

Henry de Bracton

Carved on the grand portico of the Harvard University Law School Library, in letters as tall as a man, is “NON SUB HOMINE SED SUB DEO ET LEGE”. It is a simple but profound statement: “not under Man but under God and the Law” and Henry de Bracton, the greatest of our Prebendaries wrote it.



Harvard University Law School Library

Before going there, though, let us look at the state of Wells when Henry de Bracton arrived in Wells the 1240s.

From 1090, Wells had suffered a century of decline. It lost its Bishop to Bath. Later, a greedy Bishop Savaric FitzGelderwin forcibly annexed Glastonbury Abbey to the Diocese, now called Bath and Glastonbury. Dastardly deeds filled the years - fixed elections, nepotism and murder.

Things were at rock bottom when Savaric, away as usual, this time in Rome, died in 1205. The Canons of Wells seized the day, agreed rules of election with the monks of Bath and, together, they elected Jocelin of Wells.

Jocelin ended the Glastonbury tie. Regaining independence cost the Abbey dear – the price was four manors - and the Abbey monks felt sore. Then in 1219, through a Papal Bull, Honorarius III created the Diocese of Bath and Wells we know today.

Jocelin started rebuilding the Cathedral and bequeathed his body for burial there. Wells was again at the heart of the Diocese when Jocelin died there in 1242.

In the monasteries of Bath and Glastonbury, though, Wells had enemies. The monks of Bath had buried the Bishops there for 150 years and felt humiliated.

The Canons of Wells thought the process for the election of the next bishop was clear from the 1205 agreement and Jocelin's will.

The Bath Chapter had other ideas. Without a word to Wells, they elected one of their own. Even as the Canons were laying Jocelin in his grave, the Bath monks had sent a deputation to the King in Bordeaux.

War breaks out between Bath and Wells. Wells sends its own deputation and obtains a licence from the King to elect a bishop (on condition it is not someone who upsets Bath).

They duly summon the Bath Chapter to a conference on neutral ground. Whitchurch Prebendal House is a good likely location. The Wells party was huge: proctors, archdeacons, treasurer, clerks, valets and servants galore, a herald and two huntsmen (they had to eat). Whitchurch must have been some place.

The monks of Bath, of course, failed to show. Each side then sued the other in the courts in Rome. In the end, Wells won but only after lavishing more than £1,200 (over £1 million today) on the lawsuits, favours and travel.

Into all this, in the 1240s, Wells appointed Henry de Bracton as a Canon.

If Thomas and Stephen de Tornaco, early Prebendaries of Whitchurch, had been rogues and villains, this successor was quite a different kettle of fish.

Bracton's claim to fame is his association with the long treatise "On the Laws and Customs of England". The legal historian F.W. Maitland described it as "the crown and flower of English jurisprudence."

The work sets out to describe rationally the whole of English law, a task not attempted again for another 500 years. It is remarkable for its wealth of detail and for its attempts to make sense out of English law by setting it in the context of the Roman and religious law taught in the universities.



Manuscript of *De legibus et consuetudinibus Angliae*, circa 1300

From the time of his death, scholars acknowledged Bracton as the author. Now, however, opinion is that it was the work of a number of people before it was edited and updated in the 1230s and 1250s. When he died, Bracton was certainly the owner of the manuscript.

Why did such a work come about? During the reign of King John, trouble had been brewing. The King, barons and Church all vied for power. In 1215, King John signed the *Magna Carta*

Libertatum. It was an attempt by the Archbishop of Canterbury to bring about peace. No one kept to it, of course. Pope Innocent III annulled it. War broke out again in the First Barons' War.

John died in 1216. Henry III, Bracton's exact contemporary, succeeded to the throne. Now and again, he brought out *Magna Carta* to try to restore order. It was in vain and the Second Barons' War broke out in the 1260s.

With all this going on, what better contribution could a judge and churchman make than set out what the law of England should be? Bracton was in Binegar from 1247-57, the years he edited the book.

So what else of Henry de Bracton in Binegar? The earliest evidence that he was a Canon of Wells holding the Prebend of Whitchurch is a deed dated to around 1248. In this, the Earl of Salisbury grants Bracton the right to enclose a rabbit warren to the north of his mill at Whitchurch. The deed was made in the Royal Court *Coram Rege* – literally "before the king". Bracton was important.

Bracton held the Canonry until he died in 1268. It explains why he was an assize justice in Somerset. In his day, assize justices were judges of the Royal Courts. They held assizes for their county in or near their manor or benefice when their Royal Court duties permitted.

From 1248 to 1257, Bracton held 131 assizes in Somerset – one a month. We often find him sitting near Wells or Whitchurch and the record shows he heard pleas in court in Binegar. He was clearly a regular visitor to Whitchurch Prebendal House from the court of King Henry III.

In 1250, Dame Agatha de Meysey endowed two chantry priests at Wells. The endowment funded them to say daily Mass for the benefit of the Dame's soul. Bracton heads the witnesses to the deed.

Bracton was a lawyer and so not afraid to use the law to protect his interests. In 1254, he starts legal action against John de Hereford to recover his land in Wells. He arranges for a fellow *Coram Rege* judge to hear the case. Again, in 1258, he takes action against Bartholomew of Emborrow – a leading knight – to recover lands he reckoned he owned in Emborough and Whitchurch.

In the 1250s, Bracton developed an interest in Witham Charterhouse, the first Carthusian monastery in England. Though his friend Henry of Bath was asked, it was Bracton, sitting at Ashwick, who held the inquest into the metes and bounds of the monastery's lands.

Bracton's clear statement that all men were equal under the law and under God is a foundation stone of law and democracy. It is for this reason that one of the finest universities in America celebrates him. The founding fathers of the American Revolution knew his work and it influenced the Constitution of the United States.

Google *Bracton*. You will be amazed at what you find. What is wonderful is that such a great man lived and worked where we live. He possibly wrote his famous quote in our parish!

Oh, and, by the way, I had not heard of him either.