

## **PLEASE NOTE**

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### **A matter of judgement: politics, law and the trial of Bishop Thomas Watson**

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Damned by Gilbert Burnet as ‘one of the worst men, in all respects, that I ever knew in holy orders: passionate, covetous, and false in the blackest instances;’,<sup>1</sup> Thomas Watson’s controversial expulsion from the bishopric of St David's after a long and bitterly fought series of legal actions raised fundamental and disturbing questions about the relationship between politics and the law as well as between church and state. It is the purpose of this paper to explore some of these issues.

In the last years of his reign Charles II did his best to ensure a politically compliant church hierarchy, but as James II soon discovered the bishops were not compliant enough. He thus found it necessary to take even more care in appointing bishops of his own. Unfortunately for him men who would support the crown come what may, who were committed to toleration and also had the sort of scholarly reputation required of a bishop were somewhat thin on the ground. During his brief reign James appointed three bishops: Samuel Parker, Thomas Cartwright and Thomas Watson. All came from relatively modest backgrounds. All lacked aristocratic patrons although Watson had been particularly fortunate in obtaining the lucrative rectory of Burrough Green. None had been marked out as what we now call promotion material.

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<sup>1</sup> Burnet's History of my own time, ii:226-7

In short they were creatures of the king: devoted to his interests and as a consequence objects of suspicion and contempt.<sup>2</sup>

At the revolution of 1688 several of the bishops found it impossible to swear allegiance to the new regime and were deprived of office by statute. One might have expected James II's devoted threesome to be amongst them but one was already dead, another followed the king into exile and died soon after. Only Thomas Watson was left to wrestle with his conscience. Watson consistently voted against recognising William and Mary as monarchs but as pressure to take the oaths to the new regime mounted his conscience proved less and less troublesome. Sir John Reresby recorded that Watson asked him for advice about taking the new oaths; Reresby replied somewhat contemptuously that this was a matter in which he would expect a bishop to be giving rather than taking guidance. Watson took the oaths the next day.<sup>3</sup>

In the short term Watson's apparent conversion to the new regime was almost certainly welcome, although he remained an object of considerable suspicion. Yet whilst Watson was just about acceptable to the new government he was far from welcome in his own diocese. St David's was very poor and had never recovered from extensive damage suffered in the civil wars. The cathedral was in ruins and the canons residentiary refused to live in a town that lacked a market and all the facilities required for civilised living. Successive Restoration bishops had taken advantage of the opportunities it offered. They had paid considerably less attention to their pastoral duties. This was something that Watson was determined to put right.

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<sup>2</sup> Clarendon and Rochester, Correspondence and diaries, ii:171, 200.

<sup>3</sup> Reresby, Memoirs, 569.

Watson's commitment to toleration went hand in hand with a commitment to reform and modernise the church. This, he believed, was the way to reclaim dissenters and avoid schism. His recipe for achieving this was simple: churches needed to be beautified; ministers needed to be resident and to minister to their communities. Archbishop Sancroft commended his intentions but emphasised the need for caution and for proceeding by 'just and legal methods'. Somewhat prophetically he warned Watson to 'take such sure measures from the beginning as may not fail ... in the end'.<sup>4</sup> The medieval statutes of St David had been lost or destroyed. All that was left was a random collection of old documents and what Sancroft described as 'an old ledger book'. Watson chose to believe that this old book contained the definitive statutes of the diocese and insisted that new appointees take an oath to observe them. In so doing he precipitated a feud with the chapter who already had a customary oath of their own and refused to accept a new one. Even new appointees sympathetic to the need for reform had difficulty with this new oath. As if one feud were not enough Watson also found himself at odds with George and Robert Lucy joint registrars of the diocese. His talent for confrontation was further demonstrated by his involvement in a dispute about payments to the local schoolmaster and by his speedy commencement of a suit for dilapidations against the executors of his predecessor.<sup>5</sup>

Watson's lifestyle probably made matters still worse. When he first visited St David's, his secretary was said to have declared that Watson 'was so base and niggardly on his journey' that he was ashamed of it.<sup>6</sup> It seems that he diverted most of his income into building up his landholdings. At a time when the elite were expected to be hospitable and open handed, Watson's frugality was almost certainly

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<sup>4</sup> Bodleian Library (hereafter Bodl.), Tanner, 146, f.131.

