

CHAPTER I

THE ORIGINS OF THE
JUSTICIARSHIP

The justiciar was the king's *alter ego* whose office met the need for an extension of the king's person and power, a need which came from two cardinal facts of English mediaeval history. The first was that the king personally ruled: he was himself the mainspring of government and his household or court the centre of power. The second was that the king was regularly and frequently abroad because England was part of a continental empire whose other dominions required the royal presence for their government in the same way that England did. Royal power had to be delegated at the highest level if government was to operate smoothly and not in fits and starts. Still, these two facts alone do not explain the justiciarship; they are necessary and not sufficient conditions. If the office be defined as a vicerealty when the king was abroad, and a superintendence of the machinery of government whether he was abroad or not, then its creation was dependent on three other conditions: the evolution of a regular system of regency, the development of royal administration to the point at which a permanent superintendent was a great convenience or even a necessity, and the fusion of these two positions in a single office.

Such a definition, which is based on Angevin practice, can be used to answer the question: how and when did the justiciarship evolve? The emphasis placed on these different conditions has led historians to offer different answers. If regency be stressed as the essential characteristic, then the Norman Conquest, which linked England to a continental dominion, has an obvious significance as the occasion upon which the need for a regency was introduced; if administrative development be stressed, then the reign of Henry I, that formative but tantalizing period in administrative history, and even more the reign of Henry II, which decisively shaped the pattern of mediaeval government, assume an obvious

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importance. This definition, therefore, has its dangers, especially those of retrospective judgement, but it is a useful one for purposes of analysis if its drawbacks are borne in mind. It is not difficult to conceive a viceregal position divorced from a chief administrative one (as was William Marshal's from 1216 to 1219), nor is it difficult to conceive not one but a group of great ministers responsible to the king or his regent (as under Henry III from 1234 to 1258 and under Edward I). The needs which led, as it seems naturally, to the justiciarship admitted more than one solution, and they were not constant but varied at particular times. Sufficient conditions have sometimes been sought in outside influences, in the models provided for English practice by the Norman and Angevin offices of seneschal, or the work of the Norman curial bishops: foreign influences which were not the result of natural English growth but of transplanting. Then, too, within England, the needs which the justiciarship satisfied, or, more precisely, the degree to which those needs were actually felt at any particular time, depended upon the political, social, and economic situation, upon the extent of royal power within that situation and the instruments available for its expression, upon the personalities of the king, his family, his great barons and his ministers. All of these factors affected the creation of the justiciarship and they are not comprehended in a smooth, natural process of development, whether of regency or of administration; and some of them, although they were undoubtedly important, cannot be accurately measured. Nevertheless, they must all be considered in tracing the development of the king's *alter ego*.

I. THE REIGN OF WILLIAM I

The Norman Conquest introduced the necessity for delegating royal power, but the precise details are obscure for lack of evidence; nor is the evidence that survives altogether reliable. The names of a number of great barons are mentioned by chroniclers as royal deputies: Archbishop Lanfranc of Canterbury, a close friend of the king, Bishop Odo of Bayeux, William's half-brother, and Bishop Geoffrey of Coutances among the ecclesiastical

ITS ORIGINS

3

magnates, and Count Robert of Mortain, another half-brother, Earl William fitz Osbern of Hereford, the seneschal who was also a close friend, Count Robert of Eu, Richard fitz Gilbert, Hugh de Montfort, and William de Warenne among the lay barons. Not all of this group were employed by the king in the same ways or with the same frequency, but they represent a group which was distinguished from the hundred and seventy tenants-in-chief whom William established upon the land of England, and which was called by name when the king, for example, ordered the sheriffs to be summoned to listen to royal instructions; Lanfranc, Geoffrey, Robert of Eu, Hugh de Montfort, and all the nobles of England were entrusted with this task.¹ Before, however, we examine this royal delegation in more detail, one misunderstanding must be cleared away. The belief that Queen Matilda and William the king's eldest son acted as royal deputies is based on misinterpreted evidence, supported by the fact that Matilda certainly acted as regent in Normandy, assisted by the advice and counsel of one or two great barons.² A member of the king's immediate family with the advice of great feudatories seems a natural solution to the problem of regency, but there is no evidence that the Norman precedent was followed in England, and the evidence of the deputies who were employed suggests very strongly that it was not. William's representatives in England came from a small circle of great magnates.

