquely urban and familiarly rural. There were many small shops where vendors noisily hawked their wares, attracting outsiders to the city. London was surrounded by a wall; however, it did not prevent residents from overflowing the city's boundaries. Yet, despite the extensive population inside the walls, there were still gardens and large courtyards. Approximately one-third of the population of London at any given time had been born and raised in the country. Recurring plagues and epidemics constantly changed the face of London. Vagabonds were a significant problem in the city. In 1520, there were as many registered beggars as there were merchants.

Unlike modern cities, all areas of London were residential. There were certain identifiable neighborhoods—a professional or occupational group or an ethnic group would be identified with a particular street—and the craftsmen, merchants, and professional people worked out of their residences.

A parish was the center of religious life and its administration was handled by the lay wardens. Other than matters affecting the parish, the wardens were also responsible for re-


See Wunderli, supra note 82, at 136.

See id. at 135-36.

See id.

See id.

See id. at 136.

See id.

See id. at 137.

See id. at 138. The total number of registered beggars was about 700 in 1518 in London. See id. Only those who were blind, or crippled, or old, could be registered; the aldermen distributed metal tokens to those beggars who were registered, which they were to wear on their cloaks. See id. at 137.

See id. at 139.

See id. An additional constraint was transportation. Thus, those who worked in the courts lived in houses close by. See id. at 140.

[A] parish was understood to be a (1) territorial section of the diocese, with a (2) proper church edifice to which a (3) Catholic population was assigned under the leadership of a (4) proper pastor who was removable or irremovable and who was responsible for the (5) care of souls. A parish was also considered to be a parochial benefice primarily for the determination and assignment of revenue to the pastor.

1983 CODE c.515, §§ 1-3 (citation omitted).

See Wunderli, supra note 82, at 141. Two wardens served two year terms in each parish; parishioners elected one new warden on a yearly basis. See id.
porting parish criminals to the ecclesiastical courts, based on re-
ports received from parishioners.\footnote{See id. at 142. The wardens would report all parish business to a bishop or archdeacon during the “visitation” of the city, which took place over four days, during which each parish - representing a city quarter - would report. See id. at 142-43.}

Under canon law, there were three methods used to charge a defendant: accusation, denunciation, and inquisition.\footnote{See id. at 149.} Accusation was rarely used because the accuser had the burden of proof, could not use counsel, and had to pay all costs if the defendant were acquitted.\footnote{See id. (asserting that “accusation” never appears in London church court records).}

Denunciation, like accusation, was a procedure adopted from Roman law that was the precursor of the modern prosecutorial system. The denouncer was a private individual who made the charge of a public crime.\footnote{See id. at 149.} Denunciation was the most popular method of reporting wrongdoers because the denouncer was not liable for costs since a public question was involved.\footnote{See id. (asserting that “accusation” never appears in London church court records).}

Inquisition was the method used when public rumor reached the authorities.\footnote{See id.} A defendant was charged and the public rumor was either confirmed or the defendant was cleared.\footnote{See id. at 150. The defendant had to use the method of compurgation to clear himself of charges of wrongdoing; only if the defendant contested the charges was proof required from the denouncer. See id; see also supra note 83 (describing method of compurgation).} This procedure was rarely used in England prior to the Reformation.\footnote{See id. at 151.}

In the Consistory Court, the loser bore the expense of litiga-
tion.\footnote{See id. at 151.} Conversely, in the Commissary Court, before the defendant was discharged, he had to pay fees whether he won or lost.\footnote{See id. at 162.} All court officials except the judge made their livings by exacting fees.\footnote{See id.} Once charged, the defendant had to appear before the judge or he was excommunicated.\footnote{See id. at 300 (explaining that “fees were the main source of income for apparitors and scribes.”).} Excommunication
ostracized him from both the religious and lay communities.

The presence of such procedures explains why many English citizens favored reform. Although the operation of the ecclesiastical court was probably not a major cause of the Reformation, the pervasive abuses in the system may have had some impact.