<sup>5</sup> Jane Houston (ed), *Cases in the Court of Arches* (Phillimore, 1972).

<sup>6</sup> Lambeth Palace Library (hereafter LPL), VX 1B 2g/2, box 2, Interrogatory of John Catlyn.

interpreted as plain meanness by his contemporaries, even though the money that he accumulated was also used to make generous endowments to his old college, to found a hospital in his home town of Hull and to improve the prospects and social status of his family.<sup>7</sup>

Watson continued to collect enemies. In autumn 1689 he was active in the elections for Convocation, pitting himself against government candidates and policies.<sup>8</sup>

Convocation also supplied an arena for an attack on Watson led by Robert Lucy.<sup>9</sup>

Undaunted Watson continued to monish absentee clergymen and threatened to discipline Robert Lucy for extortion, as a result of which Lucy declared that 'Something must be done and I am resolved I will not spare anything to prosecute...'

Lucy prepared a petition to the House of Lords against Watson. The petition was presented to the House in January 1692. It alleged that Watson was under prosecution for taking an excessive fee and prayed leave to prosecute him for various other unspecified crimes. Watson denied all the allegations and declared that some of the signatures were forged. The House initially instructed the petitioners to appear before it but there is no record that they ever did so and the matter dropped.

An unsigned, undated and spiteful account of Watson's 'irregularities' almost certainly relates this incident. The irregularities cited include his support for the declaration of indulgence and his attempts to bully the clergy into reading it. Buried amongst these irregularities were some of the allegations that would surface again at Watson's trial: notably his financial relationship with his nephew, Archdeacon John

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<sup>7</sup> Chatsworth, Halifax Collection B.55.

<sup>8</sup> G.V. Bennett, 'King William III and the episcopate' in *Essays in modern English church history*, eds. G.V. Bennett and J.D. Walsh, 119-20; Lathbury, *History of convocation*, 321-5.

<sup>9</sup> The National Archives (hereafter TNA), DEL 1/227 part 1, 616-20; 622-4.

Medley. They also included issues of national as well as of local interest. Watson was identified as a Jacobite who had publicly justified the legitimacy of the pretended Prince of Wales and as either an atheist or a papist.

The situation in St David's deteriorated still further with the death in February 1693 of George Lucy. Robert Lucy now claimed to be register in his own right, but Watson replaced him, declaring that he was unfit for office, having taken exorbitant fees and having been seen 'disguised with drink'.<sup>10</sup> Even Robert Lucy's allies agreed that he drank, though not in a way 'unbecoming a gentleman'.<sup>11</sup> Not surprisingly Lucy became even more entrenched in his opposition to Watson.

By June 1694 Robert Lucy had taken his complaints to John Tillotson, archbishop of Canterbury and had secured a special 'metropolitical' visitation. During the visitation Watson was found to be in contempt of the archbishop's authority, having granted an institution after receiving the archbishop's inhibition. In his defence he claimed that this was only a technical infringement as the documents concerned were postdated.<sup>12</sup> He was nevertheless suspended from office until February 1695 when he made his submission to Thomas Tenison, Tillotson's successor at Canterbury.

Robert Lucy was still not satisfied. In the summer of 1695 he commenced a new prosecution. The local campaign against Watson now became inextricably mixed up with national politics. The death of Queen Mary in December 1694 raised fresh questions about the legitimacy of William's reign. William's paranoia was

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<sup>10</sup> The extraordinary case of the Bp. of St. David's, further clear'd and made plain, from the several views that have been made of it wherein the articles against him are consider'd and his lordship vindicated from them (London, 1703), 3; TNA, DEL 1/227 part 2, 909-10.

<sup>11</sup> TNA, DEL 1/227 part 2, 1049, 1089-90.