None of them was called *justitarius* by any contemporary or near contemporary writer, and the descriptions they bear suggest a search for a descriptive phrase rather than a title of precise application. There was, indeed, little need for the king to attempt any permanent solution to the problem of regency because there was little idea that the Anglo-Norman dominion was permanent; on the Conqueror's death the lands were to be divided among his sons. Nor were William's absences so long or so regular as to

¹ *Regesta*, I, no. 50.

² In the *Handbook of British Chronology*, p. 34, Matilda and William the king's son are listed as regents. The mistake comes from H. W. C. Davis and M. M. Bigelow, both of whom assumed that writs of Henry I's queen, Matilda, and his son William belonged to the wife and son of the Conqueror; see below, pp. 14-15.

4 THE JUSTICIARSHIP IN ENGLAND

point to the need for a permanent arrangement.¹ His sole absence of length was from 1077 to 1080, and only with reference to that absence has the suggestion plausibly been made that a regular vice-royalty developed which was exercised by Bishop Odo of Bayeux.²

Among the royal representatives, Odo stands out by reason of his kinship with the king, his great landed position as earl of Kent, and his ecclesiastical dignity. In the first provision William made for the care of England, Odo was one of the two men described as the king's 'vicars'.³ The other was Earl William fitz Osbern who, with the bishop, was left in 1067 to maintain the Norman position in a still largely unconquered land; the steward was left holding the frontier facing the unconquered north, the bishop in charge of communications with Normandy through Dover and Kent. Earl William had the senior position, but the evidence that has been used to show him acting as justiciar has been misinterpreted.⁴ There is no suggestion that he issued writs in the king's name, and all the evidence points to an essentially military command. He was an old and trusted friend of the king who had been given the earldom of Hereford, and this, together with his office of steward, accounts for his pre-eminence. It was only after the earl's death that Odo was described as *totius Angliae vicedominus sub rege*, and that by a twelfth-century writer.⁵ More nearly contemporary descriptions, however, justify the phrase, for the Anglo-Saxon chronicler portrayed him as 'the mightiest man in this land' when the king was abroad, and a Norman writer as 'a second king'.⁶ This tradition of Bishop Odo's pre-eminence is certainly genuine and, combined with the evidence for his place in the great Norman land pleas, it provides the basis for the view that from 1077 to 1080 he exercised a regular and formal viceroyalty.

The impression made by Odo on his contemporaries or near contemporaries should not be allowed to colour interpretation of his viceregal activity, especially when the latter is of doubtful

¹ *Handbook of British Chronology*, p. 34.

² F. M. Stenton, *Anglo-Saxon England*, pp. 601-2.

³ Orderic, II, 168.

⁴ See West, 'An Early Justiciar's Writ', *Speculum*, xxxiv, 631-5.

⁵ Malmesbury, *De Gestis Regum*, p. 334.

⁶ *Chronicle*, 1087; Orderic, II, 222.

