REGNUM AND SACERDOTIUM, 1066–1189 AND BEYOND

Kings	Archbishops of Canterbury	Popes
		1049 — Leo IX
		1054 — d. Leo IX
1066 — William I	1070 — Lanfranc	1073 — Gregory VII
1087 — William II	1089 — d. Lanfranc	1085 — d. Gregory VII
1100 — Henry I	1093 — Anselm	1088 — Urban II
	1109 — d. Anselm	1099 — Paschal II
		1118 — d. Paschal II
	(1122 — Concordat of Worms)	
1135 — Stephen	1138 — Theobald	1130 — Innocent II
		1143 — d. Innocent II
1154 — Henry II		1154 — Adrian IV
	1161 — Becket	1159 — Alexander III
	1170 — d. Becket	1181 — d. Alexander III
1189 — Richard	1193 — Hubert Walter	
1199 — John	1205 — Stephen Langton	1198 — Innocent III
	(1213 — Langton secures post)	
1216 — d. John	1228 — d. Langton	1216 — d. Innocent III

1. The Traditional View
   a. William I, co-operation between Lanfranc and the king
   b. Henry I, attempts by the papacy to exercise influence thwarted by a strong king
   c. Stephen, papal influence fills a power vaccuum
   d. Henry II, attempts to restore the situation to what it was in the time of his grandfather, but was betrayed by Thomas Becket
2. The Problems with this View
   a. The facts are accurate to the extent that we can separate fact from attitude in the traditional account.
   b. It misses the point in much the same way that Henry II missed the point when he attempted to restore the *status quo* in the time of his grandfather
   c. The issues of the 12th century are not those of the 16th.
   d. We should not speak of church and state in his period but of *regnum* and *sacerdotium* or temporal and spiritual.
3. The Reform Movement of the Eleventh Century

a. Integration of *regnum* and *sacerdotium* under a sacral king—the abuses to which this leads

b. Monastic reform—Cluny, Henry II of Germany (1002–24)

c. Clerical reform—Leo IX (1049–54), Gregory VII (1073–85): general moral reform, simony, lay investiture, lay ownership of churches, clerical celibacy, primacy of the papacy

d. The controversy over lay investiture

4. The Conqueror and Lanfranc (1070–1089)

a. Council of London (1075)

b. Letter to Gregory VII (1073 X 1085, probably earlier in that span)

"To Gregory, the most noble shepherd of the Holy Church, William, by the grace of God renowned king of the English, and duke of the Normans, greeting with amity."

c. The document entitled 'William and the Royal Supremacy' derived from Eadmer's History (Mats. p. III–50) may not be genuine.

d. Division of the courts (1066 X 1087, probably later in that span)

"If any one refuses to come to justice before the bishop ... let him be excommunicated; and should there be need to enforce this ban, let the power and justice of the king or of the sheriff be invoked."

5. The investiture controvery in England—Anselm (1097–1107)

a. It was remarkably short. Contrast the Continent (1075–1122).

b. Appeals to the papacy were as common in Henry I's reign as they were in any other place in Europe.

c. The difference between Lanfranc and Anselm is a difference of generations.

6. The events of Stephen's reign—Gratian (c. 1140), revival of the study of Roman law, Archbishop Theobald (1138–1161), Vacarius (?1120–?1200), John of Salisbury (c.1120–1180), the Cistercians. E.g., Gratian's *Concordance of Discordant Canons*:

"Mankind is ruled by two things, to wit, natural law and customs. Natural law is what is contained in the law and the Gospel in which everyone is ordered to do to another what he wishes to happen to himself and is prohibited from inflicting on another what he does not wish to happen to himself—whence Christ in the Gospel: "Everything that you wish that men do to you, you also do to them, for this is the law and the prophets." [Matthew 7:12]

"Hence Isidore [of Seville, before 640] says in the fifth book of *Etymologies*:

"'All laws are either divine or human, divine laws correspond to nature, human laws to custom'."