<sup>12</sup> Wood's Life and times, iii:466; LPL, VX 1B 2g/2, box 3, Thos. Watson, 16 July 1694.

exacerbated still further by revelations of an Assassination Plot. Watson, apparently blind to the dangers of his situation, did nothing to reassure the government of his loyalty. On the contrary he supported opposition candidates at the 1695 elections, then further underlined his political unreliability by refusing to sign the Association<sup>13</sup> and failing to join his fellow bishops in condemning the decision of two non juring clergymen to grant absolution to William's would be assassins. He also continued to oppose government measures in parliament, particularly over the controversial attainder of Sir John Fenwick.

The prosecution was unusual in that it was quite literally before the archbishop, assisted by six of his fellow bishops, rather than in the Court of Arches or other recognised ecclesiastical court. Perhaps the medieval court of audience had been reinvented for the occasion. The charges included simony, failure to administer the oaths of allegiance at ordination, refusing to ordain an individual unless he entered into a penal bond, irregular conduct of a church court hearing, refusing to monish a priest for failing to pray for William and Mary, ordaining a priest under age, extortion, and misappropriating fees, diocesan documents and charitable funds.

There were sufficient irregularities about the mixing of common and canon law offences and about the procedures adopted to encourage Watson's lawyers to apply to the King's Bench for a writ of prohibition. Lord Chief Justice Holt, government appointee and privy councillor, granted the prohibition in respect of one minor charge but refused it for the others, arguing that 'the archbishop of Canterbury has without doubt provincial jurisdiction over all his suffragan bishops, which he may exercise in

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<sup>13</sup> HMC Lords, n.s. ii:208.

what place of the province it shall please him', that offences under the common law were punishable in the church courts if they could be construed as offences under church law and that even an offence solely created by statute (such as the failure to administer the oaths) could be deemed part and parcel of the office of a bishop. All were therefore cognisable in the church courts.<sup>14</sup>

Over the summer two further prosecutions were commenced against Watson, this time in the Court of Arches. Witnesses were asked whether Watson swore, whether he entertained non-jurors and papists, whether he had ever commented unfavourably on the ministry's foreign policy and whether he had ever refused to toast William and Mary.<sup>15</sup> Such questions were necessary because there was virtually no evidence against Watson. Testimony about the level of fees charged by Watson, for example, failed to prove they were of a substantially different order to those charged by Robert Lucy or Watson's predecessors.

The mixture of gossip and innuendo that was used to advance Lucy's case made it extremely difficult for Watson to mount an adequate defence. One of the allegations of simony concerned the appointment of his nephew John Medley as archdeacon of St. David's. Watson had supported Medley's mother and sisters, and had financed Medley's university studies. He provided money to enhance the dowries – and hence the marriage prospects - of Medley's sisters in what was clearly an attempt to improve the social standing of his wider family. But this was a loan rather than a gift: he expected to be repaid and it is clear that Medley thought that it was entirely right and proper that he should be repaid. Both Watson and Medley were prepared to testify

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<sup>14</sup> Raymond, 446.

<sup>15</sup> LPL, VX 1B 2g/2; DEL 1/227.

that their financial arrangements were of long standing and did not relate to the sale of any ecclesiastical office. Watson did receive the profits of the various offices he had granted to his nephew, but he insisted that as a more experienced landowner he had simply administered the estates on his nephew's behalf. Further elucidation of these points is not available since the court declined to hear Medley's testimony on the grounds that he was party to the crime, even though nothing had been proved against him and all witnesses were agreed that Medley was too pious to entertain a simoniacal contract.<sup>16</sup>

Confirmation of the real reasons for Tenison's involvement in Lucy's campaign came in August 1696 when Tenison made it all too clear that worries about Watson's possible Jacobitism were at the root of the case against him. Watson now lamented that 'I am denied the assistance all criminals have by law. I doubt not their design is to ruin me ...'<sup>17</sup>

By autumn 1696 some thought that Watson was so cowed by the prosecution that he had become 'very shy of his old friends'.<sup>18</sup> Perhaps this was what Tenison had originally hoped to achieve but over the course of the next year it became clear that he was under enormous pressure from the king and was now prepared to push the case to a conclusion. Although his friends tried to encourage a compromise, Watson remained obdurate, refusing even to visit the archbishop, let alone seek reconciliation. Late in the spring of 1698 Robert Lucy pressed home his advantage by commencing yet another suit against Watson, this time in Chancery for the restitution of the office

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<sup>16</sup> LPL, VX 1B 2g/2, box 1.