ITS ORIGINS

5

significance. The bishop sat in judgement in the king's place in some of the confused Evesham litigation, perhaps in 1077, and he was then occupying a viceregal position because the complaint of Abbot Walter's men that their lord had refused to receive homage was made to Odo, *qui tunc temporis sub rege quasi quidam tyrannus praefuit huic patriae*, who then convened a meeting of five shires at 'Gildeneberge' in which he compelled Abbot Walter to give him some of the towns concerned.¹ Both Odo and the king confirmed the judgement, the former to the local sheriffs, the latter to all the barons of England. This story must be treated with some reserve. It may be accepted that it enshrines a tradition of Odo's viceroyalty, but the narrative in the Evesham chronicle is certainly garbled, as an anachronistic reference to Domesday Book shows, and the two documents may be questioned on the ground that the lands they refer to were certainly in the possession of the abbey of Evesham before the Conquest so that the narrative's assertion that Abbot Walter's predecessor had bought them after the Conquest is false.² The confusion of this litigation lies beyond the present discussion, but it serves to cast some doubt upon the evidence of a formal viceroyalty at a particular date. In another case of Odo's authority there is a similar ambiguity. A royal order for the Kentford inquest of 1080 into the Ely disputes was sent *per Baiocensem episcopum*.³ Since Bishop Odo is not known to have had any other connexion with the Ely series of trials, the meaning of this phrase is obscure; it could mean that a royal order was transmitted through Bishop Odo who was then regent, as the story of his punishing the murderers of Bishop Walcher of Durham suggests, or it could mean that Odo brought the order back from Normandy with him, because he was certainly abroad in 1080 and with the king at St Georges de Boscherville.⁴ Yet a third case in which he acted *vice regis* is of little help in establishing

¹ *Chron. Abb. Evesham*, pp. 96–7.

² Round, *VHC Worcestershire*, I, 254; *Regesta*, I, nos. 185, 186.

³ *Regesta*, I, no. 122.

⁴ Odo's presence in England in 1080 depends upon Simeon of Durham's local knowledge that he came north to avenge Walcher; *Opera Omnia*, I, 118; II, 211; other accounts mention only the king. Odo's presence in Normandy is shown by his witness to a charter; *Regesta*, I, no. 121.

6 THE JUSTICIARSHIP IN ENGLAND

his formal viceroyalty in these particular years, for the date at which he judged between the bishop of Rochester and Picot the sheriff in a dispute which concerned royal lands and which had begun before the king himself is uncertain.¹ Bishop Odo certainly acted in the king's place and left a tradition of viceroyalty, but it looks rather an *ad hoc* arrangement than a formal or regular one. Odo was himself frequently abroad, even within the three years of William's long absence, and although fixed points and dates are hard to come by they are sufficient to establish that he can never have exercised a formal viceroyalty for any considerable part of the reign;² an impression borne out when the position of other royal deputies is considered.

Archbishop Lanfranc, although not a relation of the king, was probably more trusted by him than the ambitious and turbulent Odo. A Norman tradition described Lanfranc as *princeps et custos* of England, and a Canterbury historian asserted that so great was his influence that on the Conqueror's death no one could have succeeded to the kingdom without the archbishop's assent.³ As a great feudal baron and head of the church, Lanfranc naturally played a prominent part in the king's counsels, but he also had close personal ties with William. If the tradition of his pre-eminence is less marked than Odo's in many chronicles, this is no doubt due to his less dramatic, less political, less military exploits. Nor did he figure as judge in the great land pleas. Nevertheless, it is clear that during the crisis of 1075 he was acting on the king's behalf, even though Odo was in England,⁴ and there are indications that he exercised a general oversight of the land pleas themselves. In the doubtful royal confirmation of the Evesham trial, he was addressed by name with Bishop Odo when both were

¹ *Placita Anglo-Normannica*, pp. 34–6.

² Fixed points in his itinerary in Normandy are 1074, 1077 (Bayeux), 14 July 1080 (Caen), 1080 (St Georges de Boscherville), 1082. He was there at less certain dates between 1071–7 and 1077–9; *Regesta*, I, nos. 75, 98, 105, 117, 118, 121, 150, 168.

³ *Vita B. Lanfranci*, in Migne, *Patrologia Latina*, vol. CL, col. 55; Eadmer, *Hist. Nov.* p. 13.