Abuse of the court system was evident in one particular context. In the ecclesiastical system, a charge could be based upon rumor or bad reputation. After acquittal, an innocent defendant had to pay a dismissal fee, which was the equivalent of one and a half day’s pay for a craftsman or three days’ pay for a laborer. Often, defendants won dismissals because their denouncers failed to appear in court. In other cases, defendants were dismissed on their own oaths without the obligation of producing compurgators. Finally, a docket in the London courts reveals that a significant percentage of the defendants charged with sexual crimes were priests.

In addition, a problem arose in cases where compurgation, involving the attestation by others to the trustworthiness of the defendant’s statements, was the defense. Compurgation worked well in rural areas where a man’s reputation was well known, but there is some evidence that this testimony could be purchased in London. These abuses, together with the privileged treatment received by clerks charged as defendants in the church courts, likely motivated reform.

While the structure and the jurisdiction of the courts reflect the political controversy and power struggles of the time period, these aspects of the ecclesiastical courts did not cause the complete overhaul of the system during the Reformation. Rather, widespread abuse in the court system sparked reform. This conclusion is well supported through several analogies to the modern era. Similar issues in the present day have triggered reform. Firstly, financial hardship to the parties to a lawsuit has
spawned current controversy involving legal fees.160 Since the prevailing American rule makes parties responsible for their own legal fees, parties may suffer financially even in victory. Secondly, compurgation appears similar to problems with the jury system today. Since the testimony of the compurgators could be purchased, a trial often did not produce a just result. Today, factors such as race may influence the outcome of trials.161 Lastly, in the past, influential people were known to affect court decisions. Similarly, campaign contributions to elected officials today, including judges, are perceived as influence pedaling which may adversely affect the fairness of trials.162 In the modern age, such abusive practices have inspired reform. It is reasonable, therefore, to conclude that similar issues in an earlier time had the same effect.

160 See generally Walter Olson & David Bernstein, Loser Pays: Where Next?, 55 MD. L. REV. 1161 (1996) (discussing recent developments which would impose liability for winning party's legal fees on the losing party); Claudio Riedi, To Shift or to Shaft: Attorney's Fees for Prevailing Claimants in Civil Forfeiture Suits, 47 U. MIAMI L. REV. 147 (1992) (proposing shifting of legal fees to the government if forfeiture action against innocent owner does not succeed); Carl Tobias, Common Sense and Other Legal Reforms, 48 VAND. L. REV. 699 (1995) (urging rejection or delay of reform legislation, including fee shifting legislation, due to conflicts with ongoing reform measures).

161 See generally Douglas O. Linden, Juror Empathy and Race, 63 TENN. L. REV. 887 (1996) (discussing the effect of race and racial empathy on the outcome of criminal trials); Frank M. McClellan, The Dark Side of Tort Reform: Searching for Racial Justice, 48 RUTGERS L. REV. 761 (1996) (arguing for the need to include race discrimination as a crucial consideration in tort reform).

162 See, e.g., Breakstone v. MacKenzie, 565 So.2d 1332 (Sup. Ct. Fla. 1990) vacated in part, substituted opinion, 571 So.2d 32 (Fla. Ct. App. 1990) (finding recusal of judge was warranted due to perceived deferential treatment of plaintiff whose attorney contributed to campaign fund of judge's spouse). The court noted that state's public disclosure and contribution limits provided adequate safeguards to litigants, but found recusal warranted under the particular circumstances of case. Id. at 1336-40. See also Daniel Hays Lowenstein, On Campaign Finance Reform: The Root of all Evil is Deeply Rooted, 18 HOFSTRA L. REV. 301 (1989) (comparing campaign contributions to bribes); Mark Andrew Grannis, Safeguarding the Litigant's Constitutional Right to a Fair and Impartial Forum: A Due Process Approach to Impropieties Arising from Judicial Campaign Contributions from Lawyers, 86 MICH. L. REV. 382 (1987) (discussing the impact of attorneys' political contributions on the impartiality of elected judges).