<sup>17</sup> HMC, Hastings, ii, 283.

<sup>18</sup> HMC, Hastings, ii:281.

of registrar.<sup>19</sup> The case was still unresolved at Lucy's death in 1713, although what progress there was seems to have vindicated his claim to office.

On 3 Aug. 1699 Tenison found Watson guilty of simony, of taking exorbitant fees and of ordaining two deacons without tendering the necessary oaths of allegiance. In the absence of firm evidence, the conviction was based on 'common fame'. Vague and nebulous evidence for the prosecution, such as Medley's melancholy after his preferment to the archdeaconry, was accepted as confirmation of simony. That Watson had been indicted for taking excessive fees, even though he had not been tried, let alone convicted, was used to support the case against him. That he had offered to resign his living was used to prove simoniacal intent, even though he did not own the right of presentation.<sup>20</sup> His supporters were later to claim that even the conviction for failing to tender the oaths of allegiance was flawed, since the men concerned had taken the oaths the day before their ordinations.<sup>21</sup> Tenison denied Watson's accusations of party political bias, 'God forbid we should try persons instead of causes'. He then went on to demonstrate his impartiality by dismissing almost all of the evidence for the defence on the grounds that his witnesses had testified that he was of strict life and an observer of church discipline. This, he said, was self-evidently untrue since Watson's earlier suspension proved the opposite.

Significantly the bishops who sat with Tenison as assessors differed in their verdicts.

Thomas Sprat refused to give judgement at all.<sup>22</sup> Henry Compton agreed that

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<sup>19</sup> TNA, C 5/134/35.

<sup>20</sup> Bodl., Rawl. B 380, f.253-268.

<sup>21</sup> The extraordinary case of the Bp. of St. David's, further clear'd and made plain, from the several views that have been made of it wherein the articles against him are consider'd and his lordship vindicated from them, (London, 1703).

<sup>22</sup> Burnet's History of my own time, ii:226-7

Watson's financial relationship with Medley was suspicious but unproven. John Hough acquitted him of simony over Burrough Green but considered him guilty on the other charges. William Lloyd and Gilbert Burnet found him guilty on all charges.<sup>23</sup> Ironically, investigations were already beginning to reveal that Lloyd was himself guilty of simony, prompting Watson to remark that 'I wish others now were as clear of simony as I.'<sup>24</sup> Burnet made a long barbed speech in which he insisted that even evidence that Watson had refused bribes for preferment proved the allegations against him – for why otherwise would such offers have been made? Deprivation, he argued, was the only possible sentence: 'he who has once broke his faith in so sacred a matter, can never be trusted any more.'<sup>25</sup> Tenison agreed: Watson's offences were 'aggravated with a long black order of evil practices' and 'where there is a gangrene amputation is necessary.'<sup>26</sup> He sentenced Watson to deprivation.<sup>27</sup>

Watson, who had never believed such a sentence to be possible, promptly appealed to the court of Delegates even though he knew that the bias against him was so great that the Delegates would simply confirm the verdict. He also attempted to resume privilege, as protection against the 'unforeseen oppressions' to which an earlier waiver of privilege had exposed him.<sup>28</sup> During the ensuing discussion the attorney general informed the House of Lords that allowing Watson his privilege might tend 'to the diminution of the King's prerogative in ecclesiastical affairs'. Not surprisingly when the Lords instituted a full debate on the issue they soon found themselves discussing wider questions about the authority of the archbishop of Canterbury who

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<sup>23</sup> Vernon-Shrewsbury Letters, 334.

<sup>24</sup> Bodl., Rawl. B 380, f.191.

<sup>25</sup> Bodl., Rawl. B 380, f.248-252.

<sup>26</sup> Bodl., Rawl. B 380, f.253-268.

<sup>27</sup> TNA, E 135/21/83.

<sup>28</sup> Vernon-Shrewsbury Letters, 338; Journal of the House of Lords (hereafter LJ), xvi:479; LPL, Mss 3403, 239-

was effectively claiming the right to control a significant portion of the membership of the House.

