

How Did Henry Bracton's Writing Reflect the Status of Kingship and barons' Power in Medieval England?

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ABSTRACT. Status and change of kingship and barons' power in medieval England have a significant effect in the development of western society, politics, and justice. Thus, opinions and records from jurists in medieval England partially reflected the change in nature of justice and society, which led absolute monarchy to become constitutional monarchy. On the basis of previous studies, this paper specifically focus on writings of Henry de Bracton, an English jurist, aiming to provide further distinctive opinions by analyzing his writings. The content of this paper is divided into three parts altogether: The first part is chapter one, introducing Henry de Bracton, his works, and their value for understanding nature of justice and society status in medieval England. The second part is from chapter two to chapter five, analyzing status of kingship and barons' power reflected in *De Legibus et Consuetudinibus Angliae*, Magna Carta, and Bracton's notebook, detailly interpreting the legal articles and practical law cases in medieval England. The third part is chapter six, concluding the whole paper and summing up main arguments.

KEYWORDS: Medieval england, Henry de bracton, Kingship, Barons'power

1. Introduction

Henry de Bracton (c.1210-1268) was an English jurist. As the Magna Carta was signed in 1215, it can be deduced that he lived in the period that barons began to have conflicts with the kingship in England, and it was also the time period that the Angevin Empire appeared to be declining. From 1245 to 1267, he had been in the judicial system of England for 18 years. During his worktime, he recorded nearly 2000 cases handled by him. These documents were discovered in 1884 and reorganized by William Frederick Maitland in 1887, called *Bracton's notebook*. Cases in the book present the facts of justice in medieval England and opinions of English jurists on the cases, which greatly affected the formation of written laws in England later. According to *Encyclopedia of World Biography*, Henry de Bracton received a doctor degree in civil and cannon law in Oxford. Besides working as a judge, Henry de Bracton also devoted his lifetime to systemize and reorganize English common law, which was the law developed from traditional English culture and customs, presenting the nature of justice in England. One of his writings, which played an important role in the fact of justice and society in medieval England, is *De Legibus et Consuetudinibus Angliae*. Although Bracton failed to finish this writing because of the second Baron's war, content and the writing process of the writing itself do show the nature of justice, status of kingship and barons' power in England very well.

2. Kingship in de Legibus et Consuetudinibus Angliae

Firstly, the position of kingship was emphasized frequently as indispensable and venerable in *De Legibus et Consuetudinibus Angliae*. In Henry Bracton's view, kingship basically included the military power, which means that the king had the right to use his army. However, he pointed out that the king's arm should be controlled by law. "If arms fail against hostile and unsubdued enemies, then will the realm be without defense; if laws fail, justice will be extirpated; nor will there be any man to render just judgment." It shows that the kingship in England became limited at that period. The kingship was clearly illustrated to be ruled by justice, which was something hadn't taken place before. By connecting to what happened years before in the reign of king Richard I of England, that large number of soldiers were sent to fight in the Crusades and died, it is easier to understand the reason that English jurists during Bracton's time period began to support controlling the king's military power. According to Bracton's writing, "Though in almost all lands use is made of the leges and the jus scriptum, England alone uses unwritten law and custom. There law derives from nothing written from what usage has approved." As laws in England were unwritten and mainly based on local customs, it was hard to use laws and judge cases in a clear way. Thus, the king, as the one who owned the most power in England, was able to do whatever he wanted to if his authority was strong enough. "in truth these English laws and customs, by the

authority of kings, sometimes command, sometimes forbid, sometimes castigate and punish offenders.” Considering kingship of England before the first Baron’s war, kings were actually abusing their power without control of law mainly for the following two reasons: (1) Unlike Italy or some other European countries, the customs that formed English laws were similar. Usually they were not that different from each other. Thus, a group of fixed laws could be used and accepted by most citizens in England, and there would not be huge arguments on the laws that would force the authority to establish the written law. The result was that, as mentioned above, it was hard to judge if the king was using his power illegally. (2) To enable the king to exercise his power without limit, it required the strong kingship and weak power of other stratum, including the commons, the farmers, and the barons. *“Since they have been approved by the consent of those who use them and confirmed by the oath of kings, they cannot be changed without the common consent of all those by whose counsel and consent they were promulgated.”* The common consent in Bracton’s writing actually meant agreement to the kingship from other stratum. To get the common consent in order to exercise his power, the king had to own enough power that could force all the other stratum to agree. Otherwise, the king had to do what had already been widely accepted by the public, which actually meant the common laws. *“The king must not be under man but under God and under the law, because law makes the king, let him therefore bestow upon the law what the law bestows upon him, namely, rule and power. For there is no rex where will rules rather than lex.”* In this paragraph, Bracton made his point clear that kingship was under control of law instead of completely held by the king. It shows that the English kingship was limited by the common consent of barons after signing the Magna Carta, and this was proved again and again in *De Legibus et Consuetudinibus Angliae*.