⁴ Lanfranc's correspondence throughout the crisis is printed in Migne, *ibid.*, and calendared in *Regesta*, I, nos. 78–83.

distinguished in the royal greeting from the generality of the baronage. Similarly, when Bishop Geoffrey of Coutances was sent by the king to hear the dispute between Evesham and the bishop of Worcester, the royal order was sent to Lanfranc and Geoffrey even though it instructed the latter alone to do justice.¹ As archbishop, Lanfranc had an obvious interest in the disputes of his bishops and abbots, but the evidence from 1075, his close association with the king, and his relatively infrequent visits to Normandy² make it probable that he held a special if not precisely definable position on the king's behalf, even if others might carry out specific duties; a position which is reflected in the Norman tradition of his guardianship of England.

If Odo's position must thus be qualified by Lanfranc's, both must be qualified by that of Bishop Geoffrey of Coutances. Not having so close a relationship with the king to all appearances, he was nevertheless less frequently abroad than Odo and more frequently employed as royal deputy in land pleas than any other baron.³ His feudal position made him the seventh richest baron in England and he had a great reputation as a soldier, but it is also evident that he was treated as something of an expert on legal questions. He, with Bishop Remigius of Lincoln, Earl Waltheof, and the sheriffs Picot and Ilbert made an inquiry into the lands lost by the church of Ely, and thereafter he was treated as an expert in the legal affairs of the abbey; together with Lanfranc and Count Robert of Eu, he was involved in the difficulties over the consecration of Abbot Simeon.⁴ He was associated with Lanfranc in giving seisin of the lands of the murdered Countess Mabel of Shrewsbury to the abbey of St Martin de Troarn, with the archbishop, the local bishop, and sheriff, when King William gave his chaplain the church of St Mary of Wolverhampton; with the archbishop, Robert of Eu, and Hugh de Montfort, when the king ordered

¹ *Regesta*, I, no. 84.

² The only certain dates of his presence in Normandy are 1077, 1080, and 1082; *Regesta*, I, nos. 98, 125, 150.

³ See Le Patourel, 'Geoffrey de Montbray, Bishop of Coutances', *EHR*, LIX, 145 ff.

⁴ *Regesta*, I, nos. 151-7; *Inq. Com. Cant.* pp. 192-5; see also Miller, 'Ely Land Pleas in the Reign of William I', *EHR*, LXII, 448.

St Augustine's, Canterbury, to be resealed with the borough of Fordwich and certain other lands which the house had lost.¹ It is always difficult to distinguish an administrative from a feudal significance in Geoffrey's place in such writs, but he had no obvious local connexion with Canterbury or Wolverhampton, his own lands being principally in the south-west. His employment as a Domesday commissioner strengthens the suggestion that he was selected by the king because of his administrative capacity, and, so far as the evidence goes, he was selected more frequently than any other of the group of prominent barons.

The lay magnates did not occupy so prominent a place in the delegation of royal power as these three bishops, although the ecclesiastical origin of the narrative sources must be allowed for. In at least one of the Ely inquests the *legati regis* were Richard fitz Gilbert, Haimo the steward, and Tihel of Helion.² At the crises of the Norman monarchy, in 1067 before the kingdom was secure, in 1075 when it was threatened by rebellion, the lay barons acted on the king's behalf. In 1067, Hugh de Montfort, Hugh de Grantmesnil, and William de Warenne were left in charge of fortifications; in 1075, the attack on Norwich castle was commanded by Bishop Geoffrey, William de Warenne and Robert Malet, while William de Warenne and Richard fitz Gilbert summoned the traitors to answer in the king's court. If the part these great barons played seems less active or less prominent than that of their ecclesiastical colleagues, they were nevertheless always in the background, as Lanfranc implied when he wrote in the first person plural to the king, and in the singular to other barons, and they were relied upon by the king, equally with the bishops, for giving effect to royal orders settling some difficult piece of litigation.

Absence of any precise title, even where, as in the land pleas,

¹ *Regesta*, I, nos. 97, 98, 210. Both the writs in favour of Troarn and St Augustine's were dated 1077 by Davis; the latter in *dedicatione Baiocensi* certainly belongs to this year, but the former is probably 1080, because a grant to the abbey of Lessay which can be precisely dated 14 July 1080 has a very similar witness list to a confirmation by the king of a private grant to Troarn which speaks of the countess as recently dead; *Regesta*, I, nos. 125, 172.