Watson again sought a prohibition from the King's Bench, arguing that by the canon law the archbishop did not have the power of deprivation. He also asked for a writ of mandamus to compel the Delegates to accept his evidence. Holt refused the mandamus, stating that it could not be used to force an ecclesiastical court to act according to canon law. He also refused the prohibition, remarking that to question the archbishop's authority in such a way was 'to question the very foundations of the government' but he based his refusal on the much narrower grounds that the question of whether or not the archbishop could deprive a bishop of his own authority was in itself a matter for the decision of the Delegates.<sup>29</sup> When the Delegates confirmed the sentence of deprivation Watson challenged their decision by applying for a writ of error.

Holt made it known that even if the Lords granted the writ of error he would refuse to obey it,<sup>30</sup> but a clash of jurisdictions was avoided when the House decided not to consider the merits of the application but only the manner in which it had been presented. The application was refused.

In May 1702 Robert Lucy petitioned Queen Anne for his costs. He claimed to have spent £2,000 in a cause that had been fought 'only in the interests of the poor clergy ... and for the public good.'<sup>31</sup> It was perhaps as a result of this petition that the archbishop ordered Watson to pay some £600 to Lucy. Watson, apparently now

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<sup>29</sup> Richard Burn, The Ecclesiastical Law 8th edn London 1824 (4 vols), i:235.

<sup>30</sup> Raym 545.

<sup>31</sup> Calendar of State Papers Domestic (hereafter CSPD), 1702-3, 420-1.

determined to embrace martyrdom, refused to obey and was committed to Newgate. Once again he sought relief in the King's Bench. He was released on a technicality that enabled the judges to ignore wider issues about the powers of the archbishop. At or about this time Watson petitioned the new queen for a commission of review.<sup>32</sup> A powerful coalition of Welsh gentlemen counter-petitioned the crown, lambasting Watson and requesting a new bishop to act both as a spiritual leader and as a focus for loyalty to the crown. John Medley headed the list of the clergy of St. David's who demanded the return of their diocesan. Their petition emphasised Watson's devotion to the Church of England and declared that the prosecution against him 'was begun without our knowledge and carried on against our consent' but omitted any mention of his loyalty to the current regime.<sup>33</sup>

A year later the government finally deprived Watson of his temporalities.<sup>34</sup> Once again he sought a writ of error<sup>35</sup> but his failure to assign errors promptly enabled the House to invoke standing orders and dismiss the case without considering its merits. It is unclear whether this was usual practice but given the problems the House was already facing in Ashby v. White, it is understandable that it would wish to avoid reopening another controversial case.<sup>36</sup> Watson tried and failed to have the ruling overturned.

Watson died in 1717 still convinced that he had been victimised for his political beliefs. A comparison of his case with that of Edward Jones, bishop of St. Asaph who faced similar accusations of simony in 1697 suggests that he was correct. The

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<sup>32</sup> TNA, SP 34/1, 80 stamped f. 137.

<sup>33</sup> TNA, SP 34/27/3, 4, 5.

<sup>34</sup> CSPD 1703-4, 456

<sup>35</sup> LJ, xvii:599.

<sup>36</sup> LJ, xvii:609.

evidence against Jones was far more convincing than that against Watson but he was sentenced to no more than a temporary suspension. Unlike Watson, Jones had not crossed his archbishop. Unlike Watson his origins were socially acceptable and he had powerful friends who were prepared to speak up on his behalf. The accusations against Jones, like those against Watson, resulted from a local diocesan feud. Such feuds were commonplace and the accusations against Jones, which were almost certainly inspired by the Watson case, almost certainly acted as a powerful reminder to the church hierarchy that it was unwise to provide diocesan office holders with the means to challenge the authority of their bishops.

And just as a footnote: the Watson case set a precedent that has been invoked only twice in the 300 years since his deprivation. In 1822 it informed the prosecution and removal from office of Percy Jocelyn, bishop of Clogher, after he had been caught in flagrante with a guardsman in a Westminster tavern, and it was again used in the later nineteenth century in the unsuccessful prosecution of the bishop of Lincoln, one of the leaders of the Oxford movement.