7. Henry II

a. The Constitutions of Clarendon (1164)

[c.9] "If a claim is raised by a clergyman against a layman, or by a layman against a clergyman, with regard to any tenement which the clergyman wishes to treat as free alms, but which the layman [wishes to treat] as lay fee, let it, by the consideration of the king's chief justice and in the presence of the said justice, be settled through the recognition of twelve lawful men whether the tenement belongs to free alms or to lay fee. And if it is recognized as belonging to free

alms, the plea shall be [held] in the ecclesiastical court; but if [it is recognized as belonging] to lay fee, unless both call upon the same bishop or [other] baron, the plea shall be [held] in the king's court. But if, with regard to that fee, both call upon the same bishop or [other] baron, the plea shall be [held] in his court; [yet] so that, on account of the recognition which has been made, he who first was seised [of the land] shall not lose his seisin until proof [of the title] has been made in the plea."

[c.1] "If controversy arises between laymen, between laymen and clergymen, with regard to advowson and presentation to churches, it shall be treated or concluded in the court of the lord king."

[c.3] "Clergymen charged and accused of anything shall, on being summoned by a justice of the king, come into his court, to be responsible there for whatever it may seem to the king's court they should there be responsible for; and [to be responsible] in the ecclesiastical court [for what] it may seem they should there be responsible for—so that the king's justice shall send into the court of Holy Church to see on what ground matters are there to be treated. And if the clergyman is convicted, or [if he] confesses, the Church should no longer protect him."

[c.8] "With regard to appeals, should they arise—they should proceed from the archdeacon to the bishop, and from the bishop to the archbishop. And if the archbishop fails to provide justice, recourse should finally be had to the lord king, in order that by his precept the controversy may be brought to an end in the court of the archbishop; so that it should not proceed further without the assent of the lord king."

[c.15] "Pleas of debt, owed under pledge of faith or without pledge of faith, belong to the king's justice."

b. The Becket controversy

http://www.law.harvard.edu/faculty/cdonahue/courses/ELH/slides/Monreale_BecketMosaic.jpg (between 1174 and 1181)

http://www.law.harvard.edu/faculty/cdonahue/courses/ELH/slides/Martyrdom_of_Thomas_Becket_-_Psalter_(c.1220),_f.32_-_BL_Harley_MS_5102.jpg

http://www.law.harvard.edu/faculty/cdonahue/courses/ELH/slides/Becket_Confrontation_s14.jpg (statute book, c. 1312)

c. The compromise of Avranches of 1172—the constitutions of Clarendon are under a cloud; appeals to the pope are allowed; criminous clerks will be punished by the church and not by secular authority, but how the procedure is to work is not settled; nothing is said about advowsons and debts, and much else remains unsettled.

8. After some time, perhaps too long a time, the following settlements were reached:

a. The assize *utrum*, which began, as we have seen, as a preliminary inquiry into whether land was held in lay fee or by free alms, became by a process that is still imperfectly undersood, what was called the "parson's writ of right." If the clergyman won the case that was the end of it.

b. Advowsons remained within the jurisdiction of the secular courts, but possessory actions concerning churches were tried in the ecclesiastical courts.

c. Criminous clerks were tried in the secular courts, but they could then claim their clergy and were turned over the bishop for punishment. The bishop sometimes retried them and set them free. Sometimes he imprisoned them.

d. Appeals to the papacy from the ecclesiastical courts were common and largely unimpeded until a new set of statutes were passed about the practice in the fourteenth century.

e. Lay debts, except those that dealt with marriage or with testaments, were officially matters for the king's courts. The ecclesiastical courts, in fact, heard a large number of such cases in the fourteenth and fifteenth centuries.

9. An attempt to summarize at the macro level
   a. An attempt at a "constitutional" document before the time was ripe?
   b. The reason that the west developed the notion of the rule of law?
10. An attempt to summarize at the micro level
   a. Introduction of bifurcated proceedings (possessory vs. proprietary)?
   b. Jurisdictional division on the basis of substance rather than persons.