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Analysis of "The Constitutions of Clarendon" (1164)

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Público: Filología Inglesa. **Materia:** Literatura inglesa. **Idioma:** Inglés.

Title: Analysis of "The Constitutions of Clarendon" (1164).
Abstract
"The Constitutions of Clarendon" are a set of 16 articles issued by King Henry II in 1164 in his attempt to define the relationship between church and state in England. As the main goal was to restrict ecclesiastical privileges, their publication raised a famous quarrel between the King and the archbishop of Canterbury, Thomas Becket. Henry II is regarded as the originator of the common law in England thanks to the legal reforms he wanted to enforce.
Keywords: Henry II, Becket, Clarendon, canon law, ecclesiastical law

Título: Analisis de "Las Constituciones de Clarendon" (1164).
Resumen
"Las constituciones de Clarendon" son un conjunto de dieciséis órdenes promulgadas por el rey Enrique II en 1164 con la intención de redefinir las relaciones entre iglesia y estado en Inglaterra. Dado que su principal objetivo era restringir los privilegios eclesiásticos, su publicación provocó una famosa disputa entre el Rey y el arzobispo de Canterbury, Thomas Becket. Se considera que el derecho consuetudinario (o common law) surgió en Inglaterra gracias a las reformas que quiso imponer Enrique II.
Palabras clave: Enrique II, Becket, Clarendon, derecho canónico, derecho eclesiástico.

Recibido 2017-05-13; Aceptado 2017-05-19; Publicado 2017-06-25; Código PD: 084026

INTRODUCTION

"The Constitutions of Clarendon" is a juridical text written in 1164 and presented as an attempt of Henry II to solve the conflicts of interest that arose between secular and canon law jurisdictions, while in fact it was part of Henry II's larger expansion of royal jurisdiction into the Church and civil law.

ANALYSIS

In the previous anarchy of Stephen's reign, the Church had extended its jurisdiction and was able to act as plaintiff and judge in civil disputes and intimidate litigants by exercising criminal jurisdiction. Henry II wanted to reassert extensive royal authority over the Church, as it was during the reign of his grandfather (Henry I).

Most of the 16 articles of the Constitutions are about Church authority and the competence of ecclesiastical courts in different matters. Others try to define the extent of papal authority in England (following the earlier customs).

It is important to note some specific articles that were contrary to canon law, mainly the one related to the secular punishment of clerics convicted of crime in ecclesiastical courts, and that forbade appeals to Rome without royal consent (meaning, for example, that the king could not be excommunicated without his own consent). Moreover, archbishops, bishops and priests were not allowed to travel abroad without the permission of the king, vacancies were filled at king's discretion and the clerics elected had to perform homage and fealty to the king. That is why this text generated so much controversy at the time.

Henry wanted the bishops to promise to obey these customs, but Pope Alexander III condemned the text because, as it has just been said, some of the constitutions seemed to threaten the liberty of the Church.

In England, the main opponent to the text was Thomas Becket –archbishop of Canterbury-, who repudiated his agreement after the pope had condemned the text, and even though all the prelates had eventually assented to the Constitutions at Clarendon. The quarrel between the king and Becket – who even publicly declared that King Henry was usurping power- ended up in the archbishop murder in 1170. Only then Henry felt compelled to revoke those two clauses, but all the rest of the Constitutions remained in effect and became part of the common law of England.

CONCLUSION

The Constitutions of Clarendon were an extreme challenge to the autonomy and authority of the Church in England, as they reduced the Church into **an institution subject to the crown**.

The murder of Thomas Becket served to eliminate the two most controversial articles, but still the Constitutions represented a triumph of the secular over the sacred and it is said that it was then when the modern relationship between Church and state started to develop. The murder also played a capital role in the issuing of the Magna Carta by King John in 1215. This last text tried to correct the "abuses" of Clarendon and establish the inviolable freedom of the Church from the crown. If Clarendon protected the state from the Church, the Magna Carta protected the Church from the intrusions of the state.

Henry II has been traditionally considered as the **originator of the common law** in England. Even though he did not manage to subjugate the Church to his courts, his judicial reforms did last. He established a centralized judicial system in England that all free man could benefit from.

It is interesting to note that some of the points Henry II dealt with in his Constitutions of Clarendon are still in effect worldwide: we can take the debate about the separation of Church and the state, or the place where offences committed by the clergy should be judged, as good examples.

In the first case, we are still fighting to get a real separation between these two powers, even in states which think of themselves as secular states (e.g. Spain).

Regarding the second example, a piece of news recently announced that the Vatican was considering letting the ordinary justice judge those priests found guilty of pederasty. This way, they would be "double-judged": first, by the ecclesiastical court (which would excommunicate and defrock them) and second, by the ordinary one (which would punish them according to each countries' penal code).

This was one of the articles of the Constitutions Thomas Becket fought against, claiming that no man should be placed in double jeopardy. Will the Vatican "betray" one of his most well-known saints in order to be coherent with its foundation principles? Or will there be voices against the measures announced that will eventually avoid the Church being subject to secular courts?

Bibliografía

- Berman, H. J. (1983). Law and Revolution, the Formation of the Western Legal Tradition. Cambridge: Harvard University Press.
- De la Concha, A. & Cerezo, M. (2010). *Ejes de la literatura inglesa medieval y renacentista.* Madrid: Editorial Universitaria Ramón Areces.
- Mitland, F. W. (1898). Roman Canon Law in the Church of England. Six Essays. London: Methuen & Co.