² *Liber Eliensis*, p. 251; *Monasticon*, I, 482; Miller, *loc. cit.* p. 445.

ITS ORIGINS

9

justitarius would have been a literal description, and variation in the delegation of royal power, either as a general oversight or for a particular task, both argue for the absence of any settled system of regency or formal office. Earlier it was suggested that there can have been no pressing need for a definitive solution, but, even had there been, two considerations would have produced the situation which actually seems to have existed. The first, and in a sense accidental, factor was that all of the great barons were affected by the same necessity as the king: holding lands on both sides of the Channel they too had to spend some time in each dominion. The exception to this was Archbishop Lanfranc, but the other two bishops both held Norman sees, and, with the apparent exception of Richard fitz Gilbert, all of the other prominent members of the king's circle were abroad at intervals in King William's company;¹ quite apart from the demands of their own estates, a feudal king's stature was determined by the presence of his great feudatories in his retinue. Delegation of royal power therefore had to be flexible and *ad hoc*, but it was also conditioned by the nature of feudal society. The second and more important consideration was partly the general need for co-operation between the king and his baronage, and partly the particular dangers of the Norman position in England that made that co-operation urgent. The king had to rely on the baronage as a whole, as the address of William's writs suggests, and especially upon the really great barons, who were therefore distinguished from the generality of the baronage in royal orders. It is true that William inherited from his Anglo-Saxon predecessor a financial system which was competent to assess and collect the danegeld, a chancery which used a great seal unknown to Norman practice, and a system of sheriffs and shire courts which held the pleas of the Crown, but this royal

¹ Count Robert of Mortain was with the king on most of his journeys abroad; *Regesta*, I, nos. 66, 75, 105, 117, 145, 150, 168, 182; Hugh de Montfort was there in 1077, and between 1071-7 and 1072-82; *ibid.* nos. 98, 105, 168; William de Warenne was with the king only once, in 1082; *ibid.* no. 150; Richard fitz Gilbert does not appear as a witness in any of the king's Norman charters. Attendance on the king does not, however, exhaust the possibility of great barons being abroad on their own account but evidence is not available unless their journey brought them into contact with the king's court.

10 THE JUSTICIARSHIP IN ENGLAND

administration operated in a feudal context, and its leading figures were feudal ones. Royal intervention was the exception rather than the rule, the great land pleas were unusual rather than common, and the delegation of royal power was therefore not urgent. The need for a formal office like the justiciarship was not really present in the first Norman reign.

2. THE REIGN OF WILLIAM II

Under William II there was no greater need to organize the delegation of royal power. Until 1091 the new king never left England, the duchy having passed to his elder brother, and after he had embarked upon the conquest of Normandy his only lengthy absence occurred in the last two years of his reign. Since Rufus had neither wife nor children, inevitably he had to use as his deputies one or more of the barons he especially trusted. Bishop William de St Calais of Durham was reputedly 'grand justiciar' until his rebellion in 1088,¹ but no precise significance can be attached to the title, unless it be a confusion with his palatine authority. Bishop Walkelin of Winchester was more important in the king's counsels. He had had some connexion with one of the Ely trials under the Conqueror, and he served Rufus in a number of ways: by carrying a summons to the rebellious bishop of Durham in 1088, by going with Bishop Gundulf of Rochester to punish the monks of St Augustine of Canterbury in 1090.² He was also prominent among the witnesses to the increasing number of royal administrative writs. As bishop of Winchester he was one of the great barons of England, his connexion with the royal circle was certainly close and, although he was never called justiciar or by any other title, the local Winchester tradition asserted that he was left as regent in England in 1097 at the beginning of the king's long absence.³ For the first half of William II's reign he was the only great magnate close to the king, for others in that circle of royal advisers, although two of them were given bishoprics in the second half of the reign, were of much less feudal significance.

¹ Orderic, iv, 10. ² *DNB* under Walkelin. ³ *Annales Monastici*, II, 39.