3. Kingship and barons’ Power in Magna Carta

In 1215, John the king of England signed Magna Carta, being forced by barons’ rebellion. The rebellion weakened the authority of the king to a certain extent that the king had to follow the rules and customs that were widely accepted, which was the English common law, instead of explaining the law as he wanted to legalize his actions. As the rebellion was caused by king John’s unreasonable taxation demands and his behavior of seizing barons’ land, most content of Magna Carta benefited those rebelled barons by protecting their properties. It was constituted mostly basing on English customs related to property, such as how should the heir receive inheritance from elders. *“If any earl, baron, or other person that holds lands directly of the Crown, for military service, shall die, and at his death his heir shall be of full age and owe a ‘relief’, the heir shall have his inheritance on payment of the ancient scale of ‘relief’. That is to say, the heir or heirs of an earl shall pay £100 for the entire earl’s barony, the heir or heirs of a knight 100s.”* It can be observed that the king could no longer take away baron’s properties according to his will as the amount of properties that could be taken was clarified, and the profit that the king could get from a baron’s death was largely reduced by the rule, while barons could get a lot of profit according to the rule. To inherit the possession from a dead baron, all they needed to pay was a small sum of tax. Being restricted by this rule, the lands and wealth could not be taken away by the king after the baron’s death once there was someone to inherit the wealth. The amount of the tax was also limited; thus, the king could not make it too heavy for heirs of the baron to make profit. It should be considered that, as it was drafted by the barons who won the rebellion, rules in Magna Carta strongly limit power of the king. These rules in Magna Carta kept the king from taking properties of barons immoderately, which limited kingship in England. It became a successful example for capitalists in later centuries to simulate, protecting their properties by law.

4. Barons’ Power in de Legibus et Consuetudinibus Angliae

In *De Legibus et Consuetudinibus Angliae*, Henry de Bracton treated barons quite equally comparing to any other stratum except the king. As same as other stratum, their power was both protected and limited in Bracton’s writing. *“Nor is what is said of statuliberi an objection, for though a bondsman is in possession of his freedom he is in truth bond, though against his lord claiming him as his villein he sometimes can defend himself and his goods by an exception based upon his privilege.”* In this paragraph, Bracton illustrated his point that every man was bond, including barons. However, another point from this paragraph is that barons could keep themselves and their properties safe from being oppressed by the king. It does not mean that Bracton supported barons to go against kingship, while it does show that English jurists during that period realized that people had the ability and right to protect themselves and their possession against a higher stratum and recorded it as a part of their law. Relating it with Magna Carta, it can be observed that barons’ power was clearly rising during this period while kingship was declining. Also, as the number of barons and other stratum that were kind of wealthy rose, laws on how wealth should be classified and treated got more integral and more complicated as well. *“Since all were enfeoffed together and hold in common, the children do not succeed one the other, and if one of them dies without heirs his portion will accrue by the jus accrescendi to the survivors and their heirs, from*

several such to one, and will not revert to the donor as long as one survivor." This paragraph clearly clarified how possessions should be inherited. Relating it with the rules in Magna Carta, it can be concluded that these rules worked together well to protect barons and their possessions. They were commonly agreed; thus, being easy to apply in reality. The law became not only the bonds on barons but also barons' arms to defend themselves.

5. How Did Cases in Bracton's Notebook Shows the Kingship and barons' Power

Bracton's Notebook recorded many cases that were handled by Henry de Bracton from Pateshall and Raleigh. These cases partially reflect the nature of justice in England, including what the cases mainly concerned on and the way judges dealt these cases. Although these cases were usually between normal free men, tenants, and barons, we can still find some details related to kingship, showing how kingship affected judiciary at that period. "*Hugli de Slogcs (sic Logos) sued Hugh de Heideberghe for 16 virgates of land in Herdeberghe, and gives this pedigree.*" It seems to be a normal cases concern on land, which was quite common in that period of time. The plaintiff provided a pedigree, showing his ancestor was William temp. Hen. I. However, besides the basic description of the case, the author also noted that the ancestor William temp of the plaintiff was hanged by King Henry II of England It shows that jurists and judges at that period of time did pay attention to kingship when handling or recording cases. However, these attentions were more likely to be a kind of respect to kingship because of their need of a king, as Bracton wrote in *De Legibus et Consuetudinibus Angliae*, as these attention to kingship didn't really affect the results of trials. There were cases directly related to the king as well. "*William Lungespeye sued the King for the custody of the Castle of Salisbury and for the Earldom of Wilts, which descended to him by hereditary right from Earl Patrick and gives this pedigree.*" This case is likely to concern on inheritance. The king was sued because of taking away possession that the plaintiff should get as heir of earl Patrick. It proves that English king in that period did take properties from barons and had conflicts with them. However, comparing to the first barons' war, barons were able to use laws to defend themselves instead of fighting as the only way.

6. Conclusion

After analyzing kingship and barons' power respectively in *Bracton's notebook* and *De Legibus et Consuetudinibus Angliae*, it can be observed that judiciary during Bracton's period had been strongly influenced by *Magna Carta*. Kingship was still important and being respected, while the rising of barons' power prompted kingship to be under the control of laws. Barons' power, however, grew stronger but stay bonded by kingship. There was still need of a king in England in that period of time, and kingship, as the custom in England, had also became a part of English law, being unable to be separated from the judiciary